IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO RAMOS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Supreme Court Case No: 79781

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is the one who had all three. Jack had the motive, the opportunity, and the plan to either commit, or help participate in the murders of Jack Siegel, and Helen Sabraw. The State wants you to focus, as they just explained to you in their closing, on just the two pieces of evidence; on the fingerprint, and on the DNA that's found on the t-shirt.

Your Honor has an obligation to look at all of the evidence in this case. And in order make sense of what happened here Your Honor has to look at all of the evidence. And if Your Honor does that, the only logical conclusion is that Jack Siegel either committed or helped participate in the murders of Wallace Siegel and Helen Sabraw.

Now, it appears that the Defense and the State agree that this is not a case where you have a conspiracy, or you have Jack conspiring with Gustavo, or Gustavo knowing anybody there at the Camlu Apartments. So if we start with the proposition, that if we believe Jack Siegel is the one who's involved in this murder, we cannot also say that Gustavo was involved in this murder.

In -- in our language of legalese that we use as lawyers, we describe this as mutually exclusive. It's Jack's involvement automatically means Gustavo could not have been involved in the murders of Helen Sabraw and Jack Siegel. At minimum Judge, if Your Honor doesn't feel that there's proof beyond our reasonable doubt that Jack Siegel committed these murders, the evidence and the amount and type of evidence that links Jack to these murders

clearly creates a reasonable doubt that Gustavo is the one responsible for them.

Motive, opportunity, and plan, the evidence shows that Jack, and only Jack, had all three of those. Jack had various motives to kill his father. You heard the testimony from Detective Chandler, and you heard the testimony from Steve Barhei in this case. And some of the testimony from Jack collaborates this. He came down here in approximately February/March of 1998 to care for his dad who had had surgery.

He came down to care for him, not out of a sense of good will, or volunteering to help his dad, the evidence shows that Jack was forced to come down here, that he was chosen by his siblings to come down here, because he was the only one of all the siblings who wasn't working.

And I think it's understandable, to an extent, when you are caring for an elderly parent, especially one that's had surgery, that at times you're going to grow frustrated, you're going to grow stressed out and upset. And that's what the evidence shows in this case. Detective Chandler testified that his investigation revealed that Jack was angry for caring and taking care of his father during those months, leading up to the murder.

Steve Barhei described Jack as not a happy camper about caring for his dad. And I think some of that is evidenced by the fact that overall their testimony that you heard about when dad would go to eat dinner, breakfast, and lunch that usually Jack would just

drop him off there, sometimes he stayed, most of the time he didn't stay. He would just drop him off there. I think that's a -- a good indicator of the status of their relationship leading up to the murder of Jack -- excuse me, of Wallace.

He also had a financial gain in the case. Now, the testimony of Jack numerous times appeared to be covering up these motives such as financial gain. I questioned him about knowing his dads finances, what he had in the bank, what he had in life insurance, what he had in annuities. He denied that on the stand, but if Your Honor remembers, I impeached him with his statements from 1998, where he admitted to the detective who questioned him, that he was very familiar with his dads banking financial situation, his annuities and his life insurance policy.

At the time Jack came here, he was unemployed. That is evidenced in the medical records that the State provided and submitted into evidence, where his occupation is noted as unemployed. He had a lot to gain from this financial situation of his dad having a annuities and life insurance.

Part of the deception that Jack tried to confuse this court with -- or mislead this court with, is he indicated or denied that he had made any type of claims right after the murders. And if Your Honor remembers, I impeached him with a document of -- from a Zurich Kemper Insurance Company, made out -- that letter was made out strictly to Jack, it wasn't to his siblings, it was strictly to Jacks -- and that was within weeks of his dad's murder that they

had received his claim to recuperate the money under those policies. Jack, he went so far as to retain an attorney to try to obtain that money.

The issue can turn out to, well what's the motivation that Jack has to murder Helen? And you heard some of the evidence today, that there was in fact a relationship between Helen Sabraw and Jack Siegel. Janet West brought out part of that relationship and -- and explained to the Court on the telephone, that they were friends, that she would see Helen Sabraw sometimes down on the first floor, walking towards the room where Jack -- where Wallace lived.

And then you heard the testimony today of -- of Vivian Guy who testified, and has obviously no dog in this fight has no incentive to lie or to distort things, that he would see Ms. Helen, as she called her, and Wallace Siegel all the time, eating together. And that it appeared that they had a relationship, that their demeanor was that of being happy, friendly.

So the State never brought this information out. We, the defense, are the ones who brought this information out, because as the Court, I think is aware, and it happens a lot in these situations -- just like when there's a motive to kill for life insurance policies -- a lot of times when there is a child of a parent, who is now an adult, and that parent is no longer married and perhaps starts forming a relationship with someone else, sometimes those children can grow concerned or upset that they might not inherit the money that

they think that their intitled to. So that's a strong motivation for Jack in this case.

And if you remember Vivian Guy's description of the demeanor, the few times that Jack would actually be there at the table during, breakfast, lunch, and dinner, is that the demeanor was completely different. That it was more cold, not as friendly. So there was obviously -- based on that friction between Jack Siegel and his dad's relationship with Helen Sabraw. More than likely he was concerned that if is dad forms another relationship, maybe even gets married, that he is not going to get the money that he thinks he's entitled to.

Alternatively, Judge, there could've been something that Helen Sabraw saw that caused Jack to kill her. There's a lot of unknowns in this case, we do know that some of the DNA from Ms. Sabraw, was found in the room of Wallace Siegel. Jack is the one who had the opportunity, in this case, to commit both murders.

The State went to great lengths to show this Court that Jack couldn't have committed these murders, because he was at the hospital. They presented evidence that he was at hospital from approximately at 12:50 in the morning, on May 16th to approximately 4:00/4:30. And then from there he went to Walgreens to pick a prescription, and from there he went to Carl's Jr. and came back home.

The State's argument is, he couldn't have committed the murders because, he has a perfect alibi, we have medical records

we have receipt, we have the Carl's Jr. bag. Well what they State hasn't provided this Court with information of -- are numerous things that destroys the potential alibi defense. Number one, no evidence was presented on exactly when Wallace Siegel and Helen Sabraw were murdered. We don't even know at this point who was murdered first. We know who was found first, and second, but we don't know who was murdered first or second.

We don't know the whereabouts of Helen Sabraw and Wallace Siegel leading up on May 16th, Friday, going into the early morning -- I'm sorry May 15th going into the early morning of May 16th. We don't have any of that information. The only thing we have is the testimony of Jack Siegel, who claims they were both at home and from there he decided to go to the hospital. Well, to be fair, Jack is not necessarily an objective person in this case. He has a motive to lie. There's been no corroboration of where Helen Sabraw and Wallace Siegel were leading up to the first discovery of Wallace Siegel's body at approximately 5:00 in the morning, on May 16th.

Jack had the opportunity to commit these murders because he had been living at the Camlu Apartments for the previous three months before the murders. He knew the other tenants, the other tenants knew him. The staff knew him, he knew the staff. It wouldn't be at all odd or strange to find Jack walking on the first floor, on the second floor, or down in the basement. It wouldn't be odd at all for Jack to be coming in and out of the front

door of the building. This is the opportunity that he had.

Now, to make all the evidence, and I keep emphasizing all of the evidence because the State only wants you to focus on two pieces of the evidence. All of the evidence in this case, can make the following scenario more than likely, if not conclusive, of what happened in this case. On the evening of Friday, May 15th, Jack stressed out in anger about taking care of his father, perhaps upset because he's -- his father's now dating another women and he might be left out of the inheritance, murders his father in room 120.

Alternatively, he could've killed Helen Sabraw first, we don't know that, but it doesn't make difference based on the evidence that supports this scenario. Perhaps Helen Sabraw witnessed something. Witnessed a fight -- an argument -- between Jack and the -- and his father. Jack murders both of them, and has ample opportunity before midnight to clean himself up, dispose of whatever evidence he want to dispose of, get in his father's car, drive to the hospital, establish his alibi at the hospital, establish his alibi at Walgreens by getting the receipt for the medication, and going to Carl's Jr., coming home acting shocked and surprised or at least a bad attempt to add -- to act shocked and surprised, and claimed that someone robbed the place.

This is not a wild scenario invented by a overzealous defense attorney, Judge. I want to go over the evidence now that supports such a scenario. If Your Honor remembers, the detectives that were called in this case, all called by the defense, agreed that

there had been no signs found of forced entry. So no broken windows, broken doors, nothing that would indicate entry was forced in this case. In fact, Detective Chandler, indicated they couldn't even determine what was the point of entry in this case.

We know that the Camlu was a locked facility for approximately 7:00 a.m. to about 7:00 or 8:00 p.m.. I think a couple of the witnesses, Steve Barhei, Robert Reeder weren't a hundred percent accurate, but the both said ballpark, 7:00 or 8:00. So between 7:00 a.m. and 7:00 p.m. you could come and go, but after that it was a locked facility. You had to go in with a key, through the front door.

Now, th -- one of the most shocking things in this case, and Your Honor has already heard it and its been admitted into the evidence, is the 9-1-1 call that Jack Siegel made in this case. And if it's not an attempt to set up an alibi or a defense premeditated, I don't know what is.

A couple of things that I'd like to direct the Court to, things he said that -- I -- you just don't normally say, I wouldn't think you would normally say when you have found for the first time your dad potentially murdered. He makes sure to tell the 9-1-1 operator -- and there's actually two on the line, I believe there's an ambulance medical one, and a police 9-1-1 operator on the line, you can hear that in the call.

He says, I just got back from the emergency room, I had to go to the emergency room for my knee. He says, He's dead, this

happened before. I've been gone for four hours. He then, with -- I don't know how he could come to this conclusion so quickly, tells the 9-1-1 operators, no less two times somebody robbed this place. He says that twice, somebody robbed this place.

And that theory got some traction, because you can hear the 9-1-1 operator, one of them says, sounds like it's a robbery and the other one -- the other 9-1-1 operator on the line says, yeah, that's terrible.

He says, they, T-H-E-Y, they bashed him real good. This is not the behavior of someone who has no involvement in a murder and comes back home to see in shock and disbelief his father murdered. This is the language and the conduct of someone who's setting up their alibi defense.

Even his story of having knee pain is highly suspect in this case. There was no evidence presented that before that evening, when he wanted to get his knee checked out, that for the three months he was there, he had ever had any type of knee pain or complaints of knee pain. He admitted on the stand that he had never gone to that hospital before.

Judge, what a shocking coincidence that the day that he decides -- or the early morning he decides to go to the hospital for his knee pain, his father is murdered. That's beyond coincidence. He described on the stand his knee pain as being intolerable. That was the word he used, intolerable. Yet, Steve Barhei testified that when he saw him, shortly after he came back from Carl's Jr.,

presumably, called 9-1-1. He said that, Jack wasn't limping, he wasn't even wearing the knee brace that had been provided to him by the hospital. Steve Barhei described his demeanor as nonchalant about his dad's murder. He said he was acting suspiciously that was his demeanor.

Jack's story of leaving the front door unlocked, is also suspect. And I believe it's part of his plan to have focus drawn to somewhere else. That's some intruder came in and did this to his dad. Jack went to great pains, initially when he got there, because his dad liked to sleep on the sofa seat out front, in the kind of -- front area family room right out from the front door, he had this kind of intricate cable pull system where if his dad needed any type of help or assistance and perhaps no one was there, or no one could hear him, from the comfort of that chair, he could pull that string. So there's no reason for Jack not to lock that door.

The photos of the counter, where the Carl's Jr. bag and drink are at, you could see there's two keychains, and -- one of it's the car keys, and there's two keychains for the front door of the apartment for Wallace Siegel. He could've easily locked the door. His excuse that he didn't lock the door because if something happened to my dad, then no one could get to him is absurd. He set up the cable pull system, the staff there obviously had their own keys, they could've entered there, if there was any type of an emergency. This is just another piece of evidence, of all the evidence we're asking the Court to look at, that indicates that Jack

either committed or helped participate in the murders.

Perhaps the most damning evidence of Jack's guilt in this case, is the blood that is found in his father's car. The evidence that came out before Your Honor, is that since Jack came here, and his dad had that surgery approximately February of 1998, that Wally no longer drove the car; that Jack is the one who had exclusive position of that car. So from approximately February until his death in May, the only one who would be sitting in that front seat, and driving, is Jack Siegel.

Now, Jack admitted that he drove the car to the hospital. And if you remember, when the detectives questioned him that very day, when they came to investigate the scene, they gave him an opportunity to explain. Just like State was indicating the detective gave Gustavo a chance to explain, and his re -- his response didn't make sense. They gave Jack an opportunity to explain, any reason we are going to find blood in your dad's car? No. He was unequivocal about that no.

But we know, we know that there was blood, in fact, found in two locations of that car. On the steering wheel of the front pass -- the front driver seat, as well as the carpet in the area between the passenger front seat, and the drivers' seat. And -- the devil's in the details. This is the interesting point, about the DNA that is found -- the blood that is found in the area between the two front seats.

First of all, it came back with a frequency rarer than 1 in

1.36 million, as belonging to Wallace Siegel. Again, no reason for Wallace Siegel's blood to be in there. His blood is in there. And this the -- this is the detail, it was a mixture. So someone else's DNA was also mixed in with the blood of Wallace Siegel. So the State can't get up here and argue, well, maybe he bled one day, drop of blood, there was a mixture. Wallace mixed in with somebody else.

The State, a few minutes ago, went into detail about the brutal murders of Wallace Siegel and Helen Sabraw, and they were in fact brutal murders. However, this is further evidence of why someone, in this case Jack Siegel, was involved. And if you remember Detective Chandler, specific to Wallace Siegel's crime scene, the way he was murdered, described it as personal. This is not th -- both murders are not a case of someone trying to go in there take some money real quickly and then leaving as quickly as possible. This was overkill. These were personal killings.

Now we know Gustavo had no relationships with Helen Sabraw, no relationships with Jack -- with Wallace Siegel. So there's no reason for this to be a personal murder, on Gustavo's behalf. There is though, for Jack Siegel's behalf. That makes sense that's what makes all of the evidence in this case make sense.

Now perhaps we would be in a different position if the police had done a more thorough investigation. And they had several things to follow up on that, respectfully, I do not believe they adequately did, that more than likely would've changed the

posture of this case and where we are sitting here today.

I've already discussed with you -- with Your Honor, that after questioning Jack Siegel that -- whether there'd be any blood in the car, he denied it, they went, found blood. They never went back and requestioned Jack about that -- at that point the most critical piece of evidence that they had. The police never went back to question him.

A few years later, in June of 2000 you heard the testimony of Detective Chandler, he had a phone call with Leslee Siegel, the sister of Jack and the daughter of Wallace Siegel. She gave him information, which he noted down, contemporaneously with that phone call, that drew the attention and the accusation of Jack's then girlfriend, and friends involvement in the murder, of both Wallace Siegel and Helen Sabraw. Leslee gave them the name of Martha Morales.

There was no follow up to try to identify Marth Morales. If the police had done that, they would've found out fairly easily that that was Jack's long-term girlfriend. There was other names given that there was no follow up on.

Now, it could be argued, and the State might get up here and say this in rebuttal, that was a wild goose chase. There's -- that's just for wild fantasies, there's no evidence to support that. Well, if Your Honor remembers, on the stairway exit door, right outside of Wallace Siegel's room, there was blood and a DNA mixture obtained. And there was a full female profile obtained.

Now how relevant is the name Martha Morales with that information?

A few phone calls, perhaps a few trips to wherever Martha Morales was living, could've gone a long way to get an accurate account of what happened in this case. That DNA profile, the full female DNA profile that they obtained in this case has never been placed in CODIS; it's still sitting out there. Like the blood that was found in Wallace's car, the police did not follow up with Martha, or any of the information that she provided about other people that she believed was involved.

She even provided them with information that Jack had told her that a person named Ax was involved in the murder of Helen Sabraw. Now, those could've been all perhaps false leads that Jack was trying to plant. But at the minimum, it shows his consciousness of guilt. If he didn't have anything to do with this, if he didn't have a girlfriend or any of his friends that are involved this, why would you be making those declarations? Those types of statements?

A few years after that, in June of 2004, Jack on his own accord -- on his own volition -- no one forced him to do this, no one gave him the idea, he calls up the detectives, Detective Hardy and Mogg and says, Hey, I think someone is trying to frame me for my dad's murder, I want to meet with you; I want provide this information that I have.

Now the -- there was a meeting, none of those documents

were obtained, and perhaps that was wild goose chase. But even if you assume that, it's still consciousness of guilt as to Jack Siegel. If you remember the last thing that Jack asked those detectives, when he was finishing up his meeting with them, is how did I come across? Do I come across believable? That is classic evidence of consciousness of guilt.

The State, through Leslee Siegel, is trying to argue that, well Jack's not all there upstairs, you know, he's paranoid, he's this, he's that. Well, apparently the family didn't think he was too paranoid or too crazy to go care for his elderly -- for their elderly father in 1998. They entrusted him with that heavy and very big responsibility, caring for an elderly father, who has had surgery.

The State's case can be summed up in the following fashion, and Ms. Weckerly indicated this in her opening statement, the Defendant is tied forensically to each scene, the DNA found on the grey t-shirt, and the palm print found in Mr. Siegel's room. There was no reason for it to be there, therefore, he's guilty. That is essence the State's case. It's our position, Judge, that there needs to be more than that, under the particular facts of this case, and the other circumstantial evidence of someone else's guilt to find Gustavo guilty beyond a reasonable doubt.

Now today you heard the testimony from David Johnson and fingerprint analysis. And you heard Mr. Johnson indicate that the science of fingerprint is subjective, that there are guidelines. There's guidelines not only for determining whether a print is AFIS

quality but guidelines on when a quote, unquote, match or inclusion can be made. It's not an exact science. When something is subjective and not able to be validated through error rates, then there is cause to be concerned, Judge.

And I think the most shocking thing that Mr. Johnson said, and where I think he loses a lot of credibility is his indication that something called confirmation bias, or receiving bias information. Is not something that can negatively affect the conclusions of an analyst; in fact he said the opposite. I believe he testified that his understanding is that it makes an analyst more cautious. And I just don't think that passes the commonsense test.

Whether it's the field of the fingerprints, whether it's the field of interrogation of suspects of DNA, it's well established that -- what's called confirmation bias is a danger, and it can affect the results of testing, in particular here with the fingerprint. Mr. Johnson did admit he did received information in the request to do the comparison of Mr. Ramos' known prints, with the print that was found on the newspaper, with the explanation that there had already been a CODIS hit.

We -- can't we make the same argument for Joseph Guy? Can't we make the argument that his print is found on the door of a murder victim and there is no reason, no explanation why it should've been there. We heard his testimony here today. He stayed in the kitchen, every once in a while, he'd go to the assisted living side, and drop off trays to the station nurse there, who would

then distribute it to the rooms.

There's no evidence beyond mere speculation that somehow he must've walked on the second floor and touched the door of Helen Sabraw's room, and whether it's weeks, or months later, because we don't know for sure when he stopped working there, it popped up when they ran the prints just recently.

The same argument that the State's trying to make to find Gustavo guilty is the same argument that can be made to make Joseph Guy guilty of Helen Sabraw's murder. There's a print, you no longer work there, it's found on the front door of the murder victim, and there's no reason for it to be there; therefore, you are guilty of the crime. And Mr. Joseph Guy is quite lucky -- he's quite lucky that is palm print was found -- or his print on the door was found now, and not back in 1998.

Because if you remember the testimony is that Terry Cook, in 1998, found quote, unquote, negroid hairs on Ms. Sabraw, on the blanket throughout that room. So you can only imagine if they would've found the print back then, on top of the fact that they found negroid hairs, he would've been immediately arrested for the murder of Helen Sabraw.

Now the reason I bring that up, Judge, is the testimony was that the science has advanced, the science is changing, and we no longer characterize hair and negroid or white. And the point I'm trying to make is, that is applicable in all scientific fields, and I think that's the point Ms. Maningo was trying to make with Mr. Johnson'

that there's room for mistakes, there's room for changes. The problem is here we have the rest of Mr. Gustavo Ramos' life on the line, so this is extremely serious.

Besides the fingerprint the State is arguing, while there was DNA -- a mixture DNA of Gustavo Ramos found on the grey t-shirts.

Now there is one thing -- I'm going to interrupt my planned closing argument to make this point, because I'm not sure if Mr. Pesci misspoke, or he misstated the evidence; he indicated initially that the blood on that newspaper, that Gustavo Ramos could not be excluded. Now, the evidence that came out, and I know Your Honor's the final decision maker of what the evidence shows and doesn't show, but the STRmix that was done from that sample excluded Gustavo Ramos. The only two people who were included was Helen Sabraw, and Wallace Siegel.

That's my memory of the evidence and I just want to point that out and make that clear. I didn't object that at the time Mr. Pesci was making that argument, because he said I'm going to get that a little bit later, so I thought the explanation, but I do want to make that point clear, the STRmix that was done, excluded, excluded, Gustavo Ramos from the blood of that newspaper.

Now the DNA that was found is a mixture. There was DNA that was found on the neck cuttings and the armpit cuttings. On one of them the analyst put a mixture of three people, and one of them they indicated at least to potentially three people. On the

samples from that analysis of those particular cuttings that they did.

Now if Your Honor remembers when Ms. Murga [sic] was on the stand, I went into great detail with hypotheticals, on the theory of transference when it comes to DNA. I gave the example of Your Honor and I shaking hands, me touching the collar of my dress shirt, going home, then swabbing it and the possibility of your DNA showing up on the collar of my shirt, even though you never touched my shirt. I also clarified with Ms. Murga [sic], these words that are used that I think can be misleading with touch DNA.

There is no signs to validate that the amount of DNA, whether you are a minor contributor, or a major contributor, can conclusively or substantially show that you in fact touched that object. Whether it's another person, whether it's a t-shirt, whether it's a glass of water. The science doesn't allow us to determine that.

So you in fact can be a major contributor of a swab of DNA let's say on a glass, but you never touched that glass. Perhaps you shook someone's hand, you gave someone a hug, and that person transferred it. So I want to make sure we're clear that the case doesn't end because the State is claiming that Gustavo's DNA was found in a mixture of three people, especially on a object that is so readily a -- movable like a t-shirt.

The interesting thing about that grey t-shirt is that it fits the size of Jack Siegel; it's a large. And if you remember the clothes that were in the dresser drawers in the bedroom -- of

Wallace Siegel's room, that Jack Siegel was using, he had a white tank top, also a large that was his.

Now, that t-shir -- that Jock -- it was a Jockey name brand t-shirt that was found in Jack's bedroom -- although it's Wallace's room, Jack was sleeping there -- was tested -- or it was only tested one time. And it was the stains of that white tank top that were tested. They never took any cuttings from the neck area, or from the underarm area.

If you noticed from the large amount of DNA testing that they did of the grey t-shirt and white tank top that was found in Ms. Sabraw's room, those objects -- those two items were tested four separate times. One of the times, in 2000, there was no DNA obtained. So it is possible to have an item of evidence that is incriminating, yet you don't find the DNA, especially when it's only tested one time. The items that the State is resting their case on were tested four separate times.

It'd be interesting to find out if they would've taken the cuttings from the shoulder straps or the collar area of that white t-shirt that was found in Jack's room, what the evidence would've show on that. That wasn't done.

If you take a step back, and you look at the State's theory of this case, it doesn't make sense. That's why I keep emphasizing for the Court to look at all of the evidence in this case. The State's theory is that Gustavo went into Wallace Siegel's room to commit theft, or robbery, or a burglary. In their opening statement they

indicated that more than likely Wallace was sleeping at the time, and Gustavo enters the room.

Well if the intent is to go in there and steal and to take something, and you had your quote, unquote, victim there asleep, there's no point in killing that person. The evidence in this case indicates that if someone did in fact break in to that room, they went into the bedroom, retrieved the 25-pound dumbbell, where Jack says they were both sitting, and brought it into the family room/living room area, and then struck Mr. Wallace Siegel with that.

Yet, if robbery or theft is the motive in this case, what was taken? I know the State indicated that there was an empty money clip, but there was no evidence that there ever was money in that clip to begin with. There's been no evidence that Mr. Siegel -- Wallace Siegel's wallet was taken, there was no evidence presented that the gold chain necklace that he was wearing was taken. IT wasn't because they found it. A bracelet close to where he was found wasn't taken. Jars -- bags of coins weren't taken. There was a safe in the closet that was untouched.

So if the intent is to commit a robbery, and you've incapacitated your victim and you have free reign of that room, wouldn't you take a look around and take those things? The only thing that we have slightly indicating that the motive in this case, and Wallace Siegel's case is a robbery or theft, is a empty money clip, that's it. But, no evidence of money being in there in the first

place.

So if you continue with the State's theory that Gustavo goes in there, kills Mr. Wallace Siegel and -- how does he get -- how do you explain how does he get to Helen Sabraw's room? We know there's been no evidence presented that he was familiar with the place, knew where to go. He's 18 years old at the time, supposedly he just committed -- if you assume Wallace Siegel was killed first, he supposedly just killed a brutal -- just committed a brutal murder, and then he's just roaming the hallways looking for another victim?

Or if you reverse the roles and say, well he may have attacked Helen Sabraw first, that's the same thing. So he took off a supposedly grey t-shirt and a tank top, a grey t-shirt leaves it at the scene, and now he's roaming the hallways shirtless and is checking doors? There's no relationship -- under the State's theory, there's no relationship between the two rooms and, and between Helen Sabraw and Wallace Siegel.

Under the Defense theory there is. What he makes sense is that Wallace and Helen knew each other, and that Jack was aware of both of them. Again, as I said before, everyone knew Jack there. Him roaming the hallways going to one room or another wouldn't draw the attention that an 18-year-old Hispanic male walking around supposedly with bloody clothes, maybe shirtless, there's -- the State is unable to provide the connection between the two. And their case falls apart if you cannot connect those two crime scenes.

This -- so the the State's theory is he's in Wallace Siegel's room to commit theft, but he takes off his hat of thief and puts his hat of rapist on to go and rape Helen Sabraw. That's what the State is claiming, is the motivation for going into Helen's room and murdering her.

Put aside the fact that if he's a thief in Wallace Siegel's room he's not interested in the purse of Helen Sabraw that has $533 cash, jewelry. In neither room, Judge, in neither room was there any evidence that the rooms are ransacked. That is a clear indicator of a robbery or a burglary, neither room was ransacked.

The State's argument is that there's sexual assault in this case because of where some items of clothing were found, the fact that the clo -- the nightgown that Ms. Sabraw was wearing, when they found it was up above her breast area, and that there were forensic or anal injuries to Ms. Sabraw.

Number one, clearly there was a struggle in this case, with Ms. Sabraw. That's clear. And when there is a struggle when if not one, maybe more than one person is struggling with another, that is what happens to clothes, it gets pulled, sometimes it gets completely torn off. That's what happens when there's a struggle; it's not necessarily conclusive of as sexual assault.

Same thing with the underwear, if you saw in the pictures that Mr. Pesci put up and that had been admitted to evidence, there's a laundry basket that's knocked over, and there's different articles of clothing, underwear, shirts, that is spread out in that

immediate area where Ms. Sabraw is. Forensically, there is no evidence that a sexual assault was committed.

What was le -- what was left that of Mr. Pesci's closing argument is that the sexual assault kit was tested twice, once in 1998, once in 2009. Cook tested 1998, and Marschner tested in 2009. No semen was detected, there were swabs of the anal area, there was no DNA foreign to Ms. Sabraw that was detected.

Now the State's trying to rest their hat on the testimony of Doctor Gavin and her conclusions that based on her review of the pictures, there appa -- there appeared to be laceration and abrasions. Number one, Ms. -- Doctor Gavin agreed that in the pictures that she saw the body hadn't been cleaned, which is standard typically to do and the fact that it's not clean, can have an impact on what you can find or not find forensically speaking.

She agreed that the pictures were not of the best quality, the pictures that she reviewed. Most importantly, she's not a sexual assault nurse examiner. If Your Honor remembers when I voir dired her, she admitted the only time she had done any type of sexual assault nurse examinations, was when she was in medical school, under the supervision of a professor. That would've been approximately 20 years ago.

So she has no experience doing this type of forensic work, let alone how the science has changed in the past 20 years. You contrast that with our Defense expert Diana Faugno, who -- who's job is to do just that, sexual assault nurse examinations. She's

even done, I believe she said, up to ten of them postmortem. She typically testified, she said 80 percent of the time for the prosecution, so there's no indication if she's bias towards the Defense.

Someone of her expertise said that she could not find any lacerations or any abrasions in the anal area of Ms. Sabraw. She even indicated even if you were to assume -- and I think Doctor Gavin admitted to this too, even if you were to assume a laceration or an abrasion, there are tons of other reasons that could've caused that besides penetration, whether it's a penis, a finger, or an object.

The age, Ms. Sabraw's age is highly relevant. Based on her age she produces less estrogen, she's more likely to have injuries from wiping, someone with long fingernails, which both Nurse Faugno and Doctor Gavin admitted that Ms. Sabraw had based on the pictures that they reviewed. Constipation, things like diverticulitis, I believe today by stipulation -- I think the State's sought to obtain -- to admit this before, there is a picture of blood on the toilet seat of Ms. Sabraw's room. Other indications of constipation or diverticulitis.

The State's position is that def -- that Mr. Ramos is guilty because he's forensically tied to each of the scenes; to Ms. Sabraw's room and to Mr. Siegel's room. But there's several other people who are also tied forensically to those rooms, or areas very close to those rooms. Joseph Guy is tied forensically to Helen Sabraw's room without any reason for his print to be on that door.

The second and third profile of whoever is on those grey t-shirts are also forensically tied to Helen Sabraw's room. The full female profile of the DNA found on the doorway immediately to the left of Wallace Siegel's room is also forensically tied to the crime scenes in this case. That is why we can't automatically assume guilt based on pieces of forensics and nothing else. The Court has to consider the entire picture; the motive, the opportunity, the plans that people have.

I know that several instances where the -- the State whether through it's -- through police, detectives failed to follow up on items of evidence, the blood in the car, the declarations of Leslee Siegel about who she believed based on conversations she apparently had with Jack Siegel, who was involved in this case, the meeting in June 2004. And it continues here throughout trial.

We have the prints of Joseph Guy on the door of Helen Sabraw's room, as far as I can tell, because no evidence was presented, there's been no follow up on that, maybe a DNA swab to see if Joseph Guy's DNA is in any of their items that had been tested in this case, where profiles have not been obtained.

There's a couple of prints that Ms. Maningo brought to the attention of David Johnson in Wallace Siegel's room that -- again going back to reasonable minds can differ and yes, subjectiveness, people can have difference of opinions, the prints that were taken -- that were run, David Johnson's was well we don't this that -- I didn't think that was of AFIS quality' other analyst weren't so sure.

Jack Siegel is the only person who had the motive, opportunity, and plan to commit the murders of Wallace Siegel and Helen Sabraw. All of the evidence of in this case, Judge, even if you're not convinced Jack Siegel was involved, beyond a reasonable doubt, or that he conspired with Martha Morales, it at a minimum creates reasonable doubt as to the guilt of Gustavo Ramos, and that is why we're here today.

And that's one of the reasons why Gustavo agreed to entrust this case to Your Honor. We explained to Mr. Ramos that it's your oath and your ethical duty to follow the law, and there's perhaps no instruction in our criminal justice system as important as proof beyond a reasonable doubt. And I think sometimes -- sometimes -- there are juries who do not appreciate that standard that we have in our Court system.

There's a famous quote, there's different versions of it, but in essence it says, That it's better for one person, ten people, a hundred people who are guilty to go free than it is for one innocent person to suffer conviction.

Some people say it was Ben Franklin, some people say it was Blackstone, that's not the point. The point is what that message is trying to convey; that our standard of proof beyond a reasonable doubt is paramount. And that's very difficult to do, when you have two innocent victims that were murdered in the fashion they were in this case. It's very difficult to do, when there's family members here day in and day out. It's very difficult to put

aside emotion, to put aside sympathy. I think sometimes juries have a hard time doing that. I know Your Honor doesn't.

Based on everything I've present here to the Court, I am respectfully requesting the Court to strictly follow that standard, and find Mr. Ramos not guilty of the charges of in this case.

Thank you, Your Honor.

MS. WECKERLY: I just want to make sure to turn on this --

THE COURT: Hit the button.

MS. WECKERLY: Yep.

REBUTTAL CLOSING ARGUMENT

BY MS. WECKERLY:

So I echo Mr. Yanez's request that the Court decide the case based on the evidence and not -- nothing else, not based on emotion or speculation.

And I guess the suggestion, by the Defense in this case is that Jack Siegel, the phlebotomist from LA County, somehow killed his dad and a neighbor of his father's and just simply hoped in the ensuing ten years when the case was unsolved, that somehow there'd be a CODIS hit that implicated another killer, and that somehow the person in the CODIS hit would also be implicated in the bloody print left to -- left at the scene in his dad's apartment. And Jack Siegel apparently is clever enough to make sure that the Metro experts decades later, corroborate each other, in terms of identification of who the murder is in this case.

Mr. Yanez suggested that the State had no theory on what

order the -- these murders were committed it. My theory is this, Helen Sabraw's blood is in Wallace Siegel's apartment on a piece of newspaper that was impounded the day before her body was found, so she's killed first. There's movement of the murderer -- it connects the two cases. There's movement of the murderer, after killing Helen, some of her blood, a very small amount, ends up on a stain on a piece of newspaper, analyzed by Julie Marschner in 2019 with STRmix. None of that was possible years ago it sort of -- this case spans the sophistication of forensic science -- of forensic science. But that tells you she is murdered first.

Let's talk about the fingerprints just briefly, and then I'll get into the Jack Siegel theory. It's undisputed that Mr. Ramos' print is the one in blood on that other piece of newspaper. Mr. Johnson testified before the Court today, he explained the process he went through, he drew out the lines, he explained the verification process at Metro. So two people have identified this print, in blood, that matches to Gustavo Ramos.

Now I don't know how Jack Siegel left -- got that done, because I don't think that there's any connection between Jack Siegel and Gustavo Ramos, but somehow, there's this print of Gustavo Ramos in blood on a piece of newspaper at the feet of Wallace Siegel, on a piece of newspaper that was literally from the 15th in 1998, and the police arrive and discovered him in the morning of May 16th, 1998.

So, there was suggestion that somehow there might be

suspicion about the science of fingerprints. They're not akin to bite marks, they've been around for hundreds of years. And Mr. Johnson cited, or explained that the confirmation bias suggestion is something that makes examiners, I think he used the word more cautious, less likely to make an identification.

Now, Mr. Yanez and Ms. Maningo may not like that that's what those studies found, but that was the undisputed testimony in this case. And in addition, if their theory of confirmation bias were true, how is it that he identifies, in 2019, someone completely different and unrelated to the case? He identifies a former employee that he knows nothing about, in 2019 on the outside of a door. That -- if there was confirmation bias, he should be trying to identify someone who's already present in the case.

So let's talk about Jack Siegel, the Court saw him testify, he's quite a mastermind. He comes to Las Vegas and he takes care of his dad because, basically his other family members are telling him, well you're the one who's not employed. He had some medical separation from LA County that he went on and on about. And so he's the one who's -- who the family is requiring to take care of his dad. There is zero forensic link between Jack Siegel and the Sabraw case. The only forensic link to Jack Siegel and the Wallace Siegel murder is the blood in the car, which I'll get to in just a second.

But Mr. Yanez says there's access and there's opportunity for Jack Siegel. Okay, well this isn't super unique to him, there's a

bunch of employees who work there, every resident has access, every employee has access, and we know this complex had many doors, there's no fence around the facility, and it was the type of population in that residence where people were coming to visit them, because these were elderly individuals.

And if we look at State's 190, there were even problems at the facility of doors being propped open. Fort Knox, this is not. They had to tell people, hey stop propping the door open, this is a security breach, but no, there's more evidence of how easy it is to get into the Camlu Complex. This is the State's Exhibit 10, zoom back out. Screens off windows, another way to get into the complex. This is not the most secure place in the whole world. So the access and opportunity argument is pretty much a zero, because there's a bunch of people coming in and out of that place, and it isn't too hard to get in.

So let's go to the next thing Mr. Yanez mentioned, which is the 9-1-1 tape, where he says essentially that there's no sign of grief in the words of Jack Siegel. If the Court actually listens to the very -- the initial like first ten seconds of Jack Siegel, you can actually hear it's nonverbal, but there's kind of like an anguished sound he makes upon discovering his father.

And it's true, he's kind of -- through the course of the call, he kind of goes through different emotions, and he calms down, and he's definitely, I'll agree, not hysterical at the end. But he's kind of an eccentric guy. We've all seen him testify, he's a little different.

He's someone who, when I'm showing him is own medical records, is disputing with me for 20 minutes about the fact that they're incomplete.

He's someone who challenged, well I arrived at the hospital at 12:00, but they didn't see me until 1:15, so there might be an error on this record. He fixates and doesn't focus, and has trouble following questions. So how he reacts and how he reacts towards stressful situation is not indicative of any type of guilt, whatsoever.

We see this all the time in all types of criminal cases, in sexual assault, in murders, in robberies; people react differently to violence, people react differently to shock. And Jack Siegel is no different, his reaction you know, is his own reaction. He's a -- an unusual guy.

The suggestion, by the Defense Counsel, is that Jack Siegel was mad at his caregiving role and so evidently that was enough to motivate him to kill his father. So apparently he gets mad enough at having to be the caregiver for his dad that he runs upstairs and kills Helen Sabraw first, for reasons unknown.

And then the other suggestion is well, he maybe did it for finical gain. If finical gain were the only indicator of guilt, anyone who inherited any money, including all the Siegel siblings, would be potential suspects. Is it something to look at in an investigation? Yes. Is it dispositive of guilt? No, you have to look at other factors as well.

So then the other suggestion is, well Jack Siegel was kind of jealous of this supposed relationship between Helen and Wallace. And we heard about that this morning from Vivian Guy. She went into detail that they ate lunch and dinners together, they would take meals together, and she said this was possible, of course, because they didn't -- because they didn't have assigned seating, and she would often sit with Jack and his son, and Helen and see the three of them sitting together.

But that's not what Steve Barhei said, and he ran the complex and I don't for a minute suggest that Ms. Guy is purposely misleading the Court, I think it's 20 years later and she doesn't remember how the place was set up. We know, from admitted evidence -- and this is State's Exhibit 5 and 6 that guess what, there was assigned seating. And look at Helen, she's here at table -- or Row 1, Table 2, and Wallace Siegel is not. He's at a totally different table.

Exhibit 6, no overlap of them, in either -- on either day. So maybe she's remembering someone else, but they certainly weren't sitting together at the same table as she testified to in the terms of what she told the Court this morning.

So let's go through Mr. Yanez's hypothesis, and that was I guess that Jack's upset that his father is dating Helen, and so he kills his dad for that reason. And then there was a suggestion that, well maybe Helen actually witnessed the murder of Jack and his father, and that's when she ended up being killed herself.

Of course, we know Helen was killed first and if she witnessed anything it was in her nightgown, because she's in her nightgown. It has all the stab marks on it, her bed is pulled down, like she was in for the night. So I don't think she witnessed any type of murder.

And I don't know how Jack Siegel managed to get the Defendant's DNA and his print in the two different crime scenes, within, I guess a certain number of hours at the Camlu complex.

The next suggestion by Mr. Yanez was well, you can tell that this was done by Jack Siegel because this was a brutal killing, and it was personal, and actually Detective Chandler wrote that in a report. And those are really archaic, kind of anecdotal things that homicide detectives actually used to write in reports, but there's no -- but they're not definitive of anything. There are brutal murders committed by strangers, and there are brutal murders committed amongst people that know each other.

That type of interpretation of evidence doesn't tell you anything except, perhaps in this case, which is a mismatch of physical ability, right? I mean this is indicative -- the overkill in both of these cases' is indicative of a first-degree murder because it was so easy for Gustavo Ramos to inflict all those injuries on Helen Sabraw, even though she has defensive injuries, and also on Wallace Siegel, even though he has defensive injuries as well. It is not indicative and does not tell us anything about who our murderer might be.

The next suggestion by Mr. Yanez was that, well, Jack Siegel's family years later made a phone call suggests -- suggesting that he might be involved in the murder. And really that's to me, like an illustration of how families, who experience murder, it's hard on them. They don't cope well, there's blaming that goes on, there's trying to make sense of it, trying to make someone responsible.

And that type of pain and frustration with no closure in investigations, it happens a lot and it gets to where people, you know, are not their best. And families who are not the strongest in terms of their ability to deal with a tragic event, it -- you know, it impacts them worse and their skill set maybe isn't matched great with the challenge that presents them -- presents to them. But it certainly isn't indi -- an indication of any type of evidence.

And then most surprisingly, to me, is they -- that the Defense suggests that Jack Siegel contacting Metro six years after the fact, is somehow indicative of his guilt. Now if Jack were really the killer, he's been at the point, forensically eliminated as a suspect in both cases so he would really have no reason to get on the radar of Metro.

But instead, Jack packs up all his -- all this paperwork from LA County and all of this -- all these employment records and demands a meeting with Metro detectives, and as Detective Hardy, the defense witness said, it really wasn't indicative of anything, it didn't tell us who the killer was, it was just a bunch of paperwork

about his employment and about, like utilities in LA County. So I don't see how that exactly suggests that Jack Siegel is the one who committed the murder, or murders.

Now, it's interesting that there's a discussion at all, in the defense, with -- about forensic evidence, because as I mentioned Jack Siegel isn't linked to either murder; certainly not Helen Sabraw's murder. The only attenuated forensic link to Wallace Siegel's murder is the blood in the car.

And I'll put up on the overhead, this is State's 86. That's it. That's the blood that's identified to Wallace Siegel. And if the Court looks at the surrounding photographs, 85, 84, 87, this isn't the cleanest car in the whole world, so that amount of blood in a car, and I -- I will grant them that I -- I think it's Wallace Siegel's blood too. He was diabetic, it was his car, the car is messy, you have --

MR. YANEZ: Judge, I'm going --

MS. WECKERLY: -- no idea where --

MR. YANEZ: I'm going to object.

MS. WECKERLY: -- it came from.

MR. YANEZ: I don't think there was any evidence of him being diabetic. I think she's arguing facts that weren't introduced.

MS. WECKERLY: Jack Siegel testified to it.

THE COURT: I believe that there was testimony about Mr. Siegel, the elder Mr. Siegel, was diabetic because I have that in my notes.

MR. YANEZ: And I want to make sure we're not confusing

the trial with the evidentiary hearing that we had in this case.

THE COURT: Hang on one second.

Well I'll tell you what, for right now I'm going to overrule the objection. I don't think it misstates the evidence, but I'll keep looking through this.

You can go ahead and continued.

MS. WECKERLY: Okay.

BY MS. WECKERLY:

Even if he weren't diabetic, that isn't the amount of blood you would expect someone to have in a car if they got into it immediately after bludgeoning their father and Helen Sabraw; that is a pretty minute amount of blood and it wouldn't be inconceivable for someone's DNA -- especially an old -- elderly person who's had surgery, who's in a wheelchair, to have -- you know -- blood or occasionally had some type of injury in the car.

But, again, as I said, if you look at the other photographs of the car, this isn't the neatest, much like the apartment, this isn't the neatest place in the whole world. So that -- if that evidence is probative, according to Mr. Yanez, that blood, then why isn't a piece of newspaper with both victim's blood, and the defendant's print, at the feet of Wally Siegel, probative as to who committed the murders. I mean, if forensic evidence matters, then it matters.

And the second piece of forensic evidence they point to is that degraded blood on the stairway, a door, which isn't inside of either apartment, which is unknown female blood. It's so

attenuated from the crime scene, that Julie Marschner's testimony was it wouldn't even be eligible to enter into CODIS she didn't think, because it wasn't connected to the crime scene whatsoever.

So then this morning, and then, I guess later this afternoon, we move on to the sort of secondary theory that okay, well maybe it's not Jack Siegel but what about -- what about Joseph Guy? His prints on the outside of Helen Sabraw's door, and per Mr. Yanez, you know there's just no reason for it to be there.

But unlike Joseph Guy, who's an employee, Gustavo Ramos doesn't work there. Joseph Guy does; he delivered trays. His mother talked about how sometimes trays were delivered to Ms. Helen, and so his print being on the outside of a door could be a clue, but really isn't probative as to who the killer is, given the other forensic evidence that we have in this case.

Let's talk about the sexual assault, Mr. Yanez said there's no forensic evidence of sexual assault, and that's true, there's no sperm in this case, but there's medical evidence of sexual assault, because Doctor Gavin saw that injury on Helen Sabraw, and there's also evidence at the scene, where I still haven't heard any interpretation how someone's underwear comes off in a murder if there's not a component of sexual assault.

The fact that there's no sperm is really not of any moment as to whether or not there was a sexual assault or not. It could've been digital, it could've been an object that inflicted that injury on her. And the Defense expert, Nurse Faugno, who worked on a

couple of -- about ten cases she said in San Diego and never testified as an expert, with regards to a deceased victim, her testimony should not be weighted more that Doctor Gavin, who is currently working with deceased individuals and has looked at the pictures and opined that there was an injury inflicted consistent with sexual assault.

In this case, the conjunction or the joining of the -- forensic evidence is what -- is essentially what tells you who the killer is. The defendant doesn't work there, he doesn't know anybody there, he doesn't know a residence there, he doesn't socialize. But his print is in Wally Siegel's blood. How -- I mean how does that happen? How would that happen on a newspaper that had to be from the day before?

And then his DNA is on a shirt that simultaneously has Helen Sabraw's DNA. It has little flecks of blood that are consistent with when an injury is inflicted, and then it has like a bigger stain of blood towards the bottom of the shirt. How did that occur? How did this happen in two different places where he has, by his own explanation, zero, zero connection to.

He's not the employee, he's not the son, he's the guy that lives less than half a mile away. I mean, that's remarkable, the CODIS hit is to someone who's not across the United States, not someone who would've been like 10 years old at the time of the crime; the CODIS hit is to a guy who's 18, who's less than half a mile away, who's print is found in the simultaneous corresponding

murder scene.

Taken together, the totality of the evidence, there is -- it's inconceivable that anyone other than Gustavo Ramos is the killer.

THE COURT: All right. I'm going to go back and sustain the objection on the diabetic. I can't find it in the notes, so I may have read it in my evidentiary hearing notes. I don't recall it coming up then but I recall it -- having it in my notes somewhere, so.

MR. PESCI: Judge, if I could, I would direct you to, at least Detective Hardy, as I made a note of Detective Hardy that evidence coming in. I thought it was also Jack Siegel's. But that would just be my request --

THE COURT: Jack Siegel is --

MR. PESCI: -- to look at your notes there.

THE COURT: -- the one that I was mainly looking at but I'll but I'll look at Detective Hardy real quick. Hold on just a sec.

THE COURT: My notes from Detective Hardy indicated on cross-examination, the issue came up of whether the victim Wallace Siegel was diabetic, and I don't have a particular note of whether the question was did Jack Siegel ever indicate to you that he was diabetic. My notes indicate from Detective Hardy saying not recall.

So I have to assume the question is asked of him of whether or not Jack may have mentioned that to him or if he had some knowledge of it and he said he did not recall. So I'm going to leave it as -- I'm going to sustain the objection as to the reference to

diabetes of Wallace Siegel.

All right. So -- and just so you both know -- or both sides know, generally I'm kind of a person during -- when we argue motions and whatnot, I'll have some questions that come into my head, and I had questions that came into my head while you were arguing, but I didn't think it was appropriate to ask those questions because maintaining the formality of how this would occur in front of a jury, I think it's just my obligation to take in whatever information you're providing, and now give either side any kind of benefit or detriment by saying let me ask you questions, and having people not be able to respond to that in any fashion.

Because we're starting another murder trial tomorrow morning, or probably tomorrow afternoon now, it's going to take me some time to go back through all my notes and all the exhibits that you all have entered into evidence here.

I'd like to say that by Wednesday morning I could have a decision for you, that'll have time to go back through and think about everything in a way that I would like to. So I'm going to stay, let me put it on the calendar for 9:00 on Wednesday morning. If I feel like tonight and tomorrow night isn't enough time to have done all that around another case, I'll obviously let you know.

But I'm fairly comfortable that that should be plenty of time to go ahead and do what I think I need to do to evaluate everything. So we'll continue it over for a decision to Wednesday morning at 9:00 am.

MS. MANINGO: Is that before the general calendar?

THE COURT: I don't have a calendar --

MS. MANINGO: On Wednesday.

THE COURT: -- on Wednesday; all I have is my trial.

MS. MANINGO: Okay.

THE COURT: So yes, I'll probably schedule my trial for like 10:00 or something.

MS. MANINGO: Okay, thank you.

THE COURT: Okay. And you guys do not have any of the exhibits with you? Or do you?

MS. WECKERLY: I do, I'm just going to put them back in order and --

THE COURT: Okay.

MS. WECKERLY: Thank you.

[Proceeding concluded at 4:11 p.m.]

* * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Brittany Mangelson
Independent Transcriber

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CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, vs. GUSTAVO RAMOS, Defendant.	CASE#: C-10-269839-1 DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON, DISTRICT COURT JUDGE

WEDNESDAY, JULY 3, 2019

RECORDER'S TRANSCRIPT:
DECISION

APPEARANCES:

For the State: PAMELA WECKERLY, ESQ.
GIANCARLO PESCI, ESQ.
Chief Deputy District Attorneys

For the Defendant: ABEL M. YANEZ, ESQ.

ALSO PRESENT: NORMA CAUCAS
Spanish Interpreter

RECORDED BY: JILL JACOBY, COURT RECORDER

Las Vegas, Nevada, Wednesday, July 3, 2019

[Hearing began at 9:39 a.m.]

THE COURT: All right. We'll be back on the record in 269839.

Mr. Ramos is present with the interpreter. Mr. Yanez is here on his behalf. State's attorneys are here as well.

So your jury has a question. It's a funny way to phrase that since I'm the jury. Yesterday or Monday when we were settling instructions, I did not notice wearing my judge hat but I noticed wearing my jury hat that the Second Amended Information that was filed right before trial, and I can't recall exactly why it was we filed a second. What got cleaned up?

MS. WECKERLY: It took away penetration of a dead human being --

THE COURT: Oh, okay. That's right.

MS. WECKERLY: -- it was an alternative of the SA.

THE COURT: So anyway, that charged the gentleman with open murder, victim 65 years of age or older with use of a deadly weapon on each of the two counts. And then the sexual assault, victim 65 years of age or older with use of a deadly weapon.

The jury instructions and the verdict form are all devoid of any reference to age. And I can't remember if that something that came up during the trial that got removed or there was something statutorily because of the age of the case that you abandoned that. Because at

any given time I have over 200 homicide cases in my head that I'm keeping track of. So.

MR. PESCI: So --

THE COURT: Anyway, go ahead.

MR. PESCI: In preparation, we were looking at the statute and determined that the victim over 60 did not go into effect until 1999.

THE COURT: Got it. Okay.

MR. PESCI: So that's why it it's not in the verdict form and was not argued or utilized.

THE COURT: Okay. Did we make a record of that during trial or was that something that you all had a discussion of? Because I couldn't remember any discussion of it and --

MS. WECKERLY: I know we've talked --

MR. YANEZ: We discussed --

MS. WECKERLY: Talked about it.

MR. YANEZ: We discussed it.

MS. WECKERLY: I don't know that we put it on the record.

MR. YANEZ: Right.

THE COURT: But we didn't file any kind of subsequent charging document removing that from the operative one that we went to trial on, correct?

MR. YANEZ: That's correct.

THE COURT: Okay. All right.

MR. PESCI: But there was discussion with defense counsel.

MR. YANEZ: That's correct.

THE COURT: Okay. Got it. Thank you very much. Okay. So jury question is answered.

All right. And I am prepared to give you guys a decision this morning. And I appreciate giving me a couple of days to do that since we started our other trial yesterday. But I did have an opportunity both Tuesday night after we -- or excuse me, Monday night after we finished up and then yesterday after we finished the day of trial at our other case to spend a great deal of time, a number of hours reviewing everything in the case.

And I would say I compliment both sides, obviously. Every time we have issues in our homicide cases with really, really good attorneys, there's a lot of preparation, there's a lot that goes into the presentation, a lot of passion about things and it makes it really good to be involved in presiding over these cases dealing with all of you. So I commend you all very much.

Much like closing arguments, I don't think this is a Q&A kind of process. I'm just going to give you a decision. I have a couple of comments to make before that but just give you a decision. I talked to some of my colleagues as well about this singular issue. And I want to be clear since I'm the jury that I didn't discuss the case with them other than the singular issue of how to deliver a decision in a nonjury trial.

I only had one occasion before to do a nonjury criminal trial and I delivered a decision in the same way I am here which is not to go into any kind of findings of fact and conclusions of law type thing because that's a deliberative process that a jury engages in and I don't

think that's appropriate to deliver a verdict here. Rather, it's just to deliver the overall finding and the overall decision of the jury. In this case, the Court.

But I did have an opportunity to go through and review all of the exhibits which were introduced, both just reviewing them singularly and then reviewing them in conjunction with my notes as to when certain things came up during trial and when certain witnesses made reference to certain exhibits and how they played into things. I believe there was 250 or more exhibits. I ended up having about 75 plus pages of notes to go through as well as the jury instructions but I do feel like I had ample opportunity to go through and consider everything.

And much like when I did this many years ago in a nonjury criminal trial, it's a really interesting process because it gives you an idea of the weight that people in our community feel as jurors when they go about having to make these decisions. Not just as a judge sentencing people, but sitting as a juror, essentially, and kind of weighing through evidence.

And I'm reminded of a conversation that I had not too long ago with a juror in one our homicide trials that had remarked that one of the more difficult parts of the process was they're collectively trying to remember what the question was that they were trying to answer versus the questions they try and answer out of their curiosity. So that, you know, you've got this singular question to answer about whether you have an abiding conviction of the truth of something -- somebody's charge, and then you have little things that just human nature curiosity

tries to answer. I think we all know that you just can't answer everything in life, whether it's memory issues, the laws of physics and nature, whatever it may be, sometimes there's things that come up that you can't get answers to. And sometimes those answers may equate to reasonable doubt, sometimes those answers don't equate to reasonable doubt.

But the way that she discussed that with me and constantly having to pull the jury back to the 30,000-foot view, so to speak, to say what's the totality of what we have here and what does that speak to versus what is my curiosity about little things here and how this may have ended up going from Point A to Point B, et cetera. It's a very -- a very interesting process.

But overall, after consideration and comparison of everything that was provided, all the evidence, all the witness testimony, I think we had about 22 total witnesses. What can be drawn from that evidence? What reasonable inferences can be drawn from that evidence? What can be made in consideration of the law that we settled upon to guide everything? I do think that the State has proven the gentleman guilty of first degree murder with use of a deadly weapon in terms of the killing of Wallace Siegel and that that killing occurred with malice aforethought, with premeditation and deliberation willfully, and that it was done during the perpetration or attempted perpetration of the felonies of burglary and/or robbery.

I also believe that the State has proven beyond a reasonable doubt the gentleman guilty of the killing of Helen Sabraw with a knife

willfully and with malice aforethought and during the perpetration or attempted perpetration of burglary and/or robbery and/or sexual assault, and that that also was done willfully and with premeditation and deliberation.

And that the State has proven the gentleman guilty beyond a reasonable doubt of the sexual assault of Helen Sabraw by subjecting her to anal penetration against her will and without her consent again with the use of the knife. Such that he's going to be found guilty of first degree murder with use of a deadly weapon, a second count of first degree murder with use of a deadly weapon, and one count of sexual assault with use of a deadly weapon.

So in addition to orally making those findings, I went ahead and filled out the verdict form, signed off on the verdict form as well, and I'll have that filed with the Court.

And then we need to set it for a sentencing date which I would set in about 50 days. I mean, I don't know if there's anything that either side needs to prepare in anticipation of that that you need a little more time.

MS. WECKERLY: None on behalf of the State. I think that the defense wanted it on a Friday which we have no objection to.

THE COURT: Okay.

MR. YANEZ: That's correct, Judge.

THE COURT: All right. Fifty days on a Friday would be about --

THE CLERK: August 23rd.

THE COURT: August?

THE CLERK: 21st is that Wednesday.

THE COURT: 21st is a Wednesday. The 23rd I may be gone. How about -- let's go a little longer than that, then. How about September 13th.

I don't know if you all on either side need to talk to family members both on behalf of the victims or on behalf of Mr. Ramos who wish to come back to court, do you want to see those dates are amenable to everybody first?

MR. PESCI: If we can just check really fast, Your Honor. Is the --

THE COURT: Sure.

MR. YANEZ: Is it possible to go one week further? I'm supposed to start a trial on the 9th.

THE COURT: Okay.

MR. YANEZ: So if it's possible to do the 20th, I'd appreciate it.

THE COURT: Can do the 20th, can do the 6th, whatever works best for anybody.

MS. WECKERLY: The 20th is fine.

THE COURT: Okay. Then we will set it for the 20th and we'll set it at 10 a.m. And we'll refer the matter to the Department of Parole and Probation for preparation of a presentence report.

And the last thing I would just say, you know, I did not -- when I took this case from Judge Togliatti earlier this year after her retirement, I specifically didn't really spend a lot of time since it was going to be a

nonjury trial trying to track the history of it. But what I would say to the family members of Mr. Siegel and Ms. Sabraw and to Mr. Ramos and the family members, no trial should take nine years to get to trial. This is just a complete failing of the criminal justice system.

And I don't know what occurred. I know Judge Togliatti didn't get it till late 2017, so what took all that time within that intervening time? And I know it's not you all as attorneys because you all are very good at what you do. But no trial should really take that long. And I apologize on behalf of our court system that it took this long to get this case to this point.

Okay. All right, guys, I will see you back in September.

MS. WECKERLY: Thank you.

MR. PESCI: Thank you, Your Honor.

THE COURT: Thank you.

[Hearing concluded at 9:49 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/visual recording in the above-entitled case to the best of my ability.

Jill Jacoby
Court Recorder

INST

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JUL 03 2019

BY: Kory Schlitz
KORY SCHLITZ, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,
-vs-
GUSTAVO RAMOS,
Defendant.

CASE NO: C-10-269-839-1
DEPT NO: III

INSTRUCTION 1

In this case, it is charged in a Second Amended Information that on or between May 15, 1998 and May 16, 1998, Defendant committed the offenses of MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010, 200.030, 193.165, 193.167); SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON, (Felony – NRS 200.364, 200.366, 193.165, 193.167), within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 – OPEN MURDER WITH USE OF A DEADLY WEAPON

did then and there wilfully, feloniously, without authority of law, and with malice aforethought, kill WALLACE SIEGEL, a human being, by striking the head of the said WALLACE SIEGEL, with a deadly weapon, to-wit: a dumbbell weight and/or unknown heavy blunt object, the actions of Defendant resulting in the death of the said WALLACE SIEGEL, said killing having been (1) willful, deliberate and premeditated; and/or (2) committed during the perpetration or attempted perpetration of burglary and/or robbery.

C-10-269839-1
JI
Jury Instructions
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COUNT 2 – OPEN MURDER WITH USE OF A DEADLY WEAPON

did then and there willfully, feloniously, without authority of law, and with malice aforethought, kill HELEN SABRAW, a human being, by stabbing at and into the body of the said HELEN SABRAW, with a deadly weapon, to-wit: a knife, the actions of Defendant resulting in the death of said HELEN SABRAW, said killing having been (1) willful, deliberate and premeditated; and/or (2) committed during the perpetration or attempted perpetration of burglary and/or robbery and/or sexual assault.

COUNT 3 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

did then and there willfully, unlawfully, and feloniously sexually assault and subject HELEN SABRAW, a female person, to sexual penetration, to-wit: anal intercourse, by inserting his penis and/or an unknown object into the anal opening of said HELEN SABRAW, with a deadly weapon, to-wit: a knife.

It is the duty of the judge to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the defendant is guilty of the offense charged.

Each charge and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty as to one of the offenses charged should not control your verdict as to any other offense charged.

INSTRUCTION NO. 2

A person who subjects another person to sexual penetration or forces another person to make a sexual penetration on himself, against the victim's will, or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his/her conduct, is guilty of sexual assault.

"Sexual penetration" means any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the anal opening of the body of another, including sexual intercourse in its ordinary meaning. Evidence of ejaculation is not necessary.

Digital penetration is the placing of one or more fingers of the perpetrator into the anal opening of another person.

Anal intercourse is the intrusion, however slight, of the penis into the anal opening of another person.

INSTRUCTION NO. 3

Robbery is the unlawful taking of personal property from the person of another, or in his or her presence, against his or her will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his or her family, or of anyone in his company at the time of the robbery. Such force or fear must be used to:

(1) Obtain or retain possession of the property,

(2) To prevent or overcome resistance to the taking of the property, or

(3) To facilitate escape with the property.

In any case the degree of force is immaterial if used to compel acquiescence to the taking of or escaping with the property. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear.

The value of property or money taken is not an element of the crime of robbery, and it is only necessary that the State prove the taking of some property or money.

INSTRUCTION NO. 4

Every person who, by day or night, enters any residence or dwelling, with the intent to commit murder and/or a felony therein is guilty of Burglary.

INSTRUCTION NO 5

The intention with which an entry was made is a question of fact which may be inferred from the defendant's conduct and all other circumstances disclosed by the evidence.

INSTRUCTION NO. 6

In this case the defendant is accused in an Second Amended Information alleging an open charge of murder. This charge may include murder of the first degree or murder of the second degree.

The judge must decide if the defendant is guilty of any offense and, if so, of which offense.

INSTRUCTION NO. 7

Murder is the unlawful killing of a human being with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. 8

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. 9

Express malice is that deliberate intention unlawfully to take away the life of a human being, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. 10

Murder of the first degree is murder which is perpetrated by means of any kind of willful, deliberate, and premeditated killing. All three elements -- willfulness, deliberation, and premeditation -- must be proven beyond a reasonable doubt before an accused can be convicted of first-degree murder.

Willfulness is the intent to kill. There need be no appreciable space of time between formation of the intent to kill and the act of killing.

Deliberation is the process of determining upon a course of action to kill as a result of thought, including weighing the reasons for and against the action and considering the consequences of the actions.

A deliberate determination may be arrived at in a short period of time. But in all cases the determination must not be formed in passion, or if formed in passion, it must be carried out after there has been time for the passion to subside and deliberation to occur. A mere unconsidered and rash impulse is not deliberate, even though it includes the intent to kill.

Premeditation is a design, a determination to kill, distinctly formed in the mind by the time of the killing.

Premeditation need not be for a day, an hour, or even a minute. It may be as instantaneous as successive thoughts of the mind. For if the judge believes from the evidence that the act constituting the killing has been preceded by and has been the result of premeditation, no matter how rapidly the act follows the premeditation, it is premeditated.

INSTRUCTION NO. 11

The law does not undertake to measure in units of time the length of the period during which the thought must be pondered before it can ripen into an intent to kill which is truly deliberate and premeditated. The time will vary with different individuals and under varying circumstances.

The true test is not the duration of time, but rather the extent of the reflection. A cold, calculated judgment and decision may be arrived at in a short period of time, but a mere unconsidered and rash impulse, even though it includes an intent to kill, is not deliberation and premeditation as will fix an unlawful killing as murder of the first degree.

INSTRUCTION NO. 12

There are certain kinds of Murder in the First Degree which carry with them conclusive evidence of malice aforethought. One of these classes of First Degree Murder is a killing committed in the perpetration or attempted perpetration of a burglary, robbery, and/or sexual assault. Therefore, a killing which is committed in the perpetration of or attempted perpetration of a burglary, robbery, and/or sexual assault is deemed to be Murder in the First Degree, whether the killing was intentional, unintentional, or accidental. This is called the Felony-Murder Rule.

The intent to perpetrate or attempt to perpetrate a burglary, robbery and/or sexual assault must be proven beyond a reasonable doubt.

For the purposes of the Felony-Murder Rule in the context of robbery, the intent to commit the robbery must have arisen before or during the conduct resulting in death. However, in determining whether the defendant had the requisite intent to commit robbery before or during the killing, you may infer that intent from the defendant's actions during and immediately after the killing. There is no Felony-Murder where the robbery occurs as an afterthought following the killing.

INSTRUCTION NO. 13

Regardless of whether the facts establish the defendant is guilty of Premeditated and Deliberate Murder or Felony Murder so long as the Court decides that the evidence establishes the defendant's guilt of murder in the first degree, the verdict shall be Murder of the First Degree.

INSTRUCTION NO. 14

You are instructed that if you find that the State has established that the defendant has committed First Degree Murder you shall select First Degree Murder as your verdict. The crime of First Degree Murder includes the crime of Second Degree Murder. You may find the defendant guilty of Second Degree Murder if:

1. You have not found, beyond a reasonable doubt, that the defendant is guilty of murder of the first degree, and

2. You are convinced beyond a reasonable doubt the defendant is guilty of the crime of second degree murder.

If you are convinced beyond a reasonable doubt that the crime of murder has been committed by the defendant, but you have a reasonable doubt whether such murder was of the first or of the second degree, you must give the defendant the benefit of that doubt and return a verdict of murder of the second degree.

INSTRUCTION NO. 15

Under a premeditated and deliberate theory of first degree murder, all murder which is not Murder of the First Degree is Murder of the Second Degree. Murder of the Second Degree is Murder with malice aforethought, but without the admixture of premeditation and deliberation.

INSTRUCTION NO. 16

You are instructed that if you find a defendant guilty of 1st or 2nd Degree Murder you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a deadly weapon was used in the commission of such an offense, then you shall return the appropriate guilty verdict reflecting "With Use of a Deadly Weapon".

If, however, you find that a deadly weapon was not used in the commission of such an offense, but you find that it was committed, then you shall return the appropriate guilty verdict reflecting that a deadly weapon was not used.

INSTRUCTION NO. 17

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

INSTRUCTION NO. 18

The State is not required to have recovered the deadly weapon used in an alleged crime, or to produce the deadly weapon in court at trial, to establish that a deadly weapon was used in the commission of the crime.

INSTRUCTION NO. 19

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 20

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 21

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 22

The defendant has given a statement in this case which was introduced in court. The Court is not to consider or speculate on any of the portions that have not been admitted into evidence.

INSTRUCTION NO. 23

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 24

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

INSTRUCTION NO. 25

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify, nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 26

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 27

In your deliberation you may not consider the subject of punishment. Your duty is confined to the determination of the guilt or innocence of the Defendant.

INSTRUCTION NO. 28

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: _____
DISTRICT JUDGE

ORIGINAL

VER

Read @ 9:47
FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
JUL 03 2019
BY, Kory Schlitz
KORY SCHLITZ, DEPUTY

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO RAMOS,

Defendant.

CASE NO: C-10-269839-1

DEPT NO: III

C-10-269839-1
VER
Verdict
4847126

VERDICT

I, the Judge in the above entitled case, find the Defendant GUSTAVO RAMOS, as follows:

COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON (Wallace Siegel)

- [x] Guilty of First Degree Murder with Use of a Deadly Weapon
- [ ] Guilty of First Degree Murder
- [ ] Guilty of Second Degree Murder with Use of a Deadly Weapon
- [ ] Guilty of Second Degree Murder
- [ ] Not Guilty

COUNT 2 – MURDER WITH USE OF A DEADLY WEAPON (Helen Sabraw)

- [x] Guilty of First Degree Murder with Use of a Deadly Weapon
- [ ] Guilty of First Degree Murder
- [ ] Guilty of Second Degree Murder with Use of a Deadly Weapon
- [ ] Guilty of Second Degree Murder
- [ ] Not Guilty

COUNT 3-SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON

☑ Guilty of Sexual Assault With Use of a Deadly Weapon

☐ Guilty of Sexual Assault

☐ Not Guilty

DATED this 3 day of July, 2019

JUDGE HERNDON

MSTR

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Attorneys for Defendants Gustavo Ramos

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. GUSTAVO RAMOS #1516662 Defendant.	CASE NO: C-10-269839-1 DEPT. NO: III DATE: TIME: **HEARING DATE REQUESTED**

MOTION TO STRIKE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby moves this Honorable Court to strike the sentencing option of life without the possibility of parole under N.R.S. §200.030 (4).

This Motion is made based upon all the papers and pleadings on file herein, the attached Memorandum of Points and Authorities in support hereof, and oral argument at the time set for hearing this Motion.

DATED this 10th day of September, 2019.

Nobles & Yanez Law Firm

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Attorneys for Defendant Gustavo Ramos

POINTS AND AUTHORITIES

FACTS

On July 3, 2019, after a bench trial, Defendant, GUSTAVO RAMOS (hereinafter "RAMOS"), was found guilty of two (2) counts of First Degree Murder with Use of a Deadly Weapon and Sexual Assault with Use of a Deadly Weapon. Prior to trial, RAMOS agreed to waive his right to a jury trial (as to both guilt and punishment) in exchange for the State withdrawing its notice of intent to seek the death penalty. The crimes RAMOS was found guilty of occurred in May of 1998. At that time, RAMOS, who was born on July 10, 1979, was 18-years-old.

In 1998, Nevada law provided for several sentencing options a district court had if a defendant was found guilty of the charges RAMOS was found guilty of. Consequently, as to the Murder charge, the Court can sentence RAMOS to either: (1) Life without the possibility of parole; (2) 20 to Life; or (3) 20-50 years. As to the Sexual Assault charge, the Court can sentence RAMOS to either: (1) 10 to Life ; or (2) 10-25 years.[1] The Court also retains the right to run the three counts RAMOS was convicted of either concurrently or consecutively.

RAMOS now moves this Honorable Court seeking to strike the sentencing option of life without the possibility of parole—or a sentence that is its functional equivalent—pursuant to the rights afforded RAMOS by the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution and Article I, § 6 of the Nevada Constitution.

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[1] RAMOS is also subject to an additional and consecutive sentence for the deadly weapon enhancement.

ARGUMENT

I. It is Cruel and Unusual Punishment to Sentence a Person, who was 18-years-old at the time of the Crime, to Life Without the Possibility of Parole, or its Functional Equivalent

The Eighth Amendment's prohibition of cruel and unusual punishment mandates that the punishment for a crime should be graduated and proportioned to the crime. *See* Roper v. Simmons, 543 U.S. 551, 560 (2005); *see also* NEV. CONST., article I, § 6 ("nor shall cruel and unusual punishments be inflicted."). The proportionality factor requires a court to assess "'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual." Roper, 543 U.S. at 561 (quoting Trop v. Dulles, 356 U.S. 86, 100-01 (1958)).

A. Teenagers are Mentally Different and Must be Treated Differently.

Over the past 15 years, the U.S. Supreme Court has made drastic changes to what punishments imposed against juveniles[2] are acceptable under the Eighth Amendment's prohibition of cruel and unusual punishment. In 2005, the Court banned the death penalty for juvenile offenders. *See* Roper, 543 U.S. 551. Five years later, the Court banned life without parole for juvenile offenders convicted of non-homicide crimes. *See* Graham v. Florida, 560 U.S. 48 (2010). In 2012, the Court extended the rule it laid down in Graham and banned mandatory life without parole for juvenile offenders convicted of homicide. *See* Miller v. Alabama, 567 U.S. 460 (2012).[3]

Finally, in 2016, the Court held that its decision in Miller applied retroactively to prisoners currently serving mandatory life without parole sentences. *See* Montgomery v. Louisiana, 577 U.S. ___, 136 S. Ct. 718 (2016). Notably, in Montgomery, the Court held:

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[2] For purposes of this Motion, a "juvenile" is a person under the age of 18 at the time the crime was committed.

[3] Importantly, the Court explicitly stated that it was not considering, therefore not deciding, "Miller's alternative argument that the Eighth Amendment requires a categorical ban on life without parole for juveniles. . . ." Miller, 567 U.S. 479.

> *Miller*, then, did more than require a sentencer to consider a juvenile offender's youth before imposing life without parole; it established that the penological justifications for life without parole collapse in light of the distinctive attributes of youth. Even if a court considers a child's age before sentencing him or her to a lifetime in prison, that sentence still violates the Eighth Amendment for a child whose crime reflects unfortunate yet transient immaturity. Because *Miller* determined that sentencing a child to life without parole is excessive for all but the rare juvenile offender whose crime reflects irreparable corruption, it rendered life without parole an unconstitutional penalty for a class of defendants because of their status—that is, juvenile offenders whose crimes reflect the transient immaturity of youth. As a result, *Miller* announced a substantive rule of constitutional law. Like other substantive rules, *Miller* is retroactive because it necessarily carr[ies] a significant risk that a defendant—here, the vast majority of juvenile offenders—faces a punishment that the law cannot impose upon him.

Montgomery, 136 S. Ct. at 734 (internal citations and quotations omitted).

Based on this language, the Fourth Circuit Court of Appeals recently held that the rule in Miller applies, not only to *mandatory* life without parole cases, but also to *discretionary* life without parole sentencing schemes—such as N.R.S. §200.030, the statute RAMOS is being sentenced under. *See* Malvo v. Mathena, 893 F.3d 265 (4th Cir. 2018).[4] That is, under any circumstance, a sentence of life without parole for juveniles is unconstitutional under the Eighth Amendment.

However, the Fourth Circuit's holding is currently under review by the U.S. Supreme Court. *See* Mathena v. Malvo, U.S. Supreme Court Docket No. 18-217. The case is currently set for oral argument on October 16, 2019. *See* Supreme Court of the United States, Mathena v. Malvo, Docket No. 18-217 <www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-217.html> (visited September 8, 2019).

RAMOS is cognizant that the aforementioned case law involved defendants under the age of 18 and that he was 18 at the time of the crimes he was convicted of in this case. However, as one federal district court has recently found, this does not preclude other courts from finding that the

[4] The Malvo case involves the infamous 17-year-old, Lee Boyd Malvo, who, along with his father, were known as the D.C. snipers. In 2002, Malvo and his father indiscriminately murdered 12 people, seriously wounded three others, and terrorized the entire D.C. area during a two-month period. *See* Malvo, 893 F.3d at 267-68.

same prohibitions apply to 18-year-olds. *See* Cruz v. United States, 2018 U.S. Dist. LEXIS 52924, 2018 WL 1541898 (D. Conn. 2018). In finding that the Miller holding applied to 18-year-olds, the Cruz court explained: "It goes without saying that the court agrees that it is bound by Supreme Court precedent. However, it does not consider application of Miller to an 18-year-old to be contrary to Supreme Court (or Second Circuit) precedent." *Id.* at 37. Of relevance to RAMOS's argument in this Motion, the federal district court further stated:

> The court does not infer by negative implication that the Miller Court also held that mandatory life without parole is necessarily constitutional as long as it is applied to those over the age of 18. The Miller opinion contains no statement to that effect. . . . Nothing in Miller then states or even suggests **that courts are prevented from finding that the *Eighth Amendment* prohibits mandatory life without parole for those over the age of 18**. Doing so would rely on and apply the rule in Miller to a different set of facts not contemplated by the case, but it would not be contrary to that precedent.

Id. at 38 (emphasis added).

In sum, there is no U.S. Supreme Court precedent that prevents this Court from applying the rules established for juveniles in Graham, Miller, and Montgomery to a person who, like RAMOS, was 18-years-old at the time of the crime. *See id.* at 41.

B. Nevada Law Expands on U.S. Supreme Court Precedent.

Both the Nevada Supreme Court and Nevada Legislature have gone further than the U.S. Supreme Court has regarding what punishments are prohibited against juveniles. For example, in 2015, the Nevada Supreme Court extended the U.S. Supreme Court's holding in Graham by holding that "a district court violates the prohibition of cruel and unusual punishment when it sentences a nonhomicide juvenile offender to the functional equivalent of life without the possibility of parole." State v. Boston, 131 Nev. Adv. Rep. 98, 363 P.3d 453, 458 (2015).

The Nevada Legislature, also in 2015, passed Assembly Bill 267, which prohibits district courts from sentencing nonhomicide juvenile offenders to life without parole and made at least the chance of parole mandatory after 15 years of incarceration. *See* A.B. 267, 78th Leg. (Nev. 2015).

Assembly Bill 267 also made a juvenile offender, whose crime caused the death of one person, eligible for parole after serving 20 years of imprisonment. *See id.*

Furthermore, just this past legislative session, the Nevada Legislature took yet another step forward and passed Assembly Bill 424, which requires that a juvenile, who was convicted of a nonhomicide offense, be eligible for parole after serving 15 years of imprisonment, and a juvenile who has been convicted of an offense that resulted in the death of a victim, must be eligible for parole after serving 20 years of imprisonment. *See* A.B. 424, 80th Leg. (Nev. 2019). Although this new law does not take effect until October 1, 2019, the law states that it applies to "an offense committed before, on or after October 1, 2019." *Id.*

C. 18-Year-Olds are Like "Juveniles" under the Eighth Amendment

In reaching its ground-breaking decisions in Roper, Graham and Miller, the Supreme Court based its decisions on three general differences between juveniles and adults: (1) Juveniles have a "lack of maturity and an underdeveloped sense of responsibility," which often leads to "impetuous and ill-considered actions and decisions;" (2) Juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure;" and (3) Juvenile's character "is not as well formed as that of an adult." Miller, 567 U.S. at 471-72; Roper, 543 U.S. at 569-70; Graham, 560 U.S. at 68. These distinctions all apply equally to an 18-year-old as they do to a juvenile.

National consensus and developments in the scientific evidence on the hallmark characteristics of youth are the factors the Supreme Court considered in Roper, Graham and Miller. In extending the holding in Miller to 18-year-olds, the Connecticut federal district court in Cruz pointed out that numerous states recognize in their statutes a "difference between 18-year-olds and offenders in their mid-twenties for purposes of criminal culpability." *See* Cruz, 2018 U.S. Dist. LEXIS 52924 at 50-52. Additionally, the Cruz court explained that numerous states also draw "other

important societal lines at age 21," like purchasing/possessing alcohol, handguns, and tobacco. *See id.* 56-59. The court also noted that all 50 states, including Nevada, extend the jurisdiction of its juvenile court to persons under the age of 21. *See* N.R.S. §62A.030 (1). Consequently, as this Court should do, the Cruz court held that "[w]hile there is no doubt that some important societal lines remain at age 18, the changes discussed above reflect an emerging trend toward recognizing that 18-year-olds should be treated differently from fully mature adults." Cruz, 2018 U.S. Dist. LEXIS 52924 at 58-59.

The available scientific and sociological research—relied on by the Supreme Court in Roper, Graham and Miller—also mandates a finding that 18-year-olds are like "juveniles" for purposes of the Eighth Amendment. On this point, an evidentiary hearing with expert testimony may be beneficial to the Court in making a complete and informed decision. RAMOS is more than willing to provide expert testimony to the Court if it so desires. Otherwise, RAMOS is attaching scientific authority as exhibits to this Motion,[5] which, according to the three general differences between juveniles and fully mature adults noted by the U.S. Supreme Court, clearly establish that the same differences apply to 18-year-olds.

The attached research shows that late adolescents,[6] like juveniles, show problems with impulse control and self-regulation and heightened sensation-seeking. Impulse control is still developing during the late adolescent years until approximately the early- or mid-20s. Furthermore, late adolescents, like juveniles, are more likely to take risks as compared to adults. The attached research explains that risk-seeking behavior peaks around the age of 17 to 19, and then declines into adulthood.

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[5] Ex. "A": Alexandra Cohen, et. al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 TEMPLE L. REV. 769 (2016); Ex. "B": Laurence Steinberg, et al., *Around the World, Adolescence is a Time of heightened Sensation Seeking and Immature Self-Regulation*, DEV. SCI. 00 (2017)

[6] For purposes of this Motion, "late adolescence" is the time between the ages 18 and 21.

Similarly, 18-year-olds, like juveniles, are susceptible to outside influences and peer pressure. The scientific research indicates that the ability to resist peer pressure is still developing during late adolescence and that, even up until the age of 24, adolescents exhibit greater risk-taking and reward-sensitive behavior when in the presence of peers.

Lastly, the scientific research reveals that persons in late adolescence are, like juveniles, more capable of change than are adults, the third difference that the Supreme Court identified in Roper, Graham and Miller. Consequently, RAMOS urges this Court to find that imposing the penalty of life without the possibility of parole to a person who was 18-years-old at the time of the crime is contrary to the cruel and unusual punishment clause of the Eighth Amendment and Nevada Constitution.

CONCLUSION

Based on the foregoing reasons, RAMOS respectfully submits that after reviewing all the evidence adduced at a hearing on this Motion, together with the foregoing Points and Authorities, this Court will be impelled to grant his Motion.

DATED this 10th day of September, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of September, 2019, I served a true and correct copy of the foregoing document, **Motion to Strike Penalty of Life Without the Possibility of Parole**, by submitting electronically for filing and/or service within the Eighth Judicial District Court pursuant to Administrative Order 14-02 for e-service to the following:

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Ex. "A"

WHEN DOES A JUVENILE BECOME AN ADULT? IMPLICATIONS FOR LAW AND POLICY

Alexandra O. Cohen,[*] *Richard J. Bonnie,*[+] *Kim Taylor-Thompson,*[Δ] *and BJ Casey*[♦]

The U.S. Supreme Court has issued a series of landmark decisions regarding the culpability of juveniles under the age of eighteen and has increasingly referenced developmental science in these opinions. Still, the line between juvenile court jurisdiction and criminal court jurisdiction varies widely among state laws, as do the minimum ages for other legal or regulatory purposes. Although the operative age of "adulthood" typically falls somewhere between the ages of eighteen and twenty-one, it has been set lower in some important policy contexts, such as the age at which an adolescent is subject to criminal prosecution and punishment. Legal distinctions between juveniles and adults have been based on changing political climates and conventional wisdom rather than empirical evidence. Policymakers have drawn these lines without fully examining or understanding the developmental characteristics of these individuals and how similar they are to younger or older individuals in their behavior and judgment. Scientific evidence of human brain maturation shows continued development into the early twenties. In this Article, we summarize recent behavioral and neural findings on cognitive capacity in young adults (eighteen to twenty-one) and highlight several ways in which they bear on legal policies relating to the "age of adulthood."

INTRODUCTION

When does an individual become an adult? From a developmental perspective, adulthood is achieved when an adolescent successfully transitions to independence from parents or other caregivers. From a societal perspective, the achievement of adulthood coincides with changing expectations of when an individual should be financially independent, have completed formal education, or formed a family. The legal concept of adulthood is surprisingly difficult to

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define since it varies across policy contexts. Although legislatures have designated eighteen as the "age of majority," this line simply represents a "default" rule. An individual is classified as an adult at age eighteen unless the legislatures or courts have prescribed a higher or lower age in particular contexts. The "operative" age of adulthood is functionally lower than eighteen in the context of criminal punishment because every state permits at least some adolescents to be tried and punished as adults well before they turn eighteen. Meanwhile, many states recognize the continued vulnerability of young adults in various ways, such as by extending parental support obligations beyond eighteen. These different perspectives on adulthood raise two important questions. First, have changing social practices and expectations about adulthood informed or altered laws and policies that define the rights and responsibilities of adulthood? Second, to what extent do the age boundaries drawn by these policies and laws reflect or contradict our scientific understanding of human development?

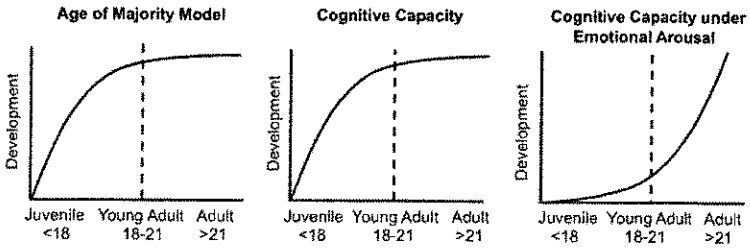
Designation of minimum or maximum ages for various legal purposes has largely been based on conventional wisdom and changing perceptions of the needs, capabilities, and rights of young people, as well as the needs and obligations of society. Nowhere is that observation more evident than in the rules governing criminal prosecution of children and adolescents. Under the doctrines of the common law, children under seven were not punishable, and children between seven and fourteen were presumed to lack criminal responsibility, with this presumption weakening as they approached fourteen. Thus children between seven and fourteen could be prosecuted if proven both to be guilty and to be able to appreciate the wrongfulness of their behavior. Today, the age of criminal responsibility of adolescents has been associated with the shifting designation of the boundaries between the respective jurisdictions of juvenile courts and criminal courts. Even today, young people are subject to prosecution and punishment as adults at the age of fourteen in most states (and even younger in some). Research on adolescent development has been used to support proposals to retain teenagers in juvenile court and to mitigate the severity of punishment for adolescents tried as adults. Recognizing that there is no developmentally informed magical demarcation at eighteen, contemporary proponents of criminal justice reform are also making the case for a rehabilitative approach to young adult offenders.

Criminal justice is not the only policy context reflecting the socially contingent legal boundaries bearing on the "legal" age of adulthood. The apparent incoherence is illustrated, on the one hand, by restricted access to alcohol (and increasingly, tobacco) before the age of twenty-one and, on the other, by access to contraceptives and abortions by young teenagers without parental knowledge or consent. What is one to make of social policies that end parental support obligations, and even foster care, at eighteen, while mandating health insurance coverage under parental health plans until age twenty-six? In the context of these variations, the so-called "age of majority" functions as a "default"—in most states, it is eighteen, unless the legislatures or courts have prescribed a higher or lower age in particular contexts. It is noteworthy, in this connection, that the "age of majority" was lowered from twenty-one to eighteen

in all but two states in the early 1970s when the voting age was lowered, and that this sudden change of policy was not accompanied in any state by a comprehensive inquiry about the welfare consequences of lowering the age or the developmental literature that might bear on it.

The purpose of this Article is to examine the implications of recent developmental science for the legal definition of adulthood for ongoing reforms of the juvenile justice system and possibly for other social policies. One consideration in selecting a legally operative age in any given context is when adolescent behavior, and the underlying neural circuitry, can be said to have reached "maturity." This Article highlights the rapidly growing body of literature on adolescent development as well as an emerging body of research on young adults. The scientific research on adolescent development shows heightened sensitivity to rewards,[1] threats,[2] and social influences,[3] which potentially renders adolescents more vulnerable to making poor decisions in these situations. The extension of this line of work to young adults suggests that young adulthood is a developmental period when cognitive capacity is still vulnerable to the emotional influences that affect adolescent behavior, in part due to continued development of prefrontal circuitry involved in self-control (see Figure 1). These findings may have policy implications in several legal domains. Most plausibly, these findings may reinforce and extend the developmental logic of reforms of the juvenile justice system already underway, and they may invite review and reconsideration of the age of adulthood in other policy contexts.

FIGURE 1. AGE OF MAJORITY IN THE CONTEXT OF RECENT DEVELOPMENTAL SCIENCE



1. *E.g.*, Jessica R. Cohen et al., *A Unique Adolescent Response to Reward Prediction Errors*, 13 NATURE NEUROSCIENCE 669, 670 (2010); Adriana Galván et al., *Earlier Development of the Accumbens Relative to Orbitofrontal Cortex Might Underlie Risk-Taking Behavior in Adolescents*, 26 J. NEUROSCIENCE 6885, 6889–91 (2006); C.F. Geier et al., *Immaturities in Reward Processing and Its Influence on Inhibitory Control in Adolescence*, 20 CEREBRAL CORTEX 1613, 1626 (2010); Linda Van Leijenhorst et al., *What Motivates the Adolescent? Brain Regions Mediating Reward Sensitivity Across Adolescence*, 20 CEREBRAL CORTEX 61, 66–67 (2010).

2. *E.g.*, Michael Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat*, 36 DEVELOPMENTAL NEUROSCIENCE 220, 225–26 (2014).

3. *See, e.g.*, Jason Chein et al., *Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry*, 14 DEVELOPMENTAL SCI. F1, F7 (2011); Leah H. Somerville et al., *Frontostriatal Maturation Predicts Cognitive Control Failure to Appetitive Cues in Adolescents*, 23 J. COGNITIVE NEUROSCIENCE 2123, 2131–32 (2011).

II. ADULTHOOD AND JUVENILE JUSTICE

A. *Historical Perspective*

Even a cursory review of the history of juvenile justice policy over the past century reveals dramatic fluctuations in the ways that American society perceives and treats adolescent offenders. But these shifts in public attitudes and justice policy have occurred largely as a consequence of changes in the social and political environment rather than as a result of an improved understanding of the adolescent. From the start of the twentieth century until the present day, there have been three distinct policy phases regarding juvenile offenders.[4] First, at the turn of the twentieth century, the Progressive reform movement advanced a conception of juvenile offenders that separated them from their adult counterparts and urged a focus on their care and rehabilitation.[5] Second, toward the end of the twentieth century, politicians, academics, and the media advanced a competing conception of the adolescent offender. They redefined adolescent offenders as a new, younger breed of criminal whose predatory conduct necessitated nothing less than adultlike interventions and punishment. The third phase in justice policymaking has begun to emerge in the last decade. Spurred in part by legal rulings, fiscal constraints, and developmental science findings, policymakers have begun to retreat from the earlier wave of punitive approaches in addressing adolescent behavior and have instead gravitated toward a more nuanced understanding of the developmental traits that distinguish adolescents from adults.

For nearly a century, the view that young offenders were distinct from adults and therefore deserving of differential and rehabilitative treatment for children held fast. But an increase in juvenile crime in the late 1980s and 1990s

4. Kim Taylor-Thompson, *Minority Rule: Redefining the Age of Criminality*, 38 N.Y.U. REV. L. & SOC. CHANGE 143, 147–48 (2014); *see also* Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 388–91 (2013) (describing the "emerging view of childhood and adolescence as distinct developmental stages").

5. Toward the end of the first phase, critics of the juvenile court began to question its informality, complaining that the rehabilitative goals of the Court were simply a cover for intervention and punishment without procedural safeguards for the child. So, the Supreme Court extended certain, but not all, constitutional protections afforded to an adult accused. *See In re* Gault, 387 U.S. 1, 56 (1967). But the extension of adultlike constitutional safeguards may have weakened the moral foundations of the juvenile court by supporting the view that courts should treat adolescents as adults. *See, e.g.*, NAT'L RESEARCH COUNCIL, REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH 38 (Richard J. Bonnie et al. eds., 2013) ("Ironically, the procedural reforms that youth advocates had promoted appeared to support the legitimacy of an adversarial regime that ignored developmental differences between juveniles and adults."); Kim Taylor-Thompson, *States of Mind/States of Development*, 14 STAN. L. & POL'Y REV. 143, 147 (2003) ("The more that juvenile legal institutions and procedures have begun to mirror their adult counterparts, the more difficult the task has become to distinguish between adolescents and adults in any meaningful way or to justify the continued existence of a separate system of adjudication for youths. Extension of adult-like constitutional status may have contributed to the perception that courts *could* treat adolescents as adults. That courts *should* treat adolescents as adults then deceptively seemed only a small step.").

shook the public's confidence that youthful offenders were indeed less culpable than their adult counterparts and catapulted questions of juvenile crime control onto the national stage. Academics warned that a new breed of young offenders—"superpredators"—loomed dangerously on the horizon. Provocative images, more often reserved for children of color who committed crimes, pushed the public to fear a coming tide of "elementary school youngsters who pack[ed] guns instead of lunches."[6] The media fueled alarm by treating individual incidents of violence as typical, leading the public to believe that the acts of juveniles were no longer delinquent; they were criminal. Capitalizing on mounting public fear, politicians adeptly collapsed the distinctions between young offenders and adult offenders. They insisted that a young offender's engagement in violent crime exhibited a certain depravity that meant the young person no longer deserved the protective environs of a juvenile system that focused on care and rehabilitation.[7] Instead, the violent act seemed to imbue the offender with a degree of maturity that required more punitive controls. "Adult time for adult crime" became the rallying cry for dramatic policy changes that swept the country. Every state toughened its laws for young offenders and expanded transfer laws to allow or mandate the prosecution of juveniles in adult criminal courts. The changed conception of the young offender would upend an almost century-long tradition of differentiated treatment for the youthful offender.

B. Developmental Approach to Juvenile Justice Reform

Recently, policymakers have begun to revise their conceptions of adolescent offenders and to reconsider their reliance on punitive approaches. A few key factors seem to be in play. First, the dire predictions in the 1990s about future crime waves at the hands of out of control adolescents never materialized. Experts (including the originators of the superpredator theory) have since acknowledged that the superpredator theory was a myth, removing a critical foundational component for the perception of contemporary adolescents as more dangerous and more mature. Second, fiscal constraints flowing from the global recession have forced policymakers to pay closer attention to the cost of the punitive reforms they implemented with such ease in the latter part of the twentieth century. The economic pressures have provided some leverage for those advocating new approaches to juvenile justice reform.[8] Third, recent neuroscience research and findings have suggested a neural basis for recognized developmental characteristics of adolescence. In fact, lawmakers are increasingly

6. John L. DiIulio, Jr., *The Coming of the Super-Predators*, WKLY. STANDARD, Nov. 27, 1995, at 23.

7. *See, e.g.*, Alfred S. Regnery, *Getting Away with Murder: Why the Juvenile Justice System Needs an Overhaul*, 34 POL'Y REV. 65, 65 (1985) ("[Current policies used to address juvenile crime] fail to hold offenders accountable and do not deter crime. At best, they are outdated; at worst, they are a total failure, and may even abet the crimes they are supposed to prevent.").

8. *See* Alex R. Piquero & Laurence Steinberg, *Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders*, 38 J. CRIM. JUST. 1 (2010) (discussing the impact of cost on the public's perception of rehabilitation programs).

referencing developmental science to support juvenile justice reform.[9]

The U.S. Supreme Court has reinforced the view that a developmental perspective should guide our assessments of an adolescent offender's culpability and punishment. In a trio of cases in the past decade, the Court has recognized and relied on a body of developmental research that questions assumptions about adolescent responsibility and punishment. First, in 2005, the Court in *Roper v. Simmons* struck down the death penalty for young offenders under the age of eighteen because such a sentence constituted a violation of the Eighth Amendment's prohibition against cruel and unusual punishment.[10] The Court made clear that the seriousness of the offense did not transform the young offender into an adult. Five years later, in *Graham v. Florida*, the Court built on the foundations of *Roper* and established a categorical ban against life without parole sentences for a juvenile offender convicted of a nonhomicide offense.[11] The *Graham* Court noted three significant developmental gaps between adolescents and adults: impulsivity linked to developmental factors, susceptibility to external pressures, and a still-developing identity. Indeed, what made these youthful traits salient in the justice context, according to the Court, was that they at once lessened a child's "moral culpability" and increased the probability that with time and attendant neurological development, the child's "'deficiencies will be reformed.'"[12] Finally, in 2012, the Court, in *Miller v. Alabama*,[13] held unconstitutional the mandatory imposition of life without parole sentences in homicide cases for all children under the age of eighteen. The Court's ruling struck down statutes in twenty-nine states that mandated the imposition of life without parole sentences for children upon conviction of homicide. The Court made clear that failing to consider the mitigating qualities of youth in the assessment of culpability "contravene[d] *Graham*'s (and also *Roper*'s) foundational principle: that imposition of a State's most severe penalties on juvenile offenders cannot proceed *as though they were not children*."[14]

When read as a whole, these three opinions craft a compelling argument. They insist that the justice system acknowledge that children differ from adults in ways that bear directly on the question of their culpability and their capacity

9. *E.g.*, TASK FORCE ON TRANSFORMING JUVENILE JUSTICE, CHARTING A NEW COURSE: A BLUEPRINT FOR TRANSFORMING JUVENILE JUSTICE IN NEW YORK STATE (2009); NAT'L RESEARCH COUNCIL, *supra* note 5, at 43; Elizabeth S. Scott, *"Children are Different": Constitutional Values and Justice Policy*, 11 OHIO ST. J. CRIM. L. 71, 74–75 (2013) ("Lawmakers today are rethinking punitive policies that were adopted in a climate of fear and hostility toward juvenile offenders in the late twentieth century."); Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. REV. 793, 796 (2005) ("[F]ew lawmakers have addressed the impact of developmental immaturity on competence. Under contemporary juvenile justice regulation, however, this issue has become highly salient." (footnote omitted)).

10. 543 U.S. 551 (2005).

11. 560 U.S. 48 (2010).

12. *Graham*, 560 U.S. at 68–69 (quoting *Roper*, 543 U.S. at 570).

13. 132 S. Ct. 2455 (2012).

14. *Miller*, 132 S. Ct. at 2458 (emphasis added).

for change. As importantly, what is significant about these opinions is their reliance on scientific studies of adolescent brain structure and functioning, as well as social science research of adolescent behavior, that confirm that teenagers are driven by circumstances and impulses,[15] are vulnerable to the influences of their peers,[16] are less capable of considering alternative courses of action and avoiding unduly risky behavior,[17] and lack the self-control that almost all of them will gain later in life.[18]

C. *What Is the Legally Operative Age of Adulthood in Criminal Justice?*

The Supreme Court's rulings focused on the most severe punishments and did not address the implications of these rulings for adult criminal prosecution of juveniles. A review of state laws reveals that all states *allow* criminal prosecution of juveniles and many require it in certain classes of cases involving serious crimes. Twenty-three states currently have no minimum age for trying a child as an adult.[19] Among states that set a minimum age for adult prosecution through transfer provisions, fourteen is the most common age.[20] Not only have these statutes ushered young children into the adult criminal justice system, but they do so disproportionately for youth of color. And these transfers occur largely without judicial review. Before the 1990s, judges held the responsibility for determining whether a child warranted adult court prosecution. But statutes in the 1990s began to narrow judicial discretion. In many jurisdictions, transfer is automatic based on the offense or at the sole discretion of the prosecutor. As a result, eighty-five percent of the determinations to send juveniles into the adult criminal justice system are not made by judges, but instead by prosecutors or legislatures.[21] In the end, over 200,000 youth under the age of eighteen face prosecution as adults in criminal court annually.[22] Despite their prevalence, transfer policies have not resulted from evidence showing the effectiveness of

15. *E.g.*, Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 ANN. REV. CLINICAL PSYCHOL. 459, 472–73 (2009) [hereinafter Steinberg, *Adolescent Development and Juvenile Justice*].

16. *E.g.*, Laurence Steinberg & Kathryn C. Monahan, *Age Differences in Resistance to Peer Influence*, 43 DEVELOPMENTAL PSYCHOL. 1531, 1540 (2007).

17. *See, e.g.*, Elizabeth Cauffman & Laurence Steinberg, *(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable than Adults*, 18 BEHAV. SCI. & L. 741, 756–57 (2000) (finding that "maturity of judgment" is correlated to "antisocial decision-making," but that responsibility, perspective, and temperance are more predictive than age alone).

18. *See, e.g.*, Laurence Steinberg et al., *Age Differences in Sensation Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model*, 44 DEVELOPMENTAL PSYCHOL. 1764, 1774–76 (2008).

19. HOWARD N. SNYDER & MELISSA SICKMUND, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 114 (2006), http://www.ojjdp.gov/ojstatbb/nr2006/downloads/chapter4.pdf.

20. *Id.*

21. JOLANTA JUSZKIEWICZ, BUILDING BLOCKS FOR YOUTH, YOUTH CRIME/ADULT TIME: IS JUSTICE SERVED? 2 (2005), http://www.njjn.org/uploads/digital-library/resource_127.pdf.

22. Jennifer L. Woolard et al., *Juveniles Within Adult Correctional Settings: Legal Pathways and Developmental Considerations*, 4 INT'L J. FORENSIC MENTAL HEALTH 1, 4 (2005).

such transfers. In fact, the opposite appears to be true: transfer policies do not deter[23] and have instead led to significant increases in recidivism across several jurisdictions.[24]

A developmental perspective has important implications for the age at which adolescents should be subject to trial and punishment "as adults" in criminal courts. However, the literature raises questions about whether the sentencing of young offenders in criminal courts should follow a developmentally informed model, rather than the traditional "just deserts" model of criminal punishment. Some states are designing or reviving special sentencing arrangements for "young adult" offenders. If they do so, what age should these statutes set as the ceiling for such an ameliorative approach? At what age is the "youth discount" exhausted?

II. DEFINITION OF ADULTHOOD FOR DIFFERENT SOCIAL POLICIES AND IN DIFFERENT JURISDICTIONS

Policy judgments about where to draw age lines relating to adulthood are highly contextual, ranging from ages fourteen to sixteen (medical decision making) to age twenty-one (purchase, use and possession for alcohol and firearms, fiduciary appointments, or most professional occupational licenses), and in contexts involving eligibility for financial and social support, even to the mid-twenties (e.g., inclusion in parental health insurance). In many contexts, a balance needs to be struck between young adults' interest in making their own choices and society's legitimate concerns about protecting the public health and protecting young people from decisions they may later regret.[25] The so-called "age of majority" functions as a default and every state sets the legal age for certain activities higher or lower for different policy purposes.[26]

In recent years, the trend in the United States has been to take a more protective stance toward older adolescents and young adults, with particular concern for impulsive action, risk-taking, and vulnerability to psychopathology.

23. *See* AARON KUPCHIK, JUDGING JUVENILES: PROSECUTING ADOLESCENTS IN ADULT AND JUVENILE COURTS 2 (2006); Jeffrey Fagan et al., *Be Careful What You Wish for: Legal Sanctions and Public Safety Among Adolescent Felony Offenders in Juvenile and Criminal Court* 15–17, 69 (Columbia Law Sch., Pub. Law Research Paper No. 03-61, 2007), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=491202.

24. COAL. FOR JUVENILE JUSTICE, CHILDHOOD ON TRIAL: THE FAILURE OF TRYING AND SENTENCING YOUTH IN ADULT CRIMINAL COURT 2 (2005); Benjamin Steiner & Emily Wright, *Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance?*, 96 J. CRIM. L. & CRIMINOLOGY 1451, 1457–58 (2006); Fagan et al., *supra* note 23, at 15–17.

25. *See* INST. OF MED., ENDING THE TOBACCO PROBLEM: A BLUEPRINT FOR THE NATION 150 (Richard J. Bonnie et al. eds., 2007); NAT'L RESEARCH COUNCIL & INST. OF MED., REDUCING UNDERAGE DRINKING: A COLLECTIVE RESPONSIBILITY 27–30 (Richard J. Bonnie & Mary Ellen O'Connell eds., 2004).

26. Richard J. Bonnie & Elizabeth S. Scott, *The Teenage Brain: Adolescent Brain Research and the Law*, 22 CURRENT DIRECTIONS PSYCHOL. SCI. 158, 158 (2013); *see also* Vivian E. Hamilton, *Immature Citizens and the State*, 2010 B.Y.U. L. REV. 1055, 1129; Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 28 ISSUES SCI. & TECH. 67, 76 (2012).

This trend has been reinforced by a lengthening transition to economic independence and, as a consequence, delayed separation from parents and postponement of marriage and childrearing.[27] In the public health context, this protective trend is most clearly evident in legislation setting the minimum age for purchasing alcohol, marijuana, and tobacco.

A. *Legal Age for Purchasing Alcohol*

After the repeal of Prohibition in 1933, the vast majority of states set the minimum drinking age at twenty-one. However, when the national voting age was set at eighteen by the Twenty-Sixth Amendment in 1971, many states decided to lower the drinking age. This change in policy led to an increase in alcohol-related traffic fatalities among young adults aged eighteen to twenty.[28] Many states then re-raised the minimum age to twenty-one, and a robust literature showed that alcohol-related fatalities declined as a result.[29] In 1984, Congress induced all states to restore the minimum age to twenty-one by threatening to withhold a percentage of highway funds from noncompliant states.[30] Subsequent studies showed significant decreases in fatal crashes, alcohol-related crashes, and arrests for driving under the influence among young people.[31] In a comprehensive report published in 2004, the National Research Council (NRC) and Institute of Medicine (IOM) proposed a "collective responsibility" for reducing underage drinking and driving given the widespread availability of and easy access by underage drinkers to alcohol, as well as the vulnerability of young people to addiction. The report emphasized enforcing drinking age laws more effectively through compliance checks, server training, zero tolerance laws, and graduated driver licensing laws, and highlighted the need for parents and other adults to take these laws seriously.

Notwithstanding the NRC and IOM report's reaffirmation of setting the minimum drinking age at twenty-one, political efforts are occasionally launched to reduce the minimum drinking age to eighteen or nineteen. Yet setting the minimum drinking age at twenty-one has reduced alcohol-related traffic crashes and alcohol consumption among youth "while also protecting drinkers from long-term negative outcomes they might experience in adulthood, including alcohol and other drug dependence, adverse birth outcomes, and suicide and homicide."[32] The U.S. Task Force on Community Preventive Services recommends implementing and maintaining a minimum drinking age of twenty-

27. INST. OF MED. & NAT'L RESEARCH COUNCIL, INVESTING IN THE HEALTH AND WELL-BEING OF YOUNG ADULTS 83–84 (Richard J. Bonnie et al. eds., 2015).

28. Alexander C. Wagenaar & Traci L. Toomey, *Effects of Minimum Drinking Age Laws: Review and Analyses of the Literature from 1960 to 2000*, J. STUD. ON ALCOHOL SUPPLEMENT 206, 206 (2002).

29. *Id.* at 219.

30. *Id.* at 206.

31. *Id.* at 219.

32. William DeJong & Jason Blanchette, *Case Closed: Research Evidence on the Positive Public Health Impact of the Age 21 Minimum Legal Drinking Age in the United States*, 75 J. STUD. ON ALCOHOL & DRUGS S108, S113 (2014).

one based on strong evidence of effectiveness, including a median sixteen percent decline in motor vehicle crashes among underage youth in states that increased the legal drinking age to twenty-one.[33]

B. *Legal Age for Purchasing Marijuana*

The alcohol experience appears to have guided policymakers in states that have elected to legalize marijuana, where the age of purchase has uniformly been set at twenty-one. Although marijuana policy has been controversial since the 1960s,[34] recent developments have fundamentally changed the regulatory landscape and are likely to have profound effects on the epidemiology of marijuana use.[35] The voters of California legalized medical use of marijuana in 1996, and analogous laws have been enacted by more than twenty other states.[36] Colorado and Washington voters approved initiatives legalizing recreational marijuana use for people over twenty-one in 2012 and directing state legislatures to license the cultivation and distribution of marijuana and impose taxes on marijuana transactions.[37] Although the cultivation, distribution, and possession of marijuana for either medical or recreational purposes remain illegal under federal law, the U.S. Department of Justice has promulgated enforcement guidance to the U.S. Attorneys. That guidance allows for declining to enforce the Controlled Substances Act against persons who comply with the requirements of state law as long as the conduct allowed by the states does not endanger overriding federal interests, such as preventing "distribution of marijuana to minors," "drugged driving[,] and the exacerbation of other adverse public health consequences associated with marijuana use."[38]

C. *Legal Age for Purchasing Tobacco*

The age of purchase for tobacco products also has come under scrutiny. Until the 1990s, the minimum purchase age (typically sixteen) varied substantially from state to state and was rarely enforced. In 1992, Congress enacted legislation known as the Synar Amendment that tied state eligibility for substance abuse prevention and treatment block grant funds to enforcement of youth tobacco access laws. Subsequent reports by the surgeon general[39] and the

33. Ruth A. Shults et al., *Reviews of Evidence Regarding Interventions to Reduce Alcohol-Impaired Driving*, 21 AM. J. PREVENTIVE MED. 66, 73–75 (2001).

34. *See* RICHARD J. BONNIE & CHARLES H. WHITEBREAD II, THE MARIHUANA CONVICTION: A HISTORY OF MARIHUANA PROHIBITION IN THE UNITED STATES (1974).

35. *See State Medical Marijuana Laws*, NAT'L CONF. ST. LEGISLATURES (Apr. 18, 2016), http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx.

36. *Id.*

37. *See id.*; *Marijuana Overview*, NAT'L CONF. ST. LEGISLATURES (Apr. 13, 2016), http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx.

38. U.S. Dep't of Justice, Memorandum from James M. Cole, Deputy Att'y Gen., to All U.S. Att'ys (Aug. 29, 2013), https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

39. U.S. DEP'T HEALTH & HUMAN SERVS., PREVENTING TOBACCO USE AMONG YOUNG PEOPLE: A REPORT OF THE SURGEON GENERAL (1994).

IOM[40] highlighted the importance of reducing youth initiation of smoking as a priority component of state tobacco control. In 1996, the U.S. Food and Drug Administration (FDA) promulgated its Tobacco Rule, establishing a federal minimum purchase age of eighteen and restricting tobacco advertising and promotion targeting adolescents.[41] Although the Supreme Court invalidated the Tobacco Rule in 2000,[42] Congress revived it in the Family Smoking Prevention and Tobacco Control Act of 2009,[43] and the FDA reissued the rule in 2010.[44] While codifying eighteen as the federal minimum age of purchase, Congress authorized the states to adopt a higher minimum purchase age and directed the FDA to convene an expert panel to assess the public health implications of raising the minimum purchase age for tobacco products. The IOM concluded that raising the age to twenty-one would produce substantial public health gains.[45] New York City and a growing number of cities and counties have raised the minimum legal age for tobacco to twenty-one, and several states may do so in the coming years.

Although adolescent vulnerability to addiction and immaturity of judgment support these underage access restrictions for alcohol, marijuana, and tobacco, these developmental concerns do not resolve the policy question about the specific age at which the line should be drawn. This is not to say that the line should be drawn based solely on developmental science either. It is only to say that eighteen is not the only developmentally plausible place to draw the line.

III. WHEN DOES COGNITIVE CAPACITY "MATURE"?

A. *Development of Cognitive Capacity*

The designation of eighteen as the "age of majority" by legislatures is predicated on the assumption that cognitive capacity is mature by this time (see Figure 1). A large developmental literature exists (see Figure 2) showing that performance of simple cognitive tasks reaches adultlike performance in speed and accuracy by the teen years.[46] However, psychologists,[47] neuroscientists,[48]

40. INST. OF MED., GROWING UP TOBACCO FREE: PREVENTING NICOTINE ADDICTION IN CHILDREN AND YOUTHS (Barbara S. Lynch & Richard J. Bonnie eds., 1994).

41. FOOD & DRUG ADMIN., COMPLIANCE WITH REGULATIONS RESTRICTING THE SALE AND DISTRIBUTION OF CIGARETTES AND SMOKELESS TOBACCO TO PROTECT CHILDREN AND ADOLESCENTS: GUIDANCE FOR INDUSTRY 2 (2013), http://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM248241.pdf.

42. FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 161 (2000).

43. Family Smoking Prevention and Tobacco Control Act, Pub. L. No. 111-31, 123 Stat. 1776 (2009).

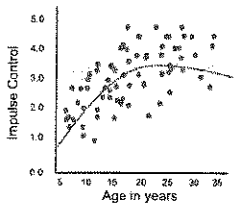
44. 21 C.F.R. pt. 1140 (2016).

45. INST. OF MED., PUBLIC HEALTH IMPLICATIONS OF RAISING THE MINIMUM AGE OF LEGAL ACCESS TO TOBACCO PRODUCTS 8 (Richard J. Bonnie et al. eds., 2015).

46. *See, e.g.*, B. J. Casey et al., *Clinical, Imaging, Lesion, and Genetic Approaches Toward a Model of Cognitive Control*, 40 DEVELOPMENTAL PSYCHOBIOLOGY 237, 238 (2002) ("These studies show a nice developmental trend in the ability to ignore irrelevant flankers over the ages of 4 to 12 years that appears to reach adult levels by 12 years as indexed by mean reaction times and accuracy rates."); B. J. Casey & Kristina Caudle, *The Teenage Brain: Self Control*, 22 CURRENT DIRECTIONS

and family and adolescent specialists[49] have called attention to evidence that capacities related to self-control and judgment in emotionally and socially charged situations may not mature until much later. These findings suggest a contextual basis for when an individual has "mature" cognitive capacity and suggest that psychological studies on cognitive capacity may have underestimated when it develops. Examining cognitive capacity in emotional contexts may more accurately reflect the emotionally charged situations in which young people often find themselves. These are the situations that are most relevant to risk-taking and impulsive behaviors that could expose them and other people to harm.

FIGURE 2. COGNITIVE CAPACITY EMERGES DURING THE TEEN YEARS (CASEY & CAUDLE, 2013)



PSYCHOL. SCI. 82, 86 (2013) ("Our findings suggest that adolescents can show remarkable restraint in controlling habitual responses but tend to fail when attempting to control habitual responses to salient positive cues in the environment. Specifically, we showed that adolescents have impulse control that is comparable to or even better than that of some adults in neutral contexts."); James T. Enns & Nameera Akhtar, *A Developmental Study of Filtering in Visual Attention*, 60 CHILD DEV. 1188 (1989) (examining the differences in filtering between children and adults); James T. Enns & Sharon Cameron, *Selective Attention in Young Children: The Relations Between Visual Search, Filtering, and Priming*, 44 J. EXPERIMENTAL CHILD PSYCHOL. 38 (1987) (discussing the existing literature of age differences in priming, search/orienting, and filtering); Karen Paulsen & Margaret Johnson, *Impulsivity: A Multidimensional Concept with Developmental Aspects*, 8 J. ABNORMAL CHILD PSYCHOL. 269, 275 (1980) ("The age-related finding seems consistent with assumptions about neurological/control development. Younger children were not able to inhibit motor movement as well as older children. . . . This is consistent with substantial evidence demonstrating that children generally become less impulsive with age and with the idea that maturational level greatly influences error scores." (citation omitted)); K. Richard Ridderinkhof et al., *Sources of Interference from Irrelevant Information: A Developmental Study*, 65 J. EXPERIMENTAL CHILD PSYCHOL. 315, 336–37 (1997) ("Thus, the main conclusion drawn from the present study is that, rather than in perceptual filtering or in response preparation, the primary source of the developmental decrease in interference from irrelevant information was found in the speed or efficiency of processing in the S-R translation stage, in which the output of perceptual analysis is coupled to the preparation and execution of the motor response.").

47. *See, e.g.*, Steinberg, *Adolescent Development and Juvenile Justice*, *supra* note 15, at 470–71 (describing the impulse control problems present in adolescents).

48. *See, e.g.*, Casey & Caudle, *supra* note 46, at 86.

49. *See, e.g.*, Sally F. Goldfarb, *Who Pays for the "Boomerang Generation"?: A Legal Perspective on Financial Support for Young Adults*, 37 HARV. J.L. & GENDER 45, 52 (2014); Vivian E. Hamilton, *Democratic Inclusion, Cognitive Development, and the Age of Electoral Majority*, 77 BROOK. L. REV. 1447, 1507–10 (2012); Scott, *supra* note 9, at 85–87.

B. *Development of Cognitive Capacity Under Social and Emotional Influences*

One of the most influential contexts for adolescents is the social environment. Social contexts impact behavior across development, but perhaps never as much as they do during the teen years.[50] Substantial evidence shows that teens are more oriented toward and influenced by peers than are either children or adults.[51] The mere presence of a peer can lead to increased risk-taking in teens that is not typically observed in individuals over eighteen.[52] For example, adolescents are more likely to drive through a yellow light at an intersection during a video game when with a peer than when not.[53] Adolescents may engage in risky behaviors in order to fit in with a social group because of the importance of peer relationships, consistent with the higher number of crimes committed in groups by juveniles than by adults.[54]

Adolescents also show a heightened sensitivity to incentives and rewards that can both diminish and enhance cognitive capacity.[55] Social cues associated with positive outcomes, such as a smiling face, can disrupt cognitive capacity as evidenced by more impulsive responses to these cues[56] (see Figure 3a), and teens as a group show less capacity for delayed gratification than adults.[57] However, teens show enhanced performance on decision-making tasks when either money

50. B.J. Casey, *Beyond Simple Models of Self-Control to Circuit-Based Accounts of Adolescent Behavior*, 66 ANN. REV. PSYCHOL. 295, 304–05 (2015); Leah H. Somerville et al., *The Medial Prefrontal Cortex and the Emergence of Self-Conscious Emotion in Adolescence*, 24 PSYCHOL. SCI. 1554, 1560 (2013); *see also* Steinberg, *Adolescent Development and Juvenile Justice*, *supra* note 15, at 468–69.

51. *See, e.g.*, Amanda E. Guyer et al., *Neural Circuitry Underlying Affective Response to Peer Feedback in Adolescence*, 7 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 81, 82 (2012) [hereinafter Guyer et al., *Neural Circuitry*]; Amanda E. Guyer et al., *Probing the Neural Correlates of Anticipated Peer Evaluation in Adolescence*, 80 CHILD DEV. 1000, 1000 (2009) [hereinafter Guyer et al., *Probing the Neural Correlates*]; Carrie L. Masten et al., *Relative Importance of Parents and Peers: Differences in Academic and Social Behaviors at Three Grade Levels Spanning Late Childhood and Early Adolescence*, 29 J. EARLY ADOLESCENCE 773, 794–95 (2009); Steinberg & Monahan, *supra* note 16, at 1531.

52. Chein et al., *supra* note 3, at F7–8; Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood: An Experimental Study*, 41 DEVELOPMENTAL PSYCHOL. 625, 625–26 (2005); Alexander Weigard et al., *Effects of Anonymous Peer Observation on Adolescents' Preference for Immediate Rewards*, 17 DEVELOPMENTAL SCI. 71, 75–77 (2014).

53. *See* Chein et al., *supra* note 3, at F7–8; Weigard et al., *supra* note 52, at 71.

54. Laurence Steinberg, *The Influence of Neuroscience on US Supreme Court Decisions About Adolescents' Criminal Culpability*, 14 NATURE REVS. NEUROSCIENCE 513, 516 (2013); *see also* Philip R. Costanzo & Marvin E. Shaw, *Conformity as a Function of Age Level*, 37 CHILD DEV. 967, 972–74 (1966) (discussing that the impact of peers on behavior varies with age); Steinberg & Monahan, *supra* note 16, at 1531 ("The increased importance of peers leads adolescents to want to alter their behavior in order to fit in; because they care more about what their friends think of them, they are more likely to go along with the crowd to avoid being rejected.").

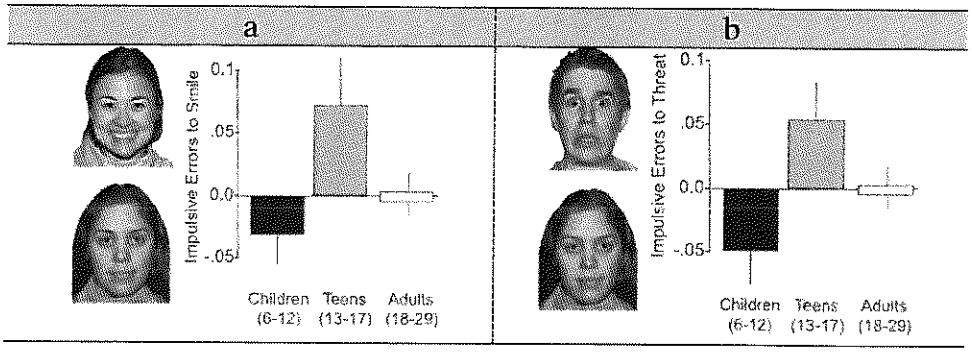
55. Steinberg et al., *supra* note 18, at 1776; *see also* Galván et al., *supra* note 1, at 6890–91.

56. Somerville et al., *supra* note 3, at 2129.

57. *See* Steinberg et al., *supra* note 18, at 1765–66, 1768.

or points are at stake and dependent on their performance.[58] Together these findings suggest that while developmental sensitivity to rewards may diminish cognitive control, it also may be harnessed to improve cognitive capacity.

FIGURE 3. HEIGHTENED SENSITIVITY TO SOCIAL AND EMOTIONAL CUES IN TEENS RELATIVE TO CHILDREN OR ADULTS (SOMERVILLE ET AL. 2011; DREYFUSS ET AL. 2014)



It is often assumed that adolescents are fearless and perceive themselves to be invincible or immortal. Yet self-report findings suggest that adolescents overestimate their own risk to fatal outcomes from injury or illness relative to adults.[59] How do threatening situations differentially impact the capacity for self-control across development? The majority of studies addressing this question use faces with fearful expressions as cues of a potential threat, as a fearful face indicates a potential threat in the environment that triggers fear. Recent behavioral findings suggest that adolescents, unlike adults, show difficulty suppressing attention and action toward cues of potential threat, even when these cues are irrelevant to the task at hand.[60] Male adolescents, especially, appear to be drawn to these cues of potential threat, impulsively reacting rather

58. *See* Geier et al., *supra* note 1, at 1615, 1625; Michael G. Hardin et al., *Inhibitory Control in Anxious and Healthy Adolescents Is Modulated by Incentive and Incidental Affective Stimuli*, 50 J. CHILD PSYCHOL. & PSYCHIATRY 1550, 1553–55 (2009); Theresa Teslovich et al., *Adolescents Let Sufficient Evidence Accumulate Before Making a Decision When Large Incentives Are at Stake*, 17 DEVELOPMENTAL SCI. 59, 61, 66–67 (2014).

59. Lawrence D. Cohn et al., *Risk-Perception: Differences Between Adolescents and Adults*, 14 HEALTH PSYCHOL. 217, 221 (1995).

60. *E.g.*, Julia E. Cohen-Gilbert & Kathleen M. Thomas, *Inhibitory Control During Emotional Distraction Across Adolescence and Early Adulthood*, 84 CHILD DEV. 1954, 1961–63 (2013) ("Results of this study supported the prediction that younger adolescents, when required to exert inhibitory control over a potentiated response, are more readily disrupted by emotional information than are older adolescents and adults."); Jillian Grose-Fifer et al., *Attentional Capture by Emotional Faces in Adolescence*, 9 ADVANCES COGNITIVE PSYCHOL. 81, 81–83, 86 (2013) ("Our findings suggest that the ability to self-regulate in adolescents, as evidenced by the ability to suppress irrelevant information on a flanker task, is more difficult when stimuli are affective in nature.").

than withdrawing like male children or adults do[61] (see Figure 3b). Together these findings suggest a heightened sensitivity to peer influences, rewards, and threats during adolescence, especially during the teen years.

IV. WHEN DOES THE BRAIN "MATURE"?

Neuroscientific evidence has emerged that may help to explain adolescent-specific changes in behavior. These studies provide evidence of regional changes in brain structure, function, and neurochemicals during adolescence that are distinct from childhood and adulthood, and have been proposed to result in imbalances within brain circuitry[62] (see Figure 4). Specifically, noninvasive brain imaging and postmortem studies have shown continued regional development of the prefrontal cortex, implicated in judgment and self-control beyond the teen years and into the twenties.[63] In contrast, evolutionarily older regions of the brain—such as the sensorimotor cortex, implicated in action,[64] and the subcortical limbic regions, implicated in desire and fear—show earlier developmental changes that peak between ages thirteen and seventeen.[65]

A. The Imbalance Model of Adolescent Brain Development

A prominent neurobiological theory of adolescence is the imbalance model (see Figure 3). This model suggests that these asymmetric and dynamic changes in the structure and function of subcortical limbic and prefrontal cortical circuitry underlie the diminished capacity to exercise self-control to inhibit inappropriate actions, desires, and emotions in favor of appropriate ones.[66] In

61. Dreyfuss et al., *supra* note 2, at 223, 226.

62. *E.g.*, Casey, *supra* note 50, at 298–301; B.J. Casey et al., *The Adolescent Brain*, 28 DEVELOPMENTAL REV. 62, 73 (2008) [hereinafter Casey et al., *The Adolescent Brain*].

63. *E.g.*, Nitin Gogtay et al., *Dynamic Mapping of Human Cortical Development During Childhood Through Early Adulthood*, 101 PROCEEDINGS NAT'L ACAD. SCI. U.S.A. 8174, 8174 (2004); Kathryn L. Mills et al., *The Developmental Mismatch in Structural Brain Maturation During Adolescence*, 36 DEVELOPMENTAL NEUROSCIENCE 147, 155–58 (2014); Zdravko Petanjek et al., *Extraordinary Neoteny of Synaptic Spines in the Human Prefrontal Cortex*, 108 PROCEEDINGS NAT'L ACAD. SCI. U.S.A. 13281, 13284 (2011); Armin Raznahan et al., *Longitudinal Four-Dimensional Mapping of Subcortical Anatomy in Human Development*, 111 PROCEEDINGS NAT'L ACAD. SCI. U.S.A. 1592, 1594–95 (2014); Elizabeth R. Sowell et al., *Longitudinal Mapping of Cortical Thickness and Brain Growth in Normal Children*, 24 J. NEUROSCIENCE 8223, 8228–30 (2004).

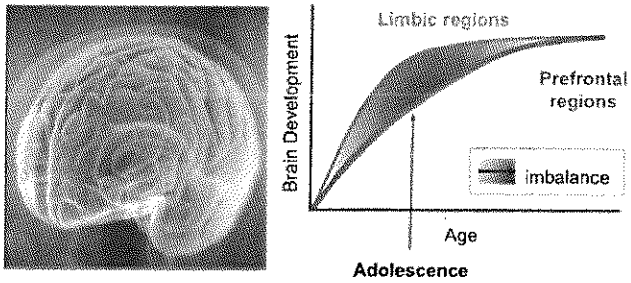
64. *See* Jean-Pierre Bourgeois et al., *Synaptogenesis in the Prefrontal Cortex of Rhesus Monkeys*, 4 CEREBRAL CORTEX 78, 78–79 (1994); Peter R. Huttenlocher & Arun S. Dabholkar, *Regional Differences in Synaptogenesis in Human Cerebral Cortex*, 387 J. COMP. NEUROLOGY 167, 176 (1997).

65. *See* Bourgeois et al., *supra* note 64, at 90; Harry T. Chugani et al., *Positron Emission Tomography Study of Human Brain Functional Development*, 22 ANNALS NEUROLOGY 487, 494–96 (1987); Galván et al., *supra* note 1, at 6886–87; Todd A. Hare et al., *Biological Substrates of Emotional Reactivity and Regulation in Adolescence During an Emotional Go-Nogo Task*, 63 BIOLOGICAL PSYCHIATRY 927, 932 (2008).

66. Casey, *supra* note 50, at 298–99; Monique Ernst et al., *Triadic Model of the Neurobiology of Motivated Behavior in Adolescence*, 36 PSYCHOL. MED. 299, 300–01 (2006); Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 DEVELOPMENTAL PSYCHOBIOLOGY 216, 216 (2010).

social or emotionally charged situations, the limbic regions of the brain may hijack less mature prefrontal regions leading to an imbalance or overreliance on these emotional regions. This tension is presumably not observed in childhood because of a relative lack of maturity of these systems or in adulthood because of a relative maturity of these brain regions (i.e., balanced). With development and experience, connections between these regions are strengthened enabling the prefrontal cortex to "override" the emotional centers of the brain to diminish emotionally triggered behavior in favor of goal-oriented or socially acceptable behavior.[67]

FIGURE 4. THE IMBALANCE MODEL OF ADOLESCENCE



Evidence for this model of adolescence comes from several imaging studies showing heightened activity in limbic regions of the brain during the teen years to cues of potential threat,[68] rewards,[69] and peers.[70] In contrast, activity in prefrontal control regions shows linear changes from childhood to adulthood and patterns of activity that are associated with overall cognitive performance.[71] These findings suggest that imbalances in recruitment of cortical and subcortical neural circuitry may underlie adolescents' impulsive and risky behavior.

67. Casey et al., *The Adolescent Brain*, *supra* note 62, at 66–68; B.J. Casey et al., *Beyond Simple Models of Adolescence to an Integrated Circuit-Based Account: A Commentary*, 17 DEVELOPMENTAL COGNITIVE NEUROSCIENCE 128, 128–30 (2016).

68. *See, e.g.*, Abigail A. Baird et al., *Functional Magnetic Resonance Imaging of Facial Affect Recognition in Children and Adolescents*, 38 J. ACAD. CHILD & ADOLESCENT PSYCHIATRY 195, 197–99 (1999); Casey, *supra* note 50, at 305–07; Guyer et al., *Probing the Neural Correlates*, *supra* note 51, at 1011; Hare et al., *supra* note 65, at 933–34; Christopher S. Monk et al., *Adolescent Immaturity in Attention-Related Brain Engagement to Emotional Facial Expressions*, 20 NEUROIMAGE 420, 427–28 (2003).

69. *See, e.g.*, Emily Barkley-Levenson & Adriana Galván, *Neural Representation of Expected Value in the Adolescent Brain*, 111 PROCEEDINGS NAT'L ACAD. SCI. U.S.A. 1646, 1648–50 (2014); Galván et al., *supra* note 1, at 6889–91; Geier et al., *supra* note 1, at 1621–26; Somerville et al., *supra* note 3, at 2129–31; Wouter van den Bos et al., *What Motivates Repayment? Neural Correlates of Reciprocity in the Trust Game*, 4 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 294, 300–03 (2009).

70. *See, e.g.*, Chein et al., *supra* note 3, at F7–8.

71. *See, e.g.*, Dreyfuss et al., *supra* note 2, at 225–26; Chein et al., *supra* note 3, at F2; Somerville et al., *supra* note 3, at 2130–32.

B. *Continued Brain Development During Young Adulthood*

The protracted development of prefrontal circuitry beyond the teen years[72] raises questions with respect to the approximate age at which an adolescent may be considered sufficiently mature to be regarded as an adult. Notwithstanding the substantial variation in social and legal policies across these ages, few studies have focused specifically on behavioral and brain changes in eighteen- to twenty-year-olds relative to older adults and teens. The few studies that have examined motivational and social influences on cognitive capacity in young adults have used varying age ranges and produced mixed results.[73] For example, while young adults over eighteen show little impact of peers on their decision making on a driving task,[74] they show less delay of gratification (i.e., choose immediate smaller rewards over delayed larger rewards) when they believe a peer is observing them.[75] Yet, they show better overall performance on gambling tasks in the presence of peers.[76] Thus, sensitivity to peers in young adulthood may share both overlapping and distinct effects to those observed in teens. This work highlights the importance of contextual influences, such as social and emotional arousal, on the development of behavior and brain function that may be particularly relevant for evaluating appropriate age cutoffs.

In an effort to address aspects of these questions, members of the MacArthur Research Network on Law and Neuroscience examined cognitive capacity in emotionally charged and emotionally benign situations in young adults.[77] We focused specially on eighteen- to twenty-one-year-olds relative to younger (thirteen to seventeen) and older (twenty-two to twenty-five) ages. To discern specific emotional contexts that may impact cognitive control differently across development, we examined the impact of both brief and prolonged emotional states and of both positive and negative valence on cognitive control. Our premise was that these emotional contexts may relate more to emotionally charged situations relevant for legal policy judgments, such as those related to

72. *See* Gogtay et al., *supra* note 63, at 8177.

73. *See, e.g.*, Chein et al., *supra* note 3, at F1, F4–7 ("Results suggest that the presence of peers increases adolescent risk taking by heightening sensitivity to the potential reward value of risky decisions."); Cohen-Gilbert & Thomas, *supra* note 60, at 217–20 ("Consistent with previous reports, adolescents in the present study demonstrated worse inhibitory control than emerging adults and adults, reflected by higher error rates on No-Go trials. . . . [M]ultiple developmental changes in cognitive processing contribute to reductions in impulsivity between adolescence and adulthood."); Karol Silva et al., *Peers Increase Late Adolescents' Exploratory Behavior and Sensitivity to Positive and Negative Feedback*, J. RES. ADOLESCENCE 1, 5–7, 9 (2015) ("Although late adolescents may engage in relatively more risky behavior when they are with their peers, they also may learn more about the environment in group settings than when they are alone. In this regard, our findings suggest that spending time with peers during adolescence may be a double-edged sword, increasing the odds that adolescents will behave recklessly, but also that they will learn from the consequences of their actions.").

74. Chein et al., *supra* note 3, at F7–8.

75. Weigard et al., *supra* note 52, at 76–77.

76. Silva et al., *supra* note 73, at 4–5, 7–9.

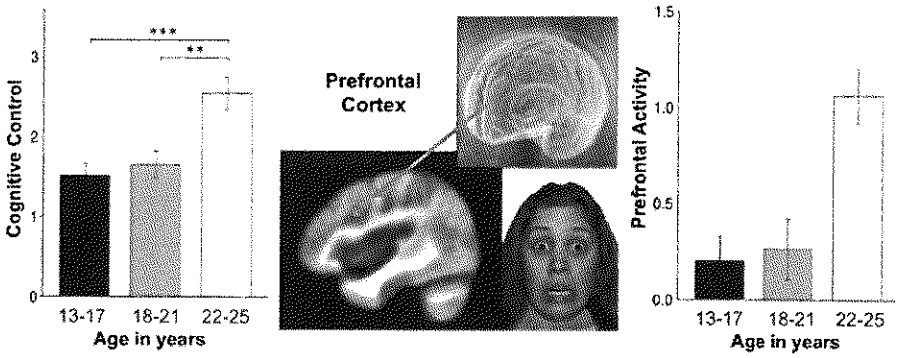
77. MACARTHUR FOUND. RES. NETWORK ON L. & NEUROSCIENCE, http://www.lawneuro.org/ (last visited June 1, 2016).

criminal responsibility, accountability, and public safety, than to emotionally benign situations.

We tested whether young adults would behave more similarly to adolescents (thirteen to seventeen) or adults (over twenty-one) in these emotionally laden contexts. Second, we tested whether prefrontal activity would differentiate performance levels between young adults from adults. In contrast, we predicted few differences in cognitive capacity between young adults and teens or adults in nonemotional situations. We used social cues of emotional expressions (smiling, fearful, neutral) as cues to assess the effects of brief emotional triggers on cognitive control. To assess prolonged emotional states on cognitive control, participants performed the cognitive control task while anticipating a negative event (loud aversive noise), positive event (winning up to $100), or no event. These emotional events were unpredictable in an attempt to elicit sustained states of anticipation and did not relate to the individual's performance.

Our findings show that, relative to adults over twenty-one, young adults show diminished cognitive capacity, similar to that of adolescents, under brief and prolonged negative emotional arousal[78] (see Figure 5). This behavioral pattern was paralleled by less adultlike recruitment of prefrontal circuitry in teens and young adults, consistent with relatively protracted development of the prefrontal cortex into the early twenties.[79] In contrast, young adults' performance did not differ significantly from either teens or adults in nonemotional situations. Positive emotional arousal impacted teens more than either young adults or adults, underscoring the point that developmentally informed age lines may differ from one context to another.

FIGURE 5. YOUNG ADULTS, LIKE TEENS, HAVE POORER COGNITIVE CONTROL AND LESS PREFRONTAL ACTIVITY TO THREAT CUES THAN ADULTS. (COHEN ET AL. IN PRESS)



78. Alexandra O. Cohen et al., *When Is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Non-Emotional Contexts*, 27 PSYCHOL. SCI. 549, 549 (2016).

79. *See* Gogtay et al., *supra* note 63, at 8176–79; Sowell et al., *supra* note 63, at 8826–28.

Taken together, the findings suggest that young adulthood is a developmental period when cognitive capacity is still vulnerable to negative emotional influences. This diminished capacity is paralleled by immature engagement of prefrontal regions that are important for overriding emotionally triggered actions. The results are consistent with prior research implicating the importance of prefrontal control circuitry in regulating emotions.[80] Although these findings may be relevant for evaluating appropriate age cutoffs relevant to policy judgments relating to risk-taking, accountability, and punishment, they are presumably less relevant for setting minimum ages for voting or making medical decisions.

CONCLUSIONS: HOW CAN DEVELOPMENTAL SCIENCE INFORM POLICY?

We began by asking whether social practices and expectations about "adulthood" had informed laws and policies that define the rights and responsibilities of adulthood, and whether age boundaries drawn by these policies and laws reflect emerging scientific understanding of human development. If we focus solely on state policies governing the minimum age for adult prosecution of young people in the United States, we would have to reply "no" to both questions. Nearly half the states have no minimum age for trying a child as an adult and, among those that do, fourteen is the most common age. Moreover, many jurisdictions automatically transfer children to the adult system even though prosecuting teenagers in criminal courts does not deter offending[81] but rather increases recidivism.[82] These findings have spurred reforms to keep more adolescents in juvenile courts by raising the age for transfer and by repealing mandatory transfers in favor of individualized decisions by juvenile court judges. More recently, reformers are also making the case for a rehabilitative, developmentally informed approach to young adult offenders eighteen to twenty-one, recognizing that there is no developmentally informed magical line of demarcation at eighteen. What should the age of eligibility be under young offender sentencing statutes? When should a "youth discount" be exhausted? These remain open questions.

80. *See, e.g.*, Jason T. Buhle et al., *Cognitive Reappraisal of Emotion: A Meta-Analysis of Human Neuroimaging Studies*, 24 CEREBRAL CORTEX 2981, 2984–87 (2014) ("Indeed, whether emotion generation and regulation necessarily rely upon distinct neural mechanisms remains an open question, given that partially overlapping prefrontal regions have been shown in prior work to support emotion generation, perception, experience, and regulation."); Jennifer A. Silvers et al., *Curbing Craving: Behavioral and Brain Evidence that Children Regulate Craving When Instructed to Do So but Have Higher Baseline Craving than Adults*, 25 PSYCHOL. SCI. 1932, 1936 (2014) ("Older age predicted increased recruitment of right lateral prefrontal and bilateral posterior parietal cortices and decreased recruitment of subcortical structures implicated in reward and emotional processing, such as the VS and amygdala, during presentation of food pictures relative to fixation. Similar regions of interest (ROIs) were identified by linear and quadratic models of age." (citations omitted)); Justin L. Vincent et al., *Evidence for a Frontoparietal Control System Revealed by Intrinsic Functional Connectivity*, 100 J. NEUROPHYSIOLOGY 3328 (2008) (discussing the frontoparietal control system).

81. KUPCHIK, *supra* note 23, at 2.

82. Fagan et al., *supra* note 23, at 15–17, 69.

The developmental science referenced in U.S. Supreme Court decisions regarding treatment of juvenile versus adult offenders over the past decade acknowledges immature cognitive capacity in juveniles as a mitigating factor in judgments of criminal culpability.[83] Scientific research has demonstrated that adolescents show heightened sensitivity to peer influences, rewards, and threats, potentially rendering them more vulnerable to making poor decisions in these situations.[84] Minimum legal ages have been imposed largely to protect young people from these vulnerabilities. Recent findings on young adults suggest that these same vulnerabilities affect young adults. Studies that fail to focus on emotional influences on cognitive capacity are likely underestimating developmental similarities between adolescents and young adults that have the most bearing on social and legal policies relating to risk-taking and accountability.

These findings of diminished cognitive capacity in negative emotional contexts in young adults reinforce and extend the developmental logic of reforms of the juvenile justice system already underway. Previous research on the diminished capacities of adolescents in self-control in emotionally laden contexts has supported arguments for raising the minimum age of criminal court jurisdiction to sixteen, keeping youth under eighteen in the juvenile court, and mitigating their punishment in criminal court. These new findings provide empirical support for extending the juvenile court's dispositional age to twenty-one or older and for reconsideration of sentencing statutes for young adult offenders. This work does not suggest that young people should not be held accountable for their actions, but rather that the boundaries of juvenile court jurisdiction and criminal court sentencing and punishment should be informed by developmental considerations.

83. Alexandra O. Cohen & B.J. Casey, *Rewiring Juvenile Justice: The Intersection of Developmental Neuroscience and Legal Policy*, 18 TRENDS COGNITIVE SCI. 63, 63 (2014); Steinberg & Monahan, *supra* note 16, at 1541.

84. *See, e.g.*, Cohen-Gilbert & Thomas, *supra* note 60, at 1961–63 (discussing adolescents' responses to potential threats); Chein et al., *supra* note 3, at F7 (discussing the impact of social influences on adolescents); Dreyfuss et al., *supra* note 2, at 225–26 (discussing adolescents' responses to threats); Somerville et al., *supra* note 3, at 2131–32 (discussing the impact of social influences on adolescents); Galván et al., *supra* note 1, at 6890–91 (discussing the impact of rewards on adolescents); Grose-Fifer et al., *supra* note 60, at 81–83, 86 ("Our findings suggest that the ability to self-regulate in adolescents, as evidenced by the ability to suppress irrelevant information on a flanker task, is more difficult when stimuli are affective in nature.").

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PAPER

WILEY Developmental Science

Around the world, adolescence is a time of heightened sensation seeking and immature self-regulation

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Abstract

The dual systems model of adolescent risk-taking portrays the period as one characterized by a combination of heightened sensation seeking and still-maturing self-regulation, but most tests of this model have been conducted in the United States or Western Europe. In the present study, these propositions are tested in an international sample of more than 5000 individuals between ages 10 and 30 years from 11 countries in Africa, Asia, Europe and the Americas, using a multi-method test battery that includes both self-report and performance-based measures of both constructs. Consistent with the dual systems model, sensation seeking increased between preadolescence and late adolescence, peaked at age 19, and declined thereafter, whereas self-regulation increased steadily from preadolescence into young adulthood,

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reaching a plateau between ages 23 and 26. Although there were some variations in the magnitude of the observed age trends, the developmental patterns were largely similar across countries.

RESEARCH HIGHLIGHTS

- Adolescence has been described as a time of heightened sensation seeking and immature self-regulation, but few studies outside the United States and Western Europe have examined the developmental trajectories of these constructs.
- The present study examines age differences in sensation seeking and self-regulation in a sample of more than 5000 individuals between the ages of 10 and 30 from 11 culturally and economically diverse countries.
- Consistent with previous work, sensation seeking is higher during adolescence – peaking at age 19 – than before or after, whereas self-regulation continues to develop into the mid-20s.
- These patterns are strikingly similar across the 11 countries studied, and variations among countries in observed age trends are mainly in the magnitude of age differences rather than in the shape of developmental trajectories.

1. | INTRODUCTION

Over the past decade, research on adolescent behavior has been increasingly influenced by studies of adolescent brain development and, in particular, by perspectives on the adolescent brain that emphasize the different developmental trajectories of brain systems that govern incentive processing and cognitive control. In these so-called 'dual systems' (Steinberg, 2008) or 'maturational imbalance' (Casey, Getz, & Galvan, 2008) models, behavior during mid- and late adolescence is frequently described as the product of a developmental asynchrony between an easily aroused reward system, which inclines adolescents toward sensation seeking, and still maturing self-regulatory regions, which limit the young person's ability to resist these inclinations. This asynchrony is often invoked as an explanation for heightened risk-taking during adolescence relative to childhood or adulthood. Some writers have described this imbalance as akin to starting a car's engines before a well-functioning braking system is in place.

Although the dual systems model has been critiqued as providing an oversimplified account of neurobiological development (e.g. Pfeifer & Allen, 2012) and being insufficiently attentive to the ways in which these brain systems interact (e.g. Casey, Galvan, & Somerville, 2016), research on psychological and behavioral development during adolescence is, by and large, consistent with this model. As Shulman and colleagues (2016) concluded in a recent review, evidence in favor of the model is strong. Sensation-seeking increases during the first half of adolescence and declines thereafter, following an inverted U-shaped function (Luciana & Collins, 2012). In contrast, self-regulation – the capacity to deliberately modulate one's thoughts, feelings, or actions in the pursuit of planned goals (Smith, Chein, & Steinberg, 2013) – increases linearly and gradually during adolescence before plateauing in adulthood (Harden & Tucker-Drob, 2011). Self-regulatory capacities may reach adult-like levels at around age 15 in relatively less arousing, 'cool' contexts (Casey, 2015), but when tasks become more demanding or emotionally arousing, adult-like performance may not be reached until closer to the mid-20s (Cohen et al., 2016; Shulman et al., 2016; Veroude, Jolles, Croiset, & Krabbendam, 2013). These findings are consistent with a growing neuroimaging literature showing amplified activation of reward-processing regions (e.g. the ventral striatum and medial prefrontal cortex) in adolescents compared with children and adults (Luciana, Wahlstrom, Porter, & Collins, 2012), and gradual maturation over the course of adolescence and young adulthood within brain regions that subserve executive function (e.g. lateral prefrontal and parietal cortices and the anterior cingulate) (Casey, 2015).

A word about terminology is warranted. In the present article, we use the terms 'sensation seeking' and 'self-regulation' to each refer to a broad constellation of interrelated but operationally distinguishable constructs. As noted by Smith and colleagues (2013), within each broad category some constructs refer to the underlying neurobiology (e.g. reward sensitivity and cognitive control, respectively), some to the psychological indicators of this underlying biology (sensation-seeking and self-regulation), and some to the behavioral manifestations of these psychological traits (approach behavior and self-control). We recognize that, within these broad categories, constructs measured at different levels of analysis, or using different methods, are often only weakly correlated (i.e. it is common to find weak correlations between self-report and behavioral measures of putatively similar constructs), but we believe that the overarching categories provide helpful heuristics. We have chosen the labels 'sensation seeking' and 'self-regulation' because these terms are commonly used in developmental psychological research (Duckworth & Steinberg, 2015).

Although the developmental trajectories of sensation seeking and self-regulation have been observed in many studies that have employed a variety of methods and measures, most of the relevant research has been carried out in the United States and a handful of Western European nations (especially the Netherlands; e.g. Peters, Jolles, van Duijvenvoorde, Crone, & Peper, 2015; van Duijvenvoorde et al., 2014; Van Leijenhorst et al., 2010). In the present study, we ask whether the inverted U-shaped pattern that characterizes the development of sensation seeking between childhood and adulthood and the gradual increase in self-regulation over the course of adolescence are observed in other parts of the world. We examine this question using a mixture of behavioral tasks and self-reports, in order to better capture the multidimensional nature of each construct.

There are arguments to be made on both sides as to whether trajectories of sensation seeking and self-regulation during adolescence are universal or culturally variable. On the one hand, the dual systems view derives explicitly from a neurobiological perspective on adolescence that links developmental changes and age differences in sensation seeking and self-regulation to changes in brain structure and function that are assumed to be universal (or near-universal) features of adolescent development (Spear, 2013). This is especially true with respect to changes in reward processing, which are thought to be caused by changes in dopaminergic activity as a consequence of the impact of pubertal hormones on the brain's reward-processing system (Luciana et al., 2012). Changes in cognitive control systems, in contrast, have been posited to be relatively more subject to environmental experience (see Smith et al., 2013). Normative maturation of crucial structures of these systems, such as the lateral prefrontal cortex, is assumed to play a significant role in the development of self-regulation between childhood and adulthood (Casey, 2015). To the extent that the imbalance hypothesized within the dual systems perspective is a biological given, it should be seen cross-culturally.

On the other hand, there is reason to think that patterns of age differences in sensation seeking and self-regulation vary across cultures. Adolescence is a stage of development in which there are substantial differences among cultures in expectations, socialization practices, and the structure of social institutions (Larson, Wilson, & Rickman, 2009). In some parts of the world, such as the United States, adolescence is viewed as a time during which the display of exuberance, novelty seeking, and experimentation with exciting experiences is not only normative, but desirable (Palladino, 1996). This is consistent with standardized ratings of countries along the dimension of 'Indulgence–Restraint', which refers to the extent to which societies encourage individuals to satisfy hedonic goals (Hofstede, 2011). Both the United States and the Netherlands, where the bulk of research into age differences in sensation seeking and self-regulation has been carried out, score high on indulgence relative to other countries, particularly those in Asia (e.g. China and India) and Eastern Europe (e.g. Ukraine and Romania) (Hofstede, Hofstede, & Minkov, 2010). In a culture that accepts (or even encourages) self-gratification in its young people, it is hardly surprising that sensation seeking is especially pronounced and self-regulation still immature during this phase of development. Thus, the pattern of age differences in sensation seeking and self-regulation described in the literature is culturally consistent with the expectations for adolescents in the societies in which most of the research has been conducted.

Not all parts of the world share this vision of adolescence as a time of carefree recklessness. In many non-Western cultures, especially those in Asia, self-regulation is demanded from children at an early age, and adolescence is not a time of exploration, self-indulgence and novelty seeking, but of buckling down to prepare for adult life (Chaudhary & Sharma, 2012; Chen, Cen, Li, & He, 2005; Weisz, Chaiyasit, Weiss, Eastman, & Jackson, 1995). Experimentation with drinking, drug use and premarital sex is neither accepted nor viewed as normative in many non-Western cultures (Haddad, Shotar, Umlauf, & Al-Zyound, 2010; Rehm et al., 2003). In these contexts, heightened sensation seeking or immature self-regulation may not be characteristic of adolescence. Indeed, we might expect far less change in these aspects of psychological functioning during adolescence, because expectations for self-regulation are already high prior to adolescence and because this period is not one in which excessive sensation seeking is tolerated, much less encouraged.

The current paper presents the findings of a cross-sectional, multinational, multi-method study of behavioral and psychological development during the second two decades of life in a sample of approximately 5000 individuals. Participants came from 11 countries (China, Colombia, Cyprus, India, Italy, Jordan, Kenya, the Philippines, Sweden, Thailand, and the United States). Using self-report and behavioral measures, we investigated age differences in sensation seeking and self-regulation. We asked two main questions. First, are patterns of age differences in sensation seeking and self-regulation similar in a multinational sample to those that have been reported in previous studies of American and European individuals? Second, within this multinational sample, how do developmental trajectories differ across disparate contexts? To answer this latter question, we compared patterns of age differences across the 11 countries.

2 | METHODS

2.1 | Participants

The sample for the present analyses (N = 5404) comprised between 407 and 570 individuals between the ages of 10 and 30 years from each of 11 locales: Guang-Zhou and Shanghai, China (N =493); Medellin, Colombia (N = 513); Nicosia, Cyprus (N = 407); Delhi, India (N = 425); Naples and Rome, Italy (N = 561); Amman and Zarqa, Jordan (N = 506); Kisumu, Kenya (N = 488); Manila, the Philippines (N = 512); several cities in the west of Sweden (N = 425); Chang Mai, Thailand (N = 504); and Durham and Winston-Salem, the United States (N = 570). The gender balance was nearly even within the whole sample (49.2% male, n = 2658; 50.8% female, n = 2746), within each country (range: 48.9–53.8% female), and across age groups (range: 48.7–52.0% female). Most of the 10–11-year-olds were participants in an ongoing study of parenting across cultures (PAC) that is being conducted in all of these locales except Cyprus and India (Lansford & Bornstein, 2011).

The PAC countries were originally selected because they differ markedly in how children are disciplined, a primary focus of that project. This focus resulted in a sample of countries that is diverse along several socio-demographic dimensions, including predominant race/ethnicity, predominant religion, various economic indicators, and indices of child well-being. For example, on the Human Development Index, a composite measure of a country's status with respect to health, education and income, participating countries ranged from a rank of 5 (United States) to 147 (Kenya) out of 187 countries with available data (United Nations Development Programme, 2014). The participating countries varied widely not only on socio-demographic indicators, but also on psychological constructs such as individualism versus collectivism, which is likely to influence how adolescents and adults make

day-to-day decisions, and on the dimension of 'Indulgence–Restraint', which, as we noted earlier, is likely to influence both sensation seeking and self-regulation. Ultimately, this diversity provided us with an opportunity to examine our research questions in a sample that is more generalizable to a wider range of the world's populations than is typical in most research on adolescent development. Although there are ethnic minorities in each of the participating countries, participants did not identify themselves as being members of any ethnic minority groups except in the United States, where we deliberately enrolled a mix of Black, Latino, and White participants.

All participants were recruited from the same neighborhoods as the children in the PAC study; in Cyprus and India, which are not in the PAC study, we recruited from neighborhoods similar to those used in the PAC study. In each country, the sample was recruited to yield an age distribution designed to replicate the age distribution of an American sample who had been studied previously using a similar test battery (see Steinberg et al., 2008, for a description). Many contemporary scholars define adolescence as beginning with puberty and ending when individuals have made the transition into adult roles. The 10–30 age range in this study allows us to capture this age period while allowing for worldwide variation in the age of pubertal onset and the age of transition into adulthood. In order to have cells with sufficiently large and comparably sized subsamples for purposes of data analysis, each study site attempted to recruit at least 30 males and 30 females from each of seven age groups: 10–11 years, 12–13 years, 14–15 years, 16–17 years, 18–21 years, 22–25 years and 26–30 years (see Table 1 for the distribution of participants across age groups by country). Across countries, participants came from households with comparable levels of parental education, which averaged some college.

Participants were recruited via flyers posted in neighborhoods, schools, advertisements placed in newspapers, and word of mouth. Because of this recruitment method, we cannot determine whether those who responded to recruitment advertisements differed from those who did not. Informed consent was obtained for all participants aged 18 and older. Parental consent and adolescent assent were obtained for all youth under 18 except in Sweden, where parental consent is not required for youth of 15 years and older. Local Institutional Review Boards (IRBs) approved all procedures.

2.2 | Procedures

Research staff in all countries underwent identical training procedures. Participants completed a 2-hour session that included several computerized tasks, computerized self-report measures, a demographic questionnaire, computerized tests of executive functions, and a measure of intellectual ability. These sessions were completed individually in participants' homes, schools, or other suitable locations (e.g. community centers) designated by the participants. Measures were administered in the predominant language at each site, following forward- and back-translation and meetings to resolve any item-by-item ambiguities in linguistic or semantic content (Erkut, 2010; Maxwell, 1996). Translators were fluent in English and the target language. In addition to translating the measures, translators were asked to note items that did not translate well, were inappropriate for the participants, were culturally insensitive, or elicited multiple meanings, and to suggest improvements. Site coordinators and translators reviewed the discrepant items and made appropriate modifications. Measures were administered in Mandarin Chinese (China), Spanish (Colombia and the United States), Italian (Italy), Arabic (Jordan), Dholuo (Kenya), Filipino (the Philippines), Greek (Cyprus), Hindi (India), Swedish (Sweden), Thai (Thailand), and American English (India, Kenya, the Philippines and the United States).

In order to keep participants engaged in the assessment, they were told that they would receive a base payment for participating in the study, and that they could obtain a bonus (equal to approximately 50% of the base payment) based on their performance on the computer tasks. In actuality, all participants received the bonus. In the United States, the base payment was US$30 and the bonus was US$15. In other countries, the principal investigators and site coordinators (with the approval of the local IRB) determined the amount of an appropriate base payment, taking into account the local standard of living and minimum wage, and ensuring that the amount was sufficient to

TABLE 1 Distribution of participants across age groups by country

	10–11	12–13	14–15	16–17	18–21	22–25	26–30	Total
China	109	61	60	60	79	59	60	488
Italy	184	60	63	58	59	59	61	544
Kenya	93	77	68	58	60	61	63	480
Phil.	114	63	62	62	72	68	63	504
Thai.	131	84	60	44	68	64	51	502
Sweden	53	58	60	61	60	60	59	411
US	164	61	60	58	67	61	66	537
Colom.	140	59	61	59	57	59	58	493
Jordan	86	58	58	56	56	61	54	429
India	55	59	61	59	59	61	60	414
Cyprus	32	37	33	40	61	48	52	303
Total	1161	677	646	615	698	661	647	5105

Note. Phil., Philippines; Thai, Thailand, US, United States; Colom., Colombia.

encourage participation in the study but not so large so as to be coercive. [The Swedish university participating in the study did not permit research subjects to be paid in cash, so participants were given three movie tickets (two as the base payment and one as a bonus) as compensation.] At the end of testing, participants were debriefed regarding this deception in countries where local IRBs deemed this disclosure necessary.

Following each assessment, the interviewer answered a series of five questions that asked about the participant's engagement in the assessment and the quality of the data. A small number of assessments (3.2%, N =172) were rated as unusable (e.g. the participant did not appear to understand the questions or tasks, did not pay attention to instructions, or was obviously disengaged); these cases were dropped from the sample. After accounting for unusable assessments and missing data on certain key variables (see the subsequent discussion on 'Missingness'), the final sample comprised 5105 participants (2578 females, M age = 17.08, SD = 5.92) (see Table 1). All analyses were conducted using Mplus (Version 7.31; Muthén & Muthén, 1998–2010).

2.3 | Measures

Of central interest in this report are a demographic questionnaire, an assessment of intelligence, and six outcome variables: three indexing sensation seeking, and three indexing self-regulation. In the interest of brevity, measures that were included in prior studies are not described in detail here; readers are directed to prior publications and to the Supporting Information that accompanies this article for additional information.

2.3.1 | Demographic questionnaire

Participants reported their age, gender, and the level of education of each of their parents. We used the average level of the participant's parents' education (i.e., highest grade completed from 0 to grade 12, with some college coded as 13, a college diploma = 14, and education beyond college = 15) to characterize the home environment during the participant's formative years (i.e., even for our adult participants, we used parental education, rather than the individual's educational attainment, as our index) (for a discussion of this strategy, see Steinberg, Mounts, Lamborn, & Dornbusch, 1991). In some locales, there were small differences between age groups in average levels of parental education, often with relatively lower average parental education reported by the older participants, whose parents had grown up at a time when postsecondary enrollment was less common, especially among women. Accordingly, we controlled for parental education in all analyses.

2.3.2 | Intelligence

The Matrix Reasoning subtest of the *Wechsler Abbreviated Scale of Intelligence* (WASI) (Psychological Corporation, 1999), administered on a laptop, was used to produce an estimate of *nonverbal intellectual ability*. (Given the variability in language across the research sites, we used only the Matrix Reasoning subscale.) The WASI has been normed for individuals between the ages of 6 and 89 years; an age-normed score (*t*-score) was computed for each participant. Participants' WASI scores, because they were obtained via computer administration, may not be comparable to scores from traditionally administered WASIs. Nevertheless, we were able to use these scores to control for any age-group differences in general intellectual functioning that might influence task performance.

2.3.3 | Sensation-seeking composite

Three measures were used to index sensation seeking: the Iowa Gambling Task, self-reported sensation seeking, and the Stoplight game. Scores on these measures were standardized and averaged to form a composite measure of sensation seeking. In order to generate coefficients with interpretable decimal values, sensation-seeking composite values were multiplied by 100.

Modified Iowa Gambling Task

Inherent in the definition of sensation seeking is the tendency for individuals to pursue activities that are perceived as potentially rewarding. The Iowa Gambling Task was used to generate a measure of *reward approach*. In the present study, the standard Iowa Gambling Task (IGT; Bechara, Damasio, Damasio, & Anderson, 1994) was modified in two key ways. First, participants made a play-or-pass decision with regard to one of four decks pre-selected on each trial, rather than being free to draw from any of four decks (see Cauffman et al., 2010 for details). This modification afforded us the ability to track independently affinity for advantageous decks and avoidance of disadvantageous ones (Peters & Slovic, 2000). Second, whereas gains and losses of a single card were presented simultaneously and separately in the original IGT (e.g. 'you won $100', 'you lost $300'), our modified version presented only the net amount for each card (e.g. 'you lost $200'). As in the original task, two of the decks are advantageous and result in a monetary gain over repeated play, while the other two decks are disadvantageous and produce a net loss over repeated play. On each trial, one of the four decks was highlighted with an arrow, and participants were given 4 s to decide to play or pass on that card. If the participant chose to play, a monetary outcome was displayed on the current card, and the total amount of money earned up to and including that trial was updated on the screen. If the participant chose to pass, no feedback was provided, and the next card appeared. (If the participant did not respond one way or the other within 4 s, the trial was considered invalid.) The task was administered in six blocks of 20 trials each. In order to quantify reward approach, we computed the change, from the first to the last block of the task, in the percentage of times the participant chose to play on advantageous decks when given the chance. Higher scores reflect greater reward approach.

Self-reported sensation seeking

Self-reported sensation seeking was assessed using a subset of six items from the Sensation Seeking Scale (Zuckerman, 1994). Many of the items on the full 19-item Zuckerman scale appear to measure impulsivity (e.g., 'I often do things on impulse'). In light of our interest in

distinguishing between impulsivity and sensation seeking, our measure included only the items that clearly indexed thrill- or novelty-seeking (sample item: 'I like doing things just for the thrill of it'; see Steinberg et al., 2008). All items were answered as either true or false. Reliability for the whole sample on this six-item scale was α= .63, with reliabilities for separate countries ranging from .49 (Kenya) to .78 (India). Confirmatory factor analysis indicated good model fit for this scale ($\chi^2[9] = 165.51$, $p < .0001$, RMSEA = .058, 90% CI [.051, .066], CFI = .96, TLI = .94). For purposes of analysis, self-reported sensation-seeking scores were multiplied by 100 (creating a lower limit of '0' and an upper limit of '100').

Stoplight game

Also inherent in the notion of sensation seeking is the willingness of individuals to pursue rewards even when some degree of risk is involved. The Stoplight game (Steinberg et al., 2008) was employed to generate a measure of *risky driving*. The player was asked to 'drive' a car to a party at a distant location in as little time as possible, passing through 20 intersections, each marked by a traffic signal. The participant's vantage point was that of someone behind the wheel, with the road and roadside scenery visible. Before playing, participants were informed that when approaching an intersection in which the traffic signal turns yellow, they must decide whether to stop the car (using the space bar) and wait for the light to cycle back to green, or to attempt to cross the intersection. Participants could not control the car's speed, and the 'brakes' only worked after the light turned yellow. Participants were told that one of three things may happen depending on their decision: (1) if brakes are not applied and the car passes through the intersection without crashing, no time is lost; (2) if brakes are applied before the light turns red, the car will stop safely, but 3 s will be lost waiting for the green light; or (3) if brakes are not applied or are applied too late, and the car crashes (accompanied by squealing tires, a loud crash, and the image of a shattered windshield), more time will be lost (approximately 6 s). Participants must decide whether to drive through the intersection in order to save time (but risk losing time if a crash occurs), or to stop and wait (and willingly lose a smaller amount of time). The outcome variable of interest was risky driving, defined as the proportion of intersections the participant entered without braking. This measure has been shown to be correlated with self-reported sensation seeking (Steinberg et al., 2008).

In the present sample, intercorrelations among the measures of sensation seeking were as follows: IGT reward approach and self-reported sensation seeking, $r = .03$, $p < .05$; IGT reward approach and Stoplight, $r = .04$, $p < .01$; and self-reported sensation seeking and Stoplight, $r = .07$, $p < .001$.

2.3.4 | Self-regulation composite

Three measures were used to index self-regulation: the Stroop task, self-reported planning, and the Tower of London task. Scores on these measures were standardized and averaged to form a composite measure of self-regulation. In order to generate coefficients with interpretable decimal values, self-regulation composite values were multiplied by 100.

Stroop task

A fundamental aspect of self-regulation is the ability to suppress a conditioned or automated (prepotent) response, and many tasks measuring response inhibition require participants to respond to a specific stimulus presented frequently but to refrain from responding to the rare occurrence of another. A computerized version of the classic Stroop color–word task was administered to assess prepotent *response inhibition* (Banich et al., 2007; see Albert & Steinberg, 2011, for details of this version). On each trial, the participant was presented either a color-word (e.g. 'BLUE', 'YELLOW') or a non-color word (e.g. 'MATH', 'ADD') and instructed to identify the color in which the word is printed (while ignoring the semantic meaning of the word) by pressing a corresponding key as quickly as possible. In this version of the task, all color-word trials are incongruent, such that the color of the ink in which the word is printed does *not* match the semantic meaning of the word (e.g. the word 'BLUE' printed in yellow).

Participants completed two 48-trial experimental blocks. The first block included an equal mix of neutral and incongruent trials, and the second block included a greater number of neutral than of incongruent trials. Success on this task relies on one's ability to maintain an abstract goal (respond with the ink color) and inhibit one's inclination to respond to the word's meaning. In order to extract a measure of self-regulation, we computed the percentage of correct responses on incongruent trials (i.e. in which there was a conflict between the color word and the color of the font in which it was printed) within blocks containing relatively fewer incongruent trials, which were therefore more likely to cause interference. Higher scores indicated better response inhibition.

Self-reported planning

Six items from the impulsivity subset of the Zuckerman Sensation Seeking Scale (SSS; Zuckerman, 1994) were used to compute a measure of *self-reported planning*. [Although the SSS is used primarily to assess sensation seeking, many of the items actually measure impulse control (for a discussion, see Steinberg et al., 2008).] Items included in the impulse control subset reflect a lack of planning (e.g., 'I tend to begin a new project without much planning on how I will do it', reversed) and acting without thinking (e.g., 'I often act without thinking', reversed). Two additional items comprising the impulsivity subset appear (on their face) to be more closely related to our conceptualization of sensation seeking [i.e. 'I enjoy getting into *new situations* where I can't tell whether it will end up bad or good' and 'I often get so carried away by *new and exciting things* and idea that I never think of possible problems that might happen' (emphasis added)] and were therefore omitted from our calculation of the planning score. All items were answered as either True (coded 1) or False (coded 0), and item scores were averaged. Higher scores reflect stronger planning. Planning scores were strongly correlated with other measures of similar constructs assessed in the present test battery (e.g. planning was positively correlated with the 'planning ahead' subscale of the Future Orientation Scale, $r = .50$, $p < .001$; Steinberg et al., 2009). Reliability for the whole sample on this six-item scale was α = .63, with reliabilities for individual countries ranging from .47 (Colombia) to .73 (India).

Confirmatory factor analysis indicated good model fit for this scale ($\chi^2[9] = 142.33$, $p < .0001$, RMSEA = .054, 90% CI [.046, .062], CFI = .97, TLI = .95). For purposes of analysis, self-reported planning scores were multiplied by 100 (creating a lower limit of '0' and an upper limit of '100').

Tower of London task

A computerized version of the Tower of London task (Shallice, 1982) was used to generate a measure of *impulse control* (Steinberg et al., 2008). One of the capacities assessed by the Tower of London task is whether one can inhibit acting before a plan is fully formed. The participant is presented with pictures of two sets of different-colored balls and three empty rods, one of which can hold three balls, one two balls, and the last, only one ball. The first picture shows the starting position of the three balls, and the second depicts the goal position. The participant is asked to move the balls in the starting arrangement onto and between the rods to match the goal arrangement in as few moves as necessary. Five sets of four problems are presented, beginning with four that can be solved in three moves and progressing to those that require a minimum of seven moves. Impulse control was indexed as the average time (in milliseconds) between the presentation of each difficult problem (i.e., those requiring a minimum of six or seven moves to complete) and the participant's first move. Longer latencies to first move indicate greater impulse control.

In the present sample, intercorrelations among the measures of self-regulation were as follows: Stroop and self-reported planning, $r = .04$, $p < .01$; Stroop and Tower of London, $r = .07$, $p < .001$; and self-reported planning and Tower of London, $r = .08$, $p < .001$.

2.3.5 | Measurement invariance of self-report scales

In order to ensure that self-report measures of sensation seeking and planning were appropriate to use within our culturally diverse sample, we tested for measurement invariance of factor loadings and intercepts across the 11 countries using the alignment technique (Muthén & Asparouhov, 2014). (Details on this procedure are provided in the Supporting Information.) As per the guidelines provided by Muthén and Asparouhov (2014), approximate measurement invariance can be assumed if fewer than 25% of the parameters are non-invariant for a given measure. In our two self-report measures (sensation seeking and planning), no more than 14% of parameters – intercepts as well as loadings – were non-invariant (see Tables S1 and S2). These results suggest that these questionnaires are reliable across countries in our sample.

2.4 | Data analysis

2.4.1 | Missingness

In order to minimize bias resulting from outliers, scores on any outcome variable that were greater than 3.5 standard deviations from the mean were recoded as missing (see below for details). As noted earlier, a small number of assessments (3.18%, $N = 172$) were rated as unusable by the interviewer and excluded from analyses. Of the remaining 5232 cases, 2 participants (.04%) were missing age, 95 (1.80%) were missing data on parental education, and 43 (.82%) were missing WASI scores. Participants with missing data on these demographic variables were excluded from analysis. Of the final analytic sample of 5105 participants, 21 (.41%) were missing IGT data, 5 (.10%) lacked a self-reported sensation-seeking score, 3 (.10%) lacked a self-reported planning score, 143 (2.80%) lacked Stoplight data, 379 (7.42%; 72 of these cases were outliers recoded as missing) were missing Tower of London data, and 119 (2.31%; 87 of these cases were outliers recoded as missing) were missing Stroop data. Full-information maximum likelihood (FIML) within Mplus was used to reduce bias owing to missing data on these variables. Because some variables were negatively skewed (i.e., latency to first move on the Tower of London) or positively skewed (i.e., self-reported planning and accuracy on Stroop), we used bootstrapped standard errors (3000 resamples) in assessing statistical significance and computing confidence intervals.

2.4.2 | Centering independent variables

All independent variables were centered so that coefficients and intercepts reflected meaningful values within the range of the sample. WASI scores and parental education were centered at their respective means. Age was centered at 18 years.

2.4.3 | Main effects

A series of regression analyses were completed to investigate age trends within the whole sample for both composite variables (the sensation-seeking composite and the self-regulation composite) and for all six component variables (i.e., reward approach on the IGT, self-reported sensation seeking, risky driving in the Stoplight game, response inhibition on the Stroop task, self-reported planning, and impulse control on the Tower of London task). Age and age^2 were entered as predictors to test for quadratic trends, specifically, a rise (during adolescence) and fall (into adulthood) in sensation seeking, and an increase across adolescence and into adulthood in self-regulation. If the quadratic term was not significant, the linear effect of age was tested (absent the quadratic term). All analyses controlled for parental education and WASI *t*-score. Owing to space considerations, and in light of previous research indicating that developmental trajectories of sensation seeking and self-regulation are quite similar among males and females (Shulman, Harden, Chein, & Steinberg, 2015), we elected not to conduct analyses separately by gender.

2.4.4 | Differences among countries

We used multiple-group structural equation models to test for differences in age trends among countries in the composite variables and in each of the six component variables. Results for the composites are reported in the main text; results for the component variables can be found in the Supporting Information.

TABLE 2 Zero-order correlations among variables

	Par. Ed.	WASI	SR SS	IGT	Stoplight	SR Plan	Stroop	ToL
Age	−.07***	.14***	.02	.04**	−.04*	.07***	.20***	.19***
Par. Ed.	–	.20***	.08***	.04**	.004	.00	−.01	.02
WASI		–	.01	.10***	.06***	.10***	.19***	.19***
SR SS			–	.03*	.07***	−.26***	.04**	−.02
IGT				–	.04**	−.03*	.09***	.05**
Stoplight					–	−.03	.05***	.03
SR Plan						–	.04**	.08***
Stroop							–	.07***

Note. Par. Ed., parental education; WASI, WASI *t*-score; SR SS, self-reported sensation seeking; IGT, Iowa Gambling Task; SR Plan, self-reported planning; ToL, Tower of London task.
*$p < .05$; **$p < .01$; ***$p < .001$.

For each outcome, we first specified a 'constrained' model, in which the effects of all predictors were set to be equal across countries. We then examined the change in chi-square between this model and a comparison model in which the effects of age and age^2 were free to vary across country. If model fit was significantly worse in the constrained model than in the comparison model (indicated by a change in χ^2 of 31.41 or greater, corresponding to a 20-unit change in parameters), we deduced that there were significant differences across groups on at least one of the parameters that were free to vary in the comparison model (i.e. age or age^2). Intercepts were free to vary across groups in all models. Covariates were constrained across groups unless otherwise noted.

In cases where chi-square difference testing yielded significant results (indicating significant variation in age patterns across countries), we conducted further analyses to characterize these differences. To do so, we examined whether each country's age pattern – with respect to either sensation seeking or self-regulation – differed from the pattern, on average, of the other 10 countries considered in the aggregate. Accordingly, we conducted a series of analyses comparing two groups: one containing the individual country, and the other containing the other 10 countries. Using 2-*df* chi-square difference testing, we compared a model in which age and age^2 were constrained to be equal across the two groups and a model in which they were free to vary. A significant change in chi-square value (i.e., greater than 5.99) indicated that the individual country differed from the overall age pattern of a given construct.

Finally, we described the shape of the average age-related pattern (i.e., linear, curvilinear, etc.) for each country for each outcome. Because we were interested in exploring age patterns *within* countries, we standardized the six measures that make up the composites separately for each country and averaged these values to form the composite variables used in these analyses. Regression analyses were fit separately for each country.

3 | RESULTS

3.1 | Main effects

Intercorrelations are presented in Table 2. Means and standard deviations for all variables are reported in Table 3. Results for the sensation-seeking and self-regulation composite variables are reported here; results for each component variable are found in the Supporting Information. Descriptive information broken down by country is available from the authors.

As expected, the age pattern of the sensation-seeking composite within the whole sample followed an inverted-U pattern ($b_{age} = 0.35$, $SE = 0.15$, $p = .02$; $b_{age}{}^2 = -0.19$, $SE = 0.03$, $p < .001$), increasing across adolescence, peaking at around age 19, and subsequently declining into adulthood (see Table 4). By comparison, the age pattern of self-regulation increased until the early to mid-20s ($b_{age} = 2.60$, $SE = 0.15$, $p < .001$; $b_{age}{}^2 = -0.20$, $SE = 0.03$, $p < .001$) without a marked decrease thereafter. Figure 1 displays the age trends and confidence intervals of both composites, centered at age 10 to show relative changes in the constructs from the youngest age onward.

3.1.1 | *Post hoc* probing

Central to our model is the proposition that sensation seeking peaks in mid- to late adolescence and subsequently declines into adulthood, whereas self-regulation increases into late adolescence or adulthood and subsequently stabilizes. Visual inspections of the age patterns in the sample as a whole were consistent with these predictions. However, in order to better describe the differences in the age trends of these constructs, we first identified the age at which the estimated value of each construct was highest. Then we tested whether, beyond the age of the highest value, scores on the relevant measure of the construct decreased linearly with age, consistent with the rise-and-fall pattern expected for sensation seeking, or failed to change with age, consistent with the plateau expected for self-regulation.

By iteratively re-estimating our models with age re-centered at each year, we were able to identify the age (in whole years) at which each construct's estimated value was highest. Sensation seeking peaked at age 19, consistent with visual inspection. An analysis of the effects of age after this peak (i.e., those aged 20 to 30, $N = 1659$) indicated that sensation seeking decreased significantly from age 20 to 30 ($b_{age} = -2.00$, $SE = 0.47$, $p < .001$) (see bottom of Table 4). In contrast, self-regulation peaked at age 24, but did not change significantly after age 25, remaining at the same level until age 30 ($N = 802$; $b_{age} = -0.77$, $SE = 1.40$, $p = .59$).

TABLE 3 Descriptive statistics by age group: mean (SD)

	Age Group						
	10–11	12–13	14–15	16–17	18–21	22–25	26–30
Age (years)	10.54 (0.50)	12.36 (0.48)	14.48 (0.50)	16.48 (0.50)	19.49 (1.12)	23.42 (1.13)	27.85 (1.39)
Parental Education	11.84 (3.00)	12.07 (2.91)	12.12 (2.78)	11.85 (2.88)	12.00 (2.79)	11.78 (3.03)	11.22 (3.25)
WASI *t*-score	48.42 (10.97)	46.02 (11.11)	46.15 (10.90)	46.98 (10.55)	49.85 (10.40)	51.32 (10.21)	51.40 (11.65)
Self-Reported SS	56.02 (27.38)	57.49 (28.10)	56.83 (30.14)	61.56 (27.84)	62.20 (27.67)	60.11 (27.72)	56.16 (28.74)
Reward Approach (IGT)	5.44 (22.49)	5.99 (21.64)	5.99 (22.52)	7.49 (22.33)	8.79 (20.15)	8.31 (21.35)	7.07 (22.85)
Risky Driving (Stoplight)	41.70 (21.78)	41.58 (20.95)	44.95 (22.74)	42.22 (21.39)	43.53 (22.65)	42.41 (22.85)	38.74 (23.17)
Response Inhibition (Stroop)	85.73 (14.01)	88.34 (12.498)	90.71 (11.63)	92.17 (10.54)	93.08 (10.01)	92.84 (10.72)	92.49 (10.77)
Self-Reported Planning	69.61 (24.71)	69.75 (25.485)	68.21 (27.75)	69.84 (26.87)	72.66 (27.23)	74.43 (26.40)	74.01 (25.98)
Impulse Control (ToL)	4367.89 (2702.05)	4340.42 (2735.57)	5087.87 (4363.35)	5265.16 (4354.17)	6177.77 (4703.61)	6243.98 (4595.54)	6490.97 (5331.61)

Note. WASI, WASI *t*-score; IGT, Iowa Gambling Task, indicates the percentage increase in draws from advantageous decks from block 1 to block 6; ToL, Tower of London task, indicates latency, in milliseconds, to first move. Values for risky driving on the Stoplight task indicate the percentage of lights run. Values for response inhibition on the Stroop task indicate percentage of accurate responses.

3.2 | Differences among countries

The omnibus chi-square difference tests indicated that the effects of age were not the same in all 11 countries for either the sensation-seeking composite [$\Delta\chi^2(20) = 46.91$, $p < .05$] or the self-regulation composite [$\Delta\chi^2(20) = 95.76$, $p < .05$]. In order to explore these differences, we compared the effects of age and age^2 within each individual country (one at a time) to the average observed in the 10 other countries.

The results of these analyses indicated that in China, Italy, Jordan and the Philippines, the age-related pattern for sensation seeking differed significantly from the aggregate of the other countries (see Table S3 for comparisons and quadratic age trends). Although the age effects observed in China, Italy and the Philippines differed from those of the aggregate, sensation seeking nevertheless followed an inverted U-shaped pattern across age in each of these countries. In Jordan, however, sensation seeking increased linearly with age ($b_{age} = 1.38$, $SE = 0.52$, $p = .007$). Thus, all but one of the deviations from the average age pattern reflected differences in the magnitude of the curvilinear pattern (i.e. as seen in China, Italy and the Philippines), rather than in the general shape of the age trend (as seen in Jordan).

With regard to self-regulation, the age patterns of China, India, Italy, Jordan, Sweden and the United States each differed from the aggregate of the other countries (see Table S4 for comparisons and quadratic age trends). Self-regulation increased across adolescence and plateaued in China, Italy and the United States, as it did in general,

TABLE 4 Sensation-seeking and self-regulation composite results: whole sample

Sensation-Seeking Composite				95% CI	
	Estimate	SE	*p*-value	LB	UB
Age	0.35	0.15	.02	0.06	0.64
Age^2	−0.19	0.03	<.001	−0.24	−0.14
Parent Ed.	0.82	0.31	.01	0.22	1.43
WASI	0.49	0.08	<.001	0.33	0.66
Post-Peak Analysis				95% CI	
Age Range	Estimate	SE	*p*-value	LB	UB
20-30	−2.00	0.47	<.001	−2.91	−1.07

Self-Regulation Composite				95% CI	
	Estimate	SE	*p*-value	LB	UB
Age	2.60	0.15	<.001	2.29	2.83
Age^2	−0.20	0.03	<.001	−0.26	−0.15
Parent Ed.	−0.64	0.32	.04	−1.23	−0.03
WASI	1.38	0.08	<.001	1.23	1.53
Post-Peak Analysis				95% CI	
Age Range	Estimate	SE	*p*-value	LB	UB
25–30	−0.77	1.40	.59	−3.46	2.08

Note. Parent Ed., parental education; WASI, WASI *t*-score; LB/UB, Lower and upper bound values of the bias-corrected 95% confidence interval (CI), respectively. Composite scores were multiplied by 100 and centered at age 18.

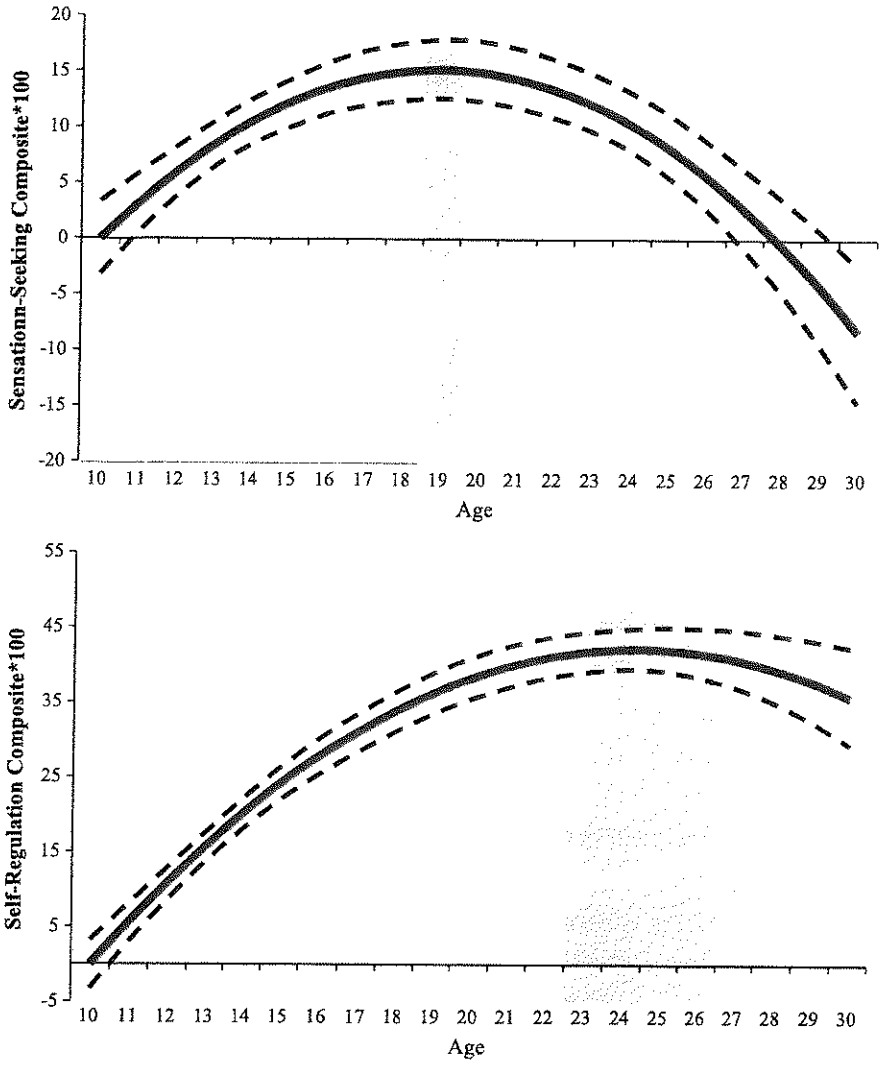

FIGURE 1 Age differences in scores on *composite* variables: sensation seeking (top) and self-regulation (bottom) in the whole sample. Composite scores were multiplied by 100 and centered at age 10. Grey shading denotes a plateau/peak, defined as years of age for which the instantaneous rate of change (i.e. the estimated slope of the age curve) did not differ significantly from zero. Dashed lines indicate 95% confidence bands

but the rate at which self-regulation increased and the age at which it plateaued varied among these countries. In Jordan and India, self-regulation did not vary systematically with age (Jordan b_{age} = −0.67, *SE* = 0.56, *p* = .23; India b_{age} = 0.72, *SE* = 0.06, *p* = .20). In Sweden and Cyprus, on the other hand, self-regulation increased linearly with age without plateauing (Sweden b_{age} = 2.25, *SE* = 0.45, *p* < .001; Cyprus b_{age} = 2.36, *SE* = 0.15, *p* < .001). Thus, some of the observed differences between countries in the age pattern of self-regulation reflected differences in the intensity with which self-regulation increased with age (e.g., in both China and Thailand, self-regulation increased and then plateaued, but the increase was relatively steeper in China), whereas other differences between countries reflected a distinctly different age-related pattern (i.e., a linear increase with no discernible plateau in Sweden) or no age-related pattern at all (i.e. in Jordan and India).

Last, we examined the age-related pattern in the development of sensation seeking and self-regulation within each country considered separately, using within-country standardized variables. Results for sensation seeking revealed a significant, inverted U-shaped curvilinear age pattern in 7 of the 11 countries: China, India, Italy, Kenya, the Philippines, Thailand and the United States. Sensation seeking increased linearly with age in Jordan (*b* = 1.27, *SE* = 0.57, *p* = .03). We found no evidence that sensation seeking varied with age in Sweden (*b* = −0.21, *SE* = 0.58, *p* = .72), Colombia (*b* = −0.27, *SE* = 0.48, *p* = .57), or Cyprus (*b* = −0.32, *SE* = 0.55, *p* = .56). Detailed results of these analyses are described in Table S5. See Figure 2 (top) for a plot of significant age trends.

With respect to self-regulation, we found significant age-related increases in 9 of the 11 countries. In China, Italy, the Philippines, and the United States, self-regulation increased during adolescence and plateaued in early adulthood. Self-regulation increased linearly with age in Colombia (*b* = 2.45, *SE* = 0.46, *p* < .001), Cyprus (*b* = 2.00, *SE* = 0.76, *p* = .009), Kenya (*b* = 1.27, *SE* = 0.43, *p* = .003), Sweden (*b* = 2.82, *SE* = 0.51, *p* < .001), and Thailand (*b* = 2.91, *SE* = 0.59, *p* < .001). Self-regulation tended to increase linearly in Jordan (*b* = −0.97, *SE* = 0.58, *p* = .09), but we did not find age-related differences in India (*b* = 0.77, *SE* = 0.52, *p* = .14). Full results of these analyses are described in Table S6. See Figure 2 (bottom) for a plot of significant age trends.

4 | DISCUSSION

Overall, our findings indicate that the developmental patterns in sensation seeking and self-regulation observed previously in American and

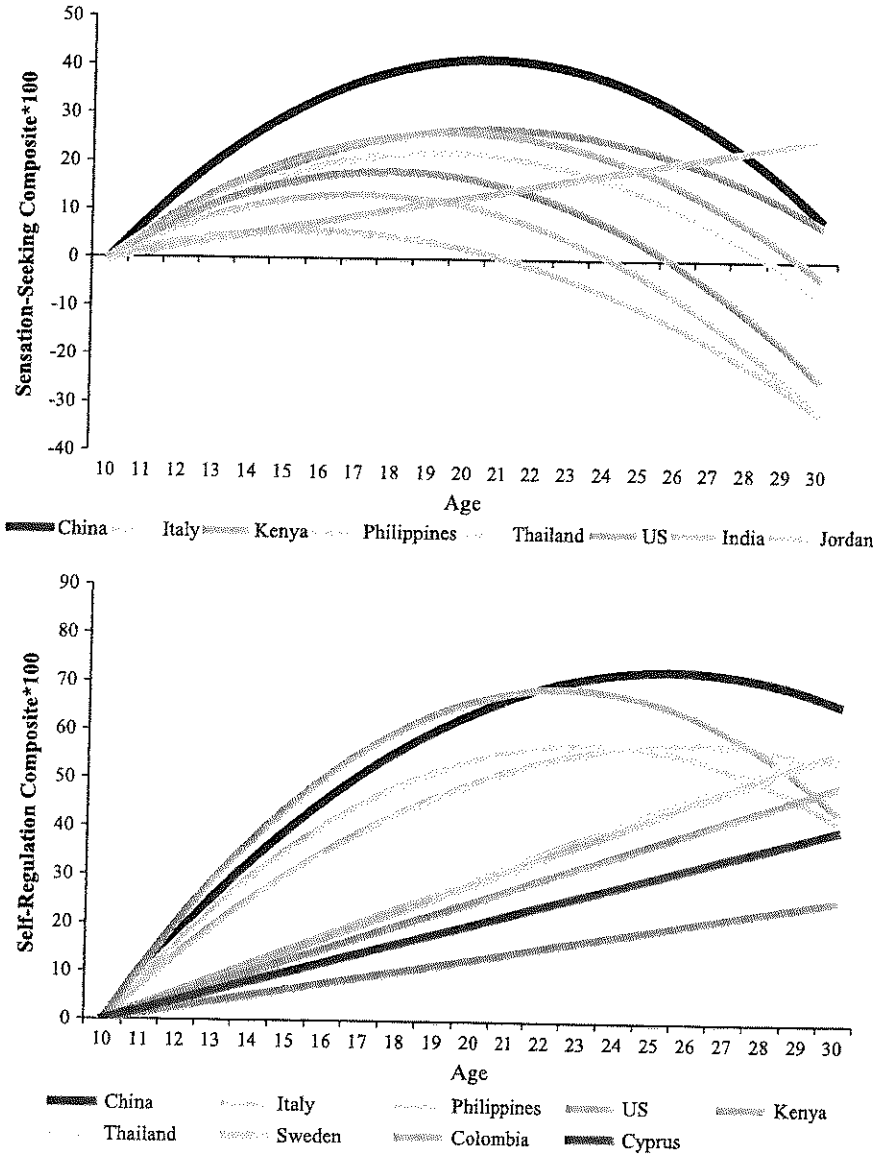

FIGURE 2 Within-country standardized age differences in scores on composite variables: sensation seeking (top) and self-regulation (bottom). Composite scores were multiplied by 100 and centered at each country's mean at age 10. Countries in which there were no significant age trends are not shown

Western European samples are found in other parts of the world as well, in countries that vary considerably with respect to their cultural and economic contexts. Generally speaking, self-regulation develops linearly and gradually over the course of adolescence, reaching a plateau somewhere during the mid-20s, whereas reward seeking follows an inverted U-shaped pattern, increasing between preadolescence and late adolescence, peaking at around age 19, and then declining as individuals move into and through their 20s. Although there are minor variations in these patterns across countries, the similarities between the observed age trends are far more striking than the differences. When countries evinced age patterns that differed from the overall trend, the differences were more often in degree (e.g., in how sharply sensation seeking peaks in late adolescence, or the degree to which self-regulation improves over the course of adolescence), rather than in the shape of the age trend. Moreover, although the correlations between the three components of each composite are modest, as we expected them to be, all three indicators of sensation seeking follow a curvilinear age pattern with a peak in adolescence, whereas all three indicators of self-regulation show a gradual increase between preadolescence and young adulthood.

Prior studies of age differences in sensation seeking and the processes presumed to underlie it, such as reward sensitivity, have disagreed as to whether the peak occurs in middle or in late adolescence (Shulman et al., 2016). The results of the present analyses indicate that discrepancies among studies in the exact age of the peak are probably the result of differences in samples and measures. Thus, although scores on the composite measure of sensation seeking in the sample as a whole peaked at age 19, the peak occurred somewhat earlier than this in some countries (e.g. Italy) and later in others (e.g. Kenya). Similarly, although the peak in the composite measure was observed at 19, sensation seeking as indexed by risky driving on the Stoplight game peaked earlier than this, whereas sensation seeking as indexed by approach behavior on the IGT peaked later. The important point, it seems to us, is that pretty much regardless of how or where it was measured in this large international sample, sensation seeking is higher during middle and late adolescence than before or after.

Along similar lines, past research on self-regulation has not always been consistent with respect to the extent to which this capacity continues to grow after adolescence, with some studies indicating a mid- or late adolescent plateau (Andrews-Hanna, Mackiewicz Seghete, Claus, Ruzic, & Banich, 2011) and others pointing to continued improvement into the mid-20s (Shulman et al., 2016; Somerville, Hare, & Casey, 2011). The findings of the present study suggest that these discrepancies may also result from variations in samples and measures. Thus, although scores on the composite measure of self-regulation in the sample as a whole plateaued during the mid-20s, this pattern was observed in some countries (e.g. China), but not in others, where self-regulation continued to develop beyond this age (e.g. Colombia). As with sensation seeking, age trends in self-regulation also varied as a function of how it was measured. The young-adult plateau was most obvious with respect to impulse control as indexed by performance on the Tower of London task, whereas scores on the measure of self-reported planning continued to improve during the late 20s. Regardless of how it is measured, however, the development of self-regulation clearly is not complete by the end of adolescence.

Despite the general pattern of consistency in findings across measures, a subset of countries did not evince the expected age patterns as measured by the sensation-seeking and self-regulation composites. The countries that did not display the inverted U-shaped pattern of sensation seeking – Jordan, Colombia, Cyprus and Sweden – differ with regard to culture, geography and economics, among other variables, so it is hard to speculate about a common factor that might lead all of these countries to depart from the expected trend. Although the two countries in which we did not observe increases in self-regulation with age (Jordan and India) both score relatively high in 'restraint' in ratings of countries along the 'Indulgence–Restraint' dimension (Hofstede et al., 2010), an examination of the mean self-regulation composite scores in these countries indicates that the absence of an age trend on this measure is probably not due to a ceiling effect (i.e. the scores were not so high as to preclude improvement with age). We have no ready explanation for this , and in the absence of obvious similarities among these countries in other respects, it would be imprudent to offer *post hoc* explanations of these findings. However, we do note that, although scores on the self-regulation composite did not change significantly with age in India, self-regulation as measured by the two behavioral tasks did show modest improvements with age (none of the self-regulation measures evinced age-related change in Jordan). Exploring specific country-level differences in developmental trajectories, as well as in mean levels of sensation seeking and self-regulation at different ages, will be important for future research.

Overall, the results of this study are consistent with portrayals of adolescence as a time of heightened sensation seeking in the face of still developing self-regulation, a combination that has been linked to the greater prevalence in risk taking during adolescence than before or after (Quinn & Harden, 2013; Steinberg, 2008). Given that actual rates of adolescents' risky behavior vary considerably around the world, however, it is clear that while certain aspects of psychological development in adolescence may be universal (and perhaps dictated by biology), their downstream effects are not. Although evolutionary models of adolescence are helpful in explaining why this stage of development is a period during which individuals are more willing to take risks – the argument is that the willingness to take risks at time of peak fertility allows juveniles to leave and mate outside the natal environment – these models do not explain why adolescent risk-taking manifests itself to different degrees and in different ways around the globe. The fact that this is the case can only mean that the broader context in which adolescents develop exerts a powerful impact on the extent to which young people engage in risky and health-compromising behavior. From a public health perspective, this is very good news, for it suggests that adolescent recklessness is not the inevitable byproduct of the period's neurobiology.

The principal aim of the present study was to examine two key tenets of the dual systems model: that sensation seeking peaks during adolescence and that self-regulation continues to mature over the same period of development. We believe that the results presented here provide strong support for this view, a conclusion that is consistent with that of a recent comprehensive review of the neuroscientific and psychological literatures (Shulman et al., 2016). Around the world, adolescence is a time when individuals are inclined to pursue exciting and novel experiences but have not yet fully developed the capacity to keep impulsive behavior in check.

REFERENCES

Albert, D., & Steinberg, L. (2011). Judgment and decision making in adolescence. *Journal of Research on Adolescence, 21*, 211–224.

Andrews-Hanna, J.R., Mackiewicz Seghete, K.L., Claus, E.D., Ruzic, L., & Banich, M.T. (2011). Cognitive control in adolescence: Neural underpinnings and relation to self-report behaviors. *PLoS ONE, 6*, e21598.

Banich, M.T., Crowley, T.J., Thompson, L.L., Jacobson, B.L., Liu, X., Raymond, K.M., & Claus, E.D. (2007). Brain activation during the Stroop task in adolescents with severe substance and conduct problems: A pilot study. *Drug and Alcohol Dependence, 90*, 175–182.

Bechara, A., Damasio, A.R., Damasio, H., & Anderson, S.W. (1994). Insensitivity to future consequences following damage to human prefrontal cortex. *Cognition, 50*, 7–15.

Casey, B.J. (2015). Beyond simple models of self-control to circuit-based accounts of adolescent behavior. *Annual Review of Psychology, 66*, 295–319.

Casey, B.J., Galvan, A., & Somerville, L.H. (2016). Beyond simple models of adolescence to an integrated circuit-based account: A commentary. *Developmental Cognitive Neuroscience, 17*, 128–130.

Casey, B.J., Getz, S., & Galvan, A. (2008). The adolescent brain. *Developmental Review, 28*, 62–77.

Cauffman, E., Shulman, E.P., Steinberg, L., Claus, E., Banich, M.T., Graham, S., & Woolard, J. (2010). Age differences in affective decision making as indexed by performance on the Iowa Gambling Task. *Developmental Psychology, 46*, 193–207.

Chaudhary, N., & Sharma, N. (2012). India. In J. Arnett (Ed.), *Adolescent Psychology Around the World* (pp. 103–120). New York: Psychology Press.

Chen, X., Cen, G., Li, D., & He, Y. (2005). Social functioning and adjustment in Chinese children: The imprint of historical time. *Child Development, 76*, 182–195.

Cohen, A., Breiner, K., Steinberg, L., Bonnie, R., Scott, E., Taylor-Thompson, K., & Casey, B.J. (2016). When is an adolescent an adult? Assessing cognitive control in emotional and non-emotional contexts. *Psychological Science, 4*, 549–562.

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO RAMOS,
#1516662

Defendant.

CASE NO: C-10-269839-1

DEPT NO: III

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE

DATE OF HEARING: 9/20/19
TIME OF HEARING: 10:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through GIANCARLO PESCI, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Strike Penalty of Life Without the Possibility of Parole.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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STATEMENT OF FACTS

On May 16, 1998, at approximately 4:52 a.m., 75-year old Wallace Siegel was found murdered in unit 120 of the Camlu Retirement Home located at 4255 South Spencer.

On May 17, 1998, at approximately 11:10 a.m., 86 year old Helen Sabraw was found murdered in unit 212 of the Camlu Retirement Home located at 4255 South Spencer.

In May 1998, Wallace Siegel was recovering from hip replacement surgery. During his recovery, his son, Jack Siegel, was staying with him in his apartment at the Camlu Retirement Home. The complex is a dormitory style complex with locked public access doors that were designed to prevent access to the individual housing units.

Jack left his dad alone late at night on May 15 and into the early morning hours of May 16, 1998. Jack left to have his swollen knee drained at a local hospital (which was later verified by medical records). He left the door to his dad's apartment unlocked. Upon returning at 4:50 a.m., Jack saw the dead body of his father – now covered in blood—sitting in a reclining chair where Wallace typically slept. Wallace has massive head trauma. Jack immediately called 911.

Police personnel found a 25 pound dumbbell on the floor near Wallace. It was covered in blood. The dumbbell belonged to Jack Siegel. The "matching" dumbbell was in Jack's room. An autopsy later revealed that Wallace suffered a skull fracture and died of blunt force trauma. Wallace's money clip and wallet were empty. Robbery appeared to be the motive. A patent bloody palm print was observed on the Las Vegas Review Journal page found on the floor near Wallace's body. See Exhibit 1. Although the print did not belong to Jack, he was considered a suspect given his alibi. Police developed no evidence implicating Jack and the case was cold for 12 years.

On May 17, 1998, Peggy Parks arrived at unit 212 of the Camlu Retirement Home to check on her friend, 86 year old Helen Sabraw. The door to Helen's apartment was unlocked. Peggy entered the apartment and found her friend lying on the floor. Helen was covered in blood.

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Helen was wearing only a nightgown which was pulled above her breasts. Her underwear were off and found under her head. Her bra was off and found near her body. There was fecal matter on the carpet near her leg.

Helen's apartment was in disarray. Among other items, was a chair, with apparent blood, turned upside down on Helen's bed. Helen was stabbed numerous times to her head, face, torso, left thigh, and buttock. Two knives were found near the body. One under her leg and one at the foot of her bed. An autopsy revealed that she died by stab wounds to her heart and pulmonary artery.

A man's grey t-shirt and white muscle shirt were found near Helen. Both had blood transfer on them. Police developed no suspects and the case was cold for 12 years.

On June 26, 2009, DNA from the two shirt found in the Sabraw scene was submitted for testing. DNA was recovered from the armpit area of the grey t-shirt and the profile was uploaded into CODIS. CODIS produced a match to Gustavo Ramos. Thereafter, a search warrant was used to get a buccal swab from Ramos and the CODIS results were confirmed. The estimated frequency of DNA in the population is rarer than 1 in 30 billion. Once Ramos was identified, his fingerprints were compared to the bloody print found on the Las Vegas Review journal page in Wallace Siegel's apartment. The examiner concluded that the print was consistent with the right palm print of Gustavo Ramos.

On May 28, 2019, the trial against the Defendant commenced and on July 3, 2019, this Court returned verdicts of guilty of First Degree Murder with Use of a Deadly Weapon on Count 1 for victim Wallace Siegel and guilty of First Degree Murder with Use of a Deadly Weapon on Count 2 for victim Helen Sabraw and guilty of Sexual Assault with Use of a Deadly Weapon on Count 3 for victim Helen Sabraw. On September 10, 2019, the Defendant filed the instant Motion to Strike Penalty of Life Without the Possibility of Parole.

The State opposes Defendant's motion.

ARGUMENT

First, Defendant was born on July 10, 1979. The Defendant murdered Wallace Siegel and Helen Sabraw on May 15th and 16th of 1998. As such, on the 15th day of May in 1998,

the Defendant was 18 years, 10 months, and 5 days old at the time of the double homicide and sexual assault. Nonetheless, Defendant's general contention is that the line distinguishing adults from juveniles, set at the age of eighteen, is arbitrary and violates not only the Equal Protection Clause, but also violates substantive and procedural due process as well as the Eighth Amendment's prohibition on cruel and unusual punishment. In his motion, Defendant makes a series of policy arguments best suited for the Legislature, which likewise fail. The fact remains: Defendant was not a minor when he committed the instant crimes. As such, the rationale of treating juvenile defendants differently from adult offenders simply does not apply to Defendant, who was over eighteen when he committed his crimes.

Despite this, Defendant cites to several United States Supreme Court cases, such as Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183 (2005) (finding the Eighth Amendment forbids the imposition of the death penalty on juveniles under the age of eighteen), Graham v. Florida, 560 U.S. 48, 130 S. Ct. 2011 (2010) (holding the Eighth Amendment bars the imposition of life without possibility of parole sentences for juveniles under the age of eighteen for non-homicide crimes), and Miller v. Alabama, 567 U.S. 460, 132 S. Ct. 2455 (2012) (finding the Eighth Amendment bars the imposition of mandatory life without possibility of parole sentences for juvenile offenders under the age of eighteen for homicide convictions), to argue that his sentence is cruel and unusual and he should be treated like juvenile defendants sentenced to life without the possibility of parole. Since Defendant was not a juvenile at the time of his crimes, the rationale of these cases simply does not apply to him for Eighth Amendment purposes.

Specifically, in Roper v Simmons, the Supreme Court found that the death penalty conviction of a seventeen-year old, juvenile defendant who had planned, discussed, and committed murder, was unconstitutional under the Eighth Amendment of the United States Constitution. The Supreme Court, taking into account the fact that a majority of States have rejected the imposition of the death penalty on juvenile offenders under the age of eighteen, held that:

> Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the reasons we have discussed, however, a line must be drawn. . . . . The age of 18 is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the age at which the line for death eligibility ought to rest. 432 U.S. at 574, 125 S. Ct. at 1197-98.

The Supreme Court thus drew a clear line at the age of eighteen, prohibiting juvenile defendants from being sentenced to the death penalty for crimes committed while they were under the age of eighteen. In reaching its holding, the Supreme Court examined national and international consensus, recognizing that a majority of American states, as well as a majority of countries, barred the imposition of the death penalty on offenders under eighteen. Id. at 575-76, 575-80, 125 S. Ct. at 1198-99, 1200-01. The Court also examined other areas wherein society "draws the line . . . between childhood and adulthood," such as the minimum age to vote, to serve on a jury, or to marry without parental consent. Id. at 580-86, 125 S. Ct.

In Graham v. Florida, the Supreme Court examined the validity of life-without-parole sentences for juvenile offenders having committed non-homicide offenses. In that case, the defendant, at 16, attempted to rob a restaurant, and Graham's accomplice struck the restaurant manager with a metal bar. While the manager yelled at them, Graham and the assailant ran out and escaped in a car driven by the third accomplice. Graham was charged as an adult with armed burglary with assault or battery, carrying a life without parole maximum, and attempted armed robbery. Graham pleaded guilty and got probation. Six months later, Graham was charged with home invasion robbery. After being revoked from probation on his first case, Graham then received a sentence of life without parole. The Court examined the national consensus, and determined that there were only eleven jurisdictions that actually imposed life without parole sentences to nonhomicide juvenile offenders, while twenty-six states – despite having statutory authorization – refused to impose life without parole sentences for juveniles. The Court then held that life without parole sentences for juvenile offenders was unconstitutional under the Eighth Amendment. Again, the Supreme Court held that:

> [I]n cases turning on the characteristics of the offender, the Court has adopted categorical rules prohibiting the death penalty for defendants who committed their crimes before the age of 18, Roper v. Simmons [citation omitted], or whose intellectual functioning is in a low range, Atkins v Virginia, 536 U.S. 551, 125 S. Ct. 1183 (2002). See also Thompson v Oklahoma, 487 U.S. 815, 108 S. Ct. 2687 (1998). In the cases adopting categorical rules the Court has taken the following approach. The Court first considers "objective indicia of society's standards, as expressed in legislative enactments and state practice," to determine whether there is a national consensus against the sentencing practice at issue. Roper, supra, at 563, 125 S. Ct. 1183. Next, guided by "the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose, Kennedy [v. Louisiana], 554 U.S. [407,] 421, 128 S. Ct. 2641, 2650 [2008], the Court must determine in the exercise of its own independent judgment whether the punishment in question violates the Constitution. Roper, supra, at 564, 125 S. Ct. 1183. Graham, 560 U.S. at 61, 130 S. Ct. at 2022 (emphasis added). In determining the national consensus, the Court looks to the legislation enacted by the country's legislatures, as well as to actual sentencing practices. Id. at 62, 130 S. Ct. at 2023.

The Court in Graham also referred to amici brief and noted that the parts of adolescents' brains involved in behavior control continue to mature through late adolescence – which is the central issue argued in Defendant's motion. Even considering the national consensus, the Graham Court again emphasized that a clear line was required to distinguish between children and adults, and that society drew the line at eighteen. 560 U.S. at 74-76, 130 S. Ct. at 2030. Despite Defendant's current contentions, it is still a fact that eighteen remains the minimum age requirement for an individual to vote, have jury service, get married or serve in the military without parental consent, or, as the Supreme Court has held, be considered an adult in the criminal justice system. Moreover, the Nevada Legislature did have the opportunity to consider Roper, Graham, and Miller when, in 2015, it statutorily implemented NRS 176.017, 176.025, and NRS 213.12135. However, the Nevada Legislature chose not to expand the protections of these statutes to those over the age of eighteen.

In Miller v. Alabama, the Supreme Court struck down mandatory life without parole sentences for juveniles convicted of homicide offenses, and required sentencing judges to consider certain mitigating factors of youth, including the diminished culpability of juveniles relative to adults. In Miller, two 14-year olds (Kuntrell Jackson and Evan Miller) were found

guilty of murder by a jury and given a mandatory sentence of life without the possibility of parole according to Alabama law. Taking issue with the mandatory life without parole sentencing scheme, the Supreme Court found the mandatory scheme violative of the Eighth Amendment, and held that a sentencing court must consider an offender's youth and attendant characteristics before imposing a life without parole sentence on a juvenile. 567 U.S. at 483, 132 S. Ct. at 2471. The Supreme Court, however, did not prohibit the imposition of a life without parole sentence on a juvenile – it merely required the sentence to consider the offender's age and attendant circumstances. Id.

All three cases upon which Defendant relies refer to minors under the age of eighteen, and Defendant was over the age of eighteen at the time of his crimes. As such, reliance on these cases is misplaced and his motion should be denied.

In Nevada, NRS 129.010 sets the age of majority at eighteen, and reads, "All persons of the age of 18 years who are under no legal disability, and all persons who have been declared emancipated pursuant to NRS 129.080 to 129.140, inclusive, are capable of entering into any contract, and are, to all intents and purposes, held and considered to be of lawful age." This provides a rational basis for the Legislature to enact NRS 176.017, NRS 176.025 and NRS 213.12135 and delineate between those offenders over the age of eighteen and those under the age of eighteen; and Defendant fails to rebut this basis. Moreover, in the Assembly and Senate Judiciary Committee Minutes from prior sessions, the Legislature heard testimony as to the development of the adolescent brain, and at no point expanded its protections to individuals over the age of eighteen.

Defendant also alleges that his sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment, relying upon Roper, Graham, and Miller. The Eighth Amendment to the United States Constitution as well as Article 1, Section 6 of the Nevada Constitution prohibits the imposition of cruel and unusual punishment. The Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so

unreasonably disproportionate to the offense as to shock the conscience.'" E.g., Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (citations omitted).

Additionally, the Nevada Supreme Court has granted district courts "wide discretion" in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Allred, 120 Nev. at 410, 92 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of discretion, the district court's determination will not be disturbed on appeal. Randell v. State, 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)). As long as the sentence is within the limits set by the legislature, a sentence will normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

Finally, "with regard to a sentence for a criminal offense, while it is the function of the Legislature to set criminal penalties, it is the function of the judiciary to decide what penalty, within the range set by the Legislature, if any, to impose on an individual defendant." Mendoza-Lobos v. State, 125 Nev. 634, 639-40, 218 P.3d 501, 504-05 (2009) (citations omitted). At the time of Defendant's offenses, the penalty range set by the Legislature for First Degree Murder, to which he was found guilty, was as follows:

> A person convicted of murder of the first degree is guilty of a category A felony and shall be punished:
> (a) By death, only if one or more aggravating circumstances are found and any mitigating circumstance or circumstances which are found do not outweigh the aggravating circumstance or circumstances; or
> (b) By imprisonment in the state prison:
> (1) For life without the possibility of parole;
> (2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 20 years has been served; or
> (3) For a definite term of 50 years, with eligibility for parole beginning when a minimum of 20 years has been served.
> 1997 NRS 200.030(4).

The sentence of life without parole was thus within the sentencing range, and was, moreover, a sentence to which he agreed he could be sentenced to after the State agreed to not seek the death penalty in this case.

Defendant claims that expansion of Roper, Graham, and Miller to offenders over the age of eighteen, such as Defendant, is supported by science, national consensus, and historical context. However, these are policy arguments that are best suited for the Nevada Legislature than this Court. However, in State v. Eighth Judicial Dist. Court (Logan D.), 129 Nev. __, __, 306 P.3d 369, 387 (2013), the Nevada Supreme Court held, when rejecting the defendant's policy argument, that:

> Logan presents a compelling policy consideration that warrants serious reflection by the Legislature. But policy considerations are not material to our ex post facto analysis because they are relevant only to whether the statutory scheme is the best manner to achieve legislative goals, and that question is solely in the Legislature's purview. In our ex post facto analysis, we are limited to considering whether the statutory scheme is reasonable in light of its goals, see Smith, 538 U.S. at 105, and Logan has failed to demonstrate that A.B. 579 is unreasonable in light of the goal of public safety.

Here, instead of addressing his policy concerns to the Nevada Legislature, Defendant asks this Court to engage in judicial activism by advocating a dramatic expansion of the series of United States Supreme Court cases related to the sentencing of juvenile offenders. However, Defendant's invitation to judicial activism is devoid of legal authority supporting the application of Miller, and Roper, to an offender over the age of eighteen. Defendant neglects this obligation because he cannot make such a showing.

Additionally, Defendant's scientific argument is a policy argument suited for the Legislature. Defendant purported science boils down to a policy argument, according to which younger adults, such as Defendant, share the same brain development as juvenile offenders, which supports Defendant benefitting from the changes in Nevada law and from Miller. However, during the meeting of the Assembly Committee on the Judiciary, on March 27, 2015, on A.B. 267, James Dold, the Advocacy Director of the Campaign for the Fair

Sentencing of Youth, detailed the findings on child brain development science, in response to a question comparing juveniles to adult offenders with below-average IQs. Mr. Dold explained that brain maturation "as a general matter [] does not happen until around 18 to 20 years of age. Dr. Bridget Walsh, a developmental scientist in the area of child development also emphasized, both in a statement to the Assembly Committee on the Judiciary and the Senate Committee on the Judiciary, that "emotions tend to rule behavior until around age 25 or so when the prefrontal cortex fully develops." The Legislature, thus, heard similar arguments to that which Defendant puts forth and yet the Legislature elected to only establish the protections of its new statutes to juveniles – those under the age of eighteen – instead of expanding Miller, Graham, or Roper to offenders over the age of eighteen. This Court should not go where the Legislature would not go.

The Defendant also cites to Cruz v. United States, wherein the U.S. District Court for Connecticut granted Cruz's civil action to vacate his sentence. While Cruz v. United States, 2018 U.S. Dist. LEXIS 52924 (2018) does state that a mandatory sentence of life-without-parole for juvenile offenders was unconstitutional, the court also emphasized that the decision did "not foreclose a sentencer's ability to make that judgment in homicide cases [so long as it took] into account how children are different . . . ." Miller, 567 U.S. at 480, 132 S. Ct. at 2469. In Nevada, unlike in Cruz, there is no mandatory Life Without the Possibility of Parole for murder. In fact, what is curious, in addition to being a possible sentence as matter of law, Defendant's exposure to life-without-parole was the result of his own agreement he entered with the State to not to seek the death penalty. Another distinguishing factor between Cruz and the case before this court is that Cruz involved a very different set of facts. Cruz involved a gang-ordered double murder by a gang member who testified he thought he would be killed if he did not commit the shootings whereas Defendant Ramos involved him killing a man and killing and raping a woman where he argued it was not him who committed the crime. Ramos and Cruz do share the commonality that both Defendant Ramos and Cruz were several months over the age of eighteen at the time they committed their murders. Despite Defendant's effort to prove the contrary, one case allegedly on point (Cruz) does not a national consensus make.

As such, not only is this a policy argument that should be brought to the Legislature, but Defendant's attempts to prove the existence of a national consensus that would support the expansion of Miller's prohibition of mandatory life without parole sentences to those over the age of eighteen also fails.

Defendant's reliance on AB 267 is also misplaced. While it is accurate that the statute allows for an offender who was under 18 years old to be eligible for parole, the statute does not apply to Defendant Ramos. The statute, NRS 213.12135, reads as follows:

> 1. Notwithstanding any other provision of law, except as otherwise provided in subsection 2 or unless a prisoner is subject to earlier eligibility for parole pursuant to any other provision of law, a prisoner who was sentenced as an adult for an offense that was committed when he or she was less than 18 years of age is eligible for parole as follows:
>
> (a) For a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that did not result in the death of a victim, after the prisoner has served 15 calendar years of incarceration, including any time served in a county jail.
>
> (b) For a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses that resulted in the death <u>of only one victim</u>, after the prisoner has served 20 calendar years of incarceration, including any time served in a county jail.
>
> 2. The provisions of this section <u>do not apply</u> to a prisoner who is serving a period of incarceration for having been convicted of an offense or offenses <u>that resulted in the death of two or more victims</u>. (Emphasis added).

The statute does not apply to the Defendant because he was 10 months and 5 days over 18 years old AND he killed TWO people. Clearly the Legislature established that even if the Defendant had been under 18 when the crimes occurred, which he was not, he would still not get the benefit of the statute as he killed two people.

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CONCLUSION

Seeing as Defendant was 18 years, 10 months, and 5 days old at the time he raped and murdered Helen Sabraw and murdered Wallace Siegel, he was not a juvenile. Thus, he is legally facing Life Without the Possibility of Parole as a possible sentence under the statute. As such, the Defendant's Motion to Strike Penalty of Life Without the Possibility of Parole should be DENIED.

DATED this _ day of September, 2019.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/Giancarlo Pesci
GIANCARLO PESCI
Chief Deputy District Attorney
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CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that service of the above and foregoing was made this 17th day of September, 2019, by electronic transmission to:

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DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. GUSTAVO RAMOS #1516662 Defendant.	)	CASE NO: C-10-269839-1 DEPT. NO: IX

REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE

COMES NOW, the Defendant, GUSTAVO RAMOS, by and through his attorneys, Ivette Amelburu Maningo, of the Law Offices of Ivette Amelburu Maningo, and Abel M. Yanez, Esq., of the Nobles & Yanez Law Firm, and hereby submits his Reply to the State's Opposition to Defendant's Motion to Strike Penalty of Life Without the Possibility of Parole.

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This Reply is made based upon all the papers and pleadings on file herein, the attached Memorandum of Points and Authorities in support hereof, and oral argument at the time set for hearing Defendant's Motion.

DATED this 29th day of September, 2019.

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POINTS AND AUTHORITIES

FACTS

Defendant, GUSTAVO RAMOS (hereinafter "RAMOS"), hereby incorporates by reference the statements of facts and points and authorities detailed in his original Motion to Strike Penalty of Life Without the Possibility of Parole.

ARGUMENT

I. RAMOS is Not Asking the Court to Engage in Judicial Activism

In its Opposition, the State claims that RAMOS's Motion is asking the "Court to engage in judicial activism by advocating a dramatic expansion of the series of United States Supreme Court cases related to the sentencing of juvenile offenders." *State's Opp*, pg. 9, lns.17-19. This completely mischaracterizes RAMOS's argument.

To be clear, RAMOS is respectfully requesting that the Court engage in what it has been constitutionally authorized to do since the founding of our Republic: Judicial review. *See* Marbury v. Madison, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is."). As Chief Justice Marshall declared well over 200 years ago: "Those who apply the rule to particular cases, **must of necessity expound and interpret that rule**. If two laws conflict with each other, the courts must decide on the operation of each." *Id.* (emphasis added). Therefore, RAMOS's Motion asks this Court to do nothing more than its inherent constitutional duty.

Additionally, as a Connecticut federal court noted in a case cited in RAMOS's original Motion, regarding the application of U.S. Supreme Court case law involving those under the age 18 to those who are in fact 18-years-old, nothing in that case law "states or even suggests that courts are prevented from finding that the *Eighth Amendment* prohibits mandatory life without parole for those **over the age of 18**. Doing so would rely on and apply . . . [that case law] to a different set of

facts not contemplated by the case, but it would not be contrary to that precedent." Cruz v. United States, 2018 U.S. Dist. LEXIS 52924, at 38 (D. Conn. 2018).

II. The State Misconstrues RAMOS's Reliance on Cruz v. United States

The State argues that the Cruz decision is inapplicable to RAMOS's case because in Nevada "there is no mandatory Life Without the Possibility of Parole." *State's Opp*, pg. 10, lns.18-19. However, RAMOS's reliance on Cruz is not for the fact that the federal court held that mandatory life without parole for juvenile offenders is unconstitutional. Rather, the rule to be applied from Cruz to RAMOS's case is that the science and rationale behind the U.S. Supreme Court precedent in Graham, Miller, and Montgomery, applies to 18-years-olds, the same age RAMOS was at the time of the alleged crimes.

III. Other State Courts have Expanded U.S. Supreme Court Case Law

Other State courts have expanded on the U.S. Supreme Court's case law regarding punishments as to juveniles. For example, just last year the Washington Supreme Court, relying in part on the Court's rationale in Graham, Miller, and Montgomery, held that under the Washington Constitution, a sentence of life without parole for a juvenile—whether mandatory or not—is disproportionate and therefore constitutes cruel and unusual punishment. *See* State v. Bassett, 428 P.3d 343 (Wash. 2018); *see also* People v. House, 72 N.E.3d 357 (Ill. App. 2015) (holding that the Miller decision applies to 19-year-olds under the Eighth Amendment).

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CONCLUSION

Based on the foregoing reasons, RAMOS respectfully submits that after reviewing all the evidence adduced at a hearing on his Motion, together with the foregoing Reply, this Court will be impelled to grant his Motion.

DATED this 19th day of September, 2019.

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Attorneys for Defendant Gustavo Ramos

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2019, I served a true and correct copy of the foregoing document, **Reply to the State's Opposition to Defendant's Motion to Strike Penalty of Life Without the Possibility of Parole**, by submitting electronically for filing and/or service within the Eighth Judicial District Court pursuant to Administrative Order 14-02 for e-service to the following:

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E-Mail Address:

pamela.weckerly@clarkcountyda.com
giancarlo.pesci@clarkcountyda.com

Attorneys for Plaintiff

/s/ Andrea Jelks
Secretary for Nobles & Yanez Law Firm

MEMO

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Attorneys for Defendants Gustavo Ramos

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. GUSTAVO RAMOS #1516662 Defendant.	CASE NO: C-10-269839-1 DEPT. NO: III

SENTENCING MEMORANDUM

Gustavo Ramos (hereinafter "Gustavo") appears before you today for sentencing. This Memorandum is being submitted to give a more complete picture of Gustavo and his case than the Pre-Sentence Report (hereinafter "PSR"), or the alleged facts in this case, reveal.

Based on the law in effect in 1998, the Court has the option to sentence Gustavo to either: (1) Life without the possibility of parole; (2) 20 to Life; or (3) 20-50 years. As to the Sexual Assault

charge, the Court can sentence Gustavo to either: (1) 10 to Life ; or (2) 10-25 years.[1] The Court also retains the right to run the three counts Gustavo was convicted of either concurrently or consecutively.

I. Introduction

Gustavo unwaveringly maintains his innocence in this case. This fact, of course, cannot be used against him to impose a harsher sentence. *See* Brake v. State, 113 Nev. 579, 584-85, 939 P.2d 1029, 1033 (1997) (A sentencing court's consideration of a defendant's refusal to admit guilt and show remorse after trial is a violation of a defendant's Fifth Amendment right to not be compelled to be a witness against himself.). It is respectfully submitted that a fair, objective, and balanced analysis of Gustavo's upbringing, intellectual disability, medical conditions, and the facts of this case, warrant an imposition of a sentence of 20 to Life for the two murder charges, 10 to 25 years on the sexual assault charge, and all counts to run concurrently.

This case was originally a death penalty case. Consequently, Gustavo's attorneys spent several years fully investigating his birth, childhood, upbringing, family relationships, and his intellectual functioning.[2] Numerous family members, friends, co-workers, and acquaintances—both in Mexico and the United States—were interviewed. Additionally, copies of important documents that give a view of Gustavo's life, like school and medical records, were obtained.[3] This in-depth

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[1] For the deadly weapon enhancement, Gustavo is also subject to a prison term equal to and in addition to the minimum term of imprisonment prescribed by statute for the underlying crime. *See* N.R.S. § 193.165. In 2007, the Nevada Legislature amended the deadly weapon enhancement statute making the enhancement punishable by a consecutive term of "not less than 1 year and a maximum sentence of not more than 20 years," after the Court considers a prescribed set of factors. N.R.S. § 193.165 (1)(a)-(e).

[2] As the Court is aware, prior to trial, Gustavo agreed to waive his right to a jury trial (as to both guilt and punishment) in exchange for the State withdrawing its notice of intent to seek the death penalty.

[3] Rather than provide the Court with hundreds of pages of documents attached to this Memorandum, the information obtained from the mitigation investigation will be summarized herein, and only the most relevant and concise documents attached as exhibits.

investigation, along with the assistance of retained experts in the field of psychology and mitigation, clearly reveals that Gustavo suffered a life filled with poverty, abuse, neglect, instability, and cognitive disabilities. It has been a life mainly devoid of love, affection, and positive role models to emulate.

II. Gustavo's Upbringing

Gustavo was born on July 10, 1979, in Mexico City, Mexico, to parents Maria Martinez Barrios and Gustavo Medina Palma. Gustavo's mother did not receive prenatal care while pregnant with him. Gustavo never met his biological father and, up until the age of 21, he thought his stepfather, Rogelio Ramos Garcia, was his biological father. In fact, Gustavo's last name, "Ramos," is his stepfather's last name.

Gustavo's childhood was characterized by extreme poverty and parental neglect. Gustavo's family often had no money for food and lacked basic necessities, like clothes, soap, shampoo, toothpaste, and toothbrushes. Gustavo and his family lived in a tenement house with other families. The tenement house was one of the poorest in a neighborhood of poor people. The "house" itself was made of cardboard/tin scraps put together and the "windows" had plastic as covering, instead of glass. Their cardboard house consisted of only one main room that served as kitchen, living room, and bedroom. Each family had a room of their own and all the tenants shared the sole bathroom. The bathroom had a toilet, but no running water or shower. Gustavo and his family had to dump water into the toilet to flush it and bathed by using a bucket and a cup. They warmed up water in their rooms and carried it to the bathroom in buckets when they wanted to bathe.

Gustavo's mother, who had six children with five different men, did not show love and affection towards any of her children, and abandoned Gustavo and his siblings to come to the United States when they were young. While in living Mexico, his mother never took interest it Gustavo's

daily activities and in general showed no interest in his life. His mother would work and left the children to their own resources.

Gustavo's stepfather was also abusive. His stepfather was an alcoholic and often spent whatever little money he earned on alcohol. Gustavo's stepfather would often beat Gustavo's mother in front of all the children. Gustavo's stepfather was also physically towards him. Sadly, likely due to this abuse and neglect, Gustavo wet his bed daily until he was approximately 12-years-old. He was delayed in achieving developmental milestones.

Gustavo attended elementary school in Mexico until the fifth grade. Due to his cognitive disabilities and problems learning, he repeated the fifth grade. When Gustavo was approximately nine-years-old, his mother abandoned the family and moved to the United States. While separated from his mother, Gustavo was cared for by his adolescent sister and stepfather, and then subsequently by his aunt and uncle.

When Gustavo was approximately 11-years-old, he moved to the United States to reunite with his mother in Oxnard, California. However, his original stay in the United States was for only about six months, after which he returned to Mexico to live with his maternal grandmother because he did not speak English and had a difficult time learning in school.

A year later, at the age of 12, Gustavo returned to California again and began attending middle school. Gustavo struggled in school due to his cognitive disability, which was compounded by the fact that he did not speak English. These factors caused him to not be able to comprehend and learn. His grades during the last year of school that Gustavo attended, the ninth grade, shows just how poorly he did academically. *See* Ex. "A." Gustavo never returned to school after the ninth grade.

III. Gustavo Suffers from Intellectual and Developmental Disability

As the Court is aware, prior to the State withdrawing its notice of intent to seek the death penalty, Gustavo filed a motion to declare Gustavo intellectually disabled pursuant to N.R.S.

§174.098 and the *Atkins* decision. In support, Gustavo provided the written report of Dr. Ricardo Weinstein who concluded, "to a reasonable degree of scientific certainty," that Gustavo fulfilled "the criteria for the diagnosis of Intellectual Developmental Disorder (formerly Mental Retardation) according to the Nevada statutory definition, the DSM-V and the American Association of Intellectual and Developmental Disabilities (2010)." *See* Ex. "B."

Dr. Weinstein's evaluation and report shows that, due to his cognitive disability, Gustavo never maintained gainful employment for more than a full year. Gustavo was never able to maintain gainful employment not because he was lazy, but because he lacked basic skills. The jobs Gustavo did work were menial, including as a landscaper, dishwasher, and car washer.

Socially, Gustavo never lived independently, had or managed a bank account, or applied to obtain a driver's license. Rather, Gustavo has always lived with his mother, relatives, girlfriends, or wife, who took care of life's daily necessities and family finances. Gustavo had problems managing his own affairs. His family and friends always considered Gustavo as being "slow," having problems understanding what he was told and following instructions.

IV. Gustavo's Current Medical Condition

In 2007, Gustavo for the first time was officially diagnosed with glaucoma. Unfortunately, this began numerous years of inconsistent and neglectful medical treatment by his caretakers. Beginning in 2010, Gustavo suffered medical neglect from the Clark County Detention Center as medically urgent and required surgeries were at times delayed and sometimes flat out denied.

However, Gustavo has had other problems with his vision since very young. Unfortunately, he never received proper medical treatment due to his family's poverty. Because Gustavo's family did not have money for doctors, Gustavo would sometimes receive medical "treatment" from "curanderos," that is, a person who tries to heal an ailment through folk remedies. The family would

also rely on persons who had "magic healing powers" or "lucky powders" to help with Gustavo's health issues.

Currently, Gustavo cannot see anything out of his right eye because of glaucoma. This disease has also affected his left eye, which allows him only to see shadows and outlines of people and objects. Although he had surgery to his left eye on November 11, 2010, and had a tube planted by his eye to drain excessive fluid build-up, he is for practical purposes completely blind. Additionally, every now and then, his eyes will itch and irritate him to the point of needing further medical attention. His blindness has caused him to be at the mercy and help of others in getting around and doing things that people with sight take for granted. Gustavo's blindness will impact the rest of his life, including his safety and physical well-being while he remains in prison.

V. Gustavo's Family

Gustavo and his mother have been able to work on and to a large extent heal their formerly strained and difficult relationship. A big reason why they have been able to overcome their issues is that they have both converted to the Christian faith and are deeply religious.

His mother lives here in Las Vegas and his supported him for the past nine years while Gustavo was in custody at CCDC awaiting trial. She was a constant presence in court throughout the trial in this case and will continue to support him in the years to come. Additionally, Gustavo is also the father of six children.

VI. Conclusion

The extraordinary fact of this case is that the Court is imposing its sentence over 21 years after Gustavo is alleged to have committed the crimes he is being sentenced for. In the typical criminal case, a strong argument why a large prison sentence is recommended and necessary is to prevent a defendant from committing a similar crime or other crimes in general.

However, in this case, we have the rare ability to see that for the past 21 years, Gustavo has remained mainly trouble free. He was convicted of assault with a deadly weapon for an incident that happened in 1998, and for driving under the influence of alcohol in 2002. Other than that, he has lived a law-abiding life. Therefore, there is no argument to be made that Gustavo must spend the rest of his life in prison because he is a danger to society. In fact, the objective evidence the Court has at hand reveals that just the opposite is true. Based on Gustavo's conduct over the past 21 years, as well as the fact that he is blind, it can be said with almost certainty that he is not a danger to society and that the chances of him reoffending are slim to none. Indeed, even if the Court were to impose the sentence recommended in this Memorandum, Gustavo will be a very old man even if he is one day granted the privilege of parole.

Accordingly, it is respectfully submitted that the Court impose a prison sentence of 20 to Life for the two murder charges and 10 to 25 years on the sexual assault charge. It is further requested that the Court order that all counts run concurrently.

DATED this 19th day of September, 2019.

Submitted by:

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Attorneys for Defendant Gustavo Ramos

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2019, I served a true and correct copy of the foregoing document**, Sentencing Memorandum**, by submitting electronically for filing and/or service within the Eighth Judicial District Court pursuant to Administrative Order 14-02 for e-service to the following:

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giancarlo.pesci@clarkcountyda.com

Attorneys for Plaintiff

/s/ Andrea Jelks
Secretary for Nobles & Yanez Law Firm

Ex. "A"

FOR STUDENT: RAMOS, GUSTAVO M. HUENEME HIGH SCHOOL
059137 09M-2 3128 SO. "E" STREET 500 BARD ROAD
SS#: OXNARD CA 93033 OXNARD, CA 93030
DOB: 7/10/79 805/483-3174 805/385-2667
POB: MX
PARENT OR GUARDIAN: MARTINEZ, MARIA
IMMUN: S L C M G I R S
ENTRY DT DRIVERS ED: X X
9/01/94 TRAINING: DROPPED: 4/03/95 MEXICO

(P) = COURSE SATISFIES UC A-F COURSE ADMISSIONS REQUIREMENTS
(HP)= COURSE IS AN HONORS LEVEL OR ADVANCED PLACEMENT COURSE
(#) = THIS TECH PREP COURSE IS ARTICULATED WITH LIKE COURSEWORK IN THE VENTURA COUNTY COMMUNITY COLLEGE DISTRICT, SUBJECT TO CONDITIONS

------- 1ST SEMESTER 1994-95 ------------

SCHL	COURSE TITLE		SC	CRDTS	AB
HHS 2	ENGLISH 101		C	5.00	15
HHS 10	HEALTH ED/ST REQ-BIL	F			14
HHS 12	WORLD CIV 2 - BIL	P	D	5.00	14

------ 2ND SEMESTER 1994-95 ------------

SCHL	COURSE TITLE		SC	CRDTS	AB
HHS 2	ENGLISH 101		C	5.00	9
HHS 8	GEOG NON-TRACK/BIL		F		8
HHS 12	WORLD CIV 2 - BIL	P	F		9

------- 3RD SEMESTER 1994-95 ------------

SCHL	COURSE TITLE		SC	CRDTS	AB
HHS 1	*P.E. 9		F		33
HHS 2	ESL CONVERSATION 101		F		24
HHS 6	ESSENTIALS/MATH OPP		F		13
HHS 7	INTEG SCI 1A - BIL	P	A	5.00	20

CUMULATIVE TUC: 20.00 TGP: 45.00 GPA: .90 RANKED OF
COLLEGE TUC: TGP: GPA: .00

CREDITS TOWARDS GRADUATION:

01-P.E.:	04-GOV:	07-SCI P: 5.00	10-HE ST:	13-ECON:	
02-ENGL: 10.00	05-DE/ST:	08-ELECT:	11-FNART:	14-SCI B:	
03-US HS:	06-MATH:	09-F LNG:	12-W CIV: 5.00	15-W EXP:	

IMMUNIZATION DATES POLIO: 9/18/91 12/03/91 6/03/92
RUBELLA: 9/18/91 DPT/DT: 9/18/91 12/03/91 6/03/92
MEASLES: 9/18/91 MUMPS: 9/18/91
TB TEST: : :

SPANISH ASSESSMENT OF BASIC ED (SABE): 12/94 READING- 78 12/94 MATH- 15

LANGUAGE ASSESSMENT SCALE (LAS) TEST SCORE- 1 TEST DATE- 12/94

COMPREHENSIVE TESTS OF BASIC SKILLS 9/94 GRADE: 09 LEVEL:19 FORM: A

	NATL %ILE	STA9	NCE		NATL %ILE	STA9	NCE		NATL %ILE	STA9	NCE
READING	1	1	1	STUDY SKILLS	34	4	42	SPELLING			
MATH	1	1	1	SOCIAL STUDIES				SCIENCE			
LANGUAGE											

CALIFORNIA PHYSICAL AND HEALTH RELATED FITNESS TEST 4/95

AGE	GRADE	SIT-RE	SIT-UP	PUL-UP	MILE-T	:	TRI-SKNF	CALF-SKF	SKNF-SUM
15	9	NT	NT	NT	NT		NT	NT	.0
* MIN/STANDARD *		(25)	(42)	(5)	(7.50)				(12-25)

COMPUTER LITERACY: NOT COMPLETED GEOGRAPHY LITERACY: NOT COMPLETED

MINIMUM PROFICIENCY: WRIT: NOT TESTED COMM: FAILED 9/94 MATH: FAILED 9/94

END OF TRANSCRIPT FOR THIS STUDENT

Ex. "B"

Ricardo Weinstein, Ph.D.
LICENSE NO: PSY8954
CLINICAL AND FORENSIC NEUROPSYCHOLOGY

January 18, 2017

Ivette Amelburu Maningo
Attorney at Law
720 South 7th Street, 3rd Floor
Las Vegas, Nevada 89101

Abel Yanez
Attorney at Law

RE: Gustavo Ramos
DOB: 07-10-1979
DOI: 07-23-2013 and 10-08-2015

Dear Ms. Maningo and Mr. Yanez,

At your request I evaluated Mr. Ramos for the purpose of determining whether he fulfills the diagnostic criteria of Intellectual Developmental Disorder (formerly Mental Retardation). My evaluation included a clinical interview of Mr. Ramos, interviews of collateral witnesses, and a review of extensive documentation including school records, medical records, and criminal justice system records.

MATERIALS REVIEWED:

1. Hueneme School District records
2. Oxnard School District records
3. Hueneme High School record
4. Mexican school records (fifth grade only)
5. Ramos Martinez family tree
6. Gustavo Ramos social history timeline
7. Federal prison records
8. Nevada Department of Corrections records
9. Offense records related to Mr. Ramos's current criminal case

1202 Quail Gardens Ct. Encinitas. CA 92024 760846-1983. ricardoweins@gmail.com.

COLLATERAL SOURCES INTERVIEWED:

NAME	RELATIONSHIP	PLACE
Maria Ramirez	Mother	Las Vegas
Claudia Griselda Valdez	Older Sister	Las Vegas
Virginia Valdez Hernandez	Older Sister	Oxnard, CA
Jose Ramos	Brother	Oxnard, CA
Irma Villanueva	School District Administrator	Oxnard, CA
Heidi Hanes	School Principal	Oxnard, CA
Elizabeth Barrientos (Chavela)	Aunt	Mexico
Francisco Barrientos (Pato)	Uncle	Mexico
Gavino Martinez	Grandfather	Mexico
Paula Barrios Cardenas	Grandmother	Mexico
Santa Guadalupe Martinez	Aunt	Mexico
Juan Marcelo Osorio	Childhood Friend	Mexico
Porfiria Cardenas Hernandez	Great Grandmother	Mexico
Elizabeth Barrientos Cabrera	Cousin	Mexico
Francisco Barrientos	Cousin	Mexico
Rosario Ramos	Sister	Mexico

In addition, I conducted the following:

1. Clinical Interview
2. Mental Status Examination
3. Wechsler Adult Intelligence Test, 3rd Edition, Mexican Version (US Norms)
    - Verbal Scales
4. Bateria III, Cognitive and Achievement batteries
5. Dot Counting Test (DOT)
6. Rey Fifteen Item Test (Rey 15)
7. Comprehensive Test of Non Verbal Intelligence- Second Edition (C-TONI 2)
8. CNS Vital Signs:
    - Verbal Memory Test
    - Visual Memory Test
    - Finger Tapping Test
    - Symbol Digit Coding

- Stroop Test
- Shifting Attention Test
- Continuous Performance Test
- Perception of Emotions Test
- Reasoning Test

9. Neuropsychological Assessment Battery (NAB):
    - Attention Module
    - Executive Functions Module
    - Judgment
10. Delis Kaplan Executive Function System (D-KEFS):
    - Color-Word Interference Test
    - Proverbs
11. Rey Complex Figure Drawing
12. BANFE 2:
    - Laberintos
    - Senalamiento Autodirigido
    - Ordenamiento Alfabetico de Palabras
    - Resta Consecutiva
    - Suma Consecutiva
    - Clasificacion de Cartas
    - Clasificaciones Semanticas
    - Efecto Stroop Forma A
    - Fluidez Verbal
    - Juego De Cartas
    - Seleccion de Refranes
    - Torre de Hanoi
    - Memoria de Trabajo Visoespacial
13. Quantitative Electroencephalogram (QEEG)

MENTAL STATUS EXAMINATION:

I interviewed and tested Mr. Ramos on July 23, 2013, and October 8, 2015. Mr. Ramos presented for interview and testing as a Latino male that looks approximately his stated chronological age. He was appropriately dressed and groomed in jail garb. He has black hair, a moustache, glasses and his head is shaven. He is 5'5" and weighs 170 lbs. He is blind in the right eye due to Glaucoma and, at the time of testing, had adequate vision in the left eye. He is right handed. He has multiple tattoos.

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I explained to Mr. Ramos the purpose of the interview and testing, the limits of confidentiality and the need to interview friends and relatives. He understood the information and acquiesced to participate.

Mr. Ramos was open, disclosing and cooperative. He was able to communicate adequately and no significant receptive or expressive language deficits were identified. He related well to the evaluator. The interview and testing were conducted in Spanish.

Mr. Ramos was able to answer the simple questions contained in the standard mental status examination for mental acuity. His levels of alertness, attention and orientation were intact. His knowledge of current affairs was sufficient.

Mr. Ramos denied experiencing any symptoms of a major psychiatric disorder in the form of psychosis or schizophrenia. He denied experiencing visual, auditory or olfactory hallucinations. There was no paranoid ideation identified.

Mr. Ramos also denied experiencing any physiological symptoms of depression including sleep, appetite or mood problems. He denied suicidal or homicidal ideation.

Mr. Ramos's capacity for psychological insight is limited.

CLINICAL INTERVIEW:

Mr. Ramos informed me that he was born in Mexico, D.F., Mexico, on 07-10-1979. He is the only child from his parents' relationship. He never met his biological father. Ramos is his stepfather's last name. He does not know if he was formally adopted. He has three half sisters and two half brothers.

Mr. Ramos grew up with his mother, stepfather and siblings. His stepfather was a cobbler. He described his childhood as living in poverty in a very poor environment being deprived of basic necessities.

His mother, Maria Ramirez, is 58 years old and presently lives with Mr. Ramos' younger half brother. She helps take care of the half brother's children. She formerly worked at a hotel in Las Vegas but is presently disabled.

Mr. Ramos lived in Mexico D.F. until he was approximately nine years old. His mother had moved to Oxnard, CA, in 1988. He moved to California to be reunited with his mother. While his mother was away he remained under the care of a sister and his stepfather. His parents separated and his stepfather never came to the

United States. While in Mexico, when his mother moved to the U.S., he also lived with an aunt and uncle, Chavela and Francisco.

In Mexico he attended elementary school up to the fifth grade. He repeated the fifth grade. When he moved to Oxnard, California, he entered the seventh grade.

When he was approximately 11 years old he returned to Mexico and lived with his maternal grandmother for approximately 4 months.

Mr. Ramos returned to Oxnard. He attended up to the 9th grade. When he was 15 years old he met the mother of his first two daughters. She was one year younger.

He cohabitated with the mother of his children until 1998. In 1998, he met another woman that was approximately 10 years older than he was. He left his common law wife and moved to Las Vegas, Nevada. He procreated three boys in total.

Mr. Ramos has never maintained gainful employment for a full year. In California, he worked in landscaping and in a restaurant. He also worked at a car wash and helped a relative sell vegetables. He also has done basic labor activities. In Las Vegas he worked in landscaping at a hotel and at the airport doing menial labor activities. He has never been able to maintain gainful employment. He was willing to work but lacked basic skills and constancy.

Mr. Ramos has previously been incarcerated in Las Vegas, Nevada.

Mr. Ramos acknowledged that he started drinking alcohol at the age of 11. He denied blackouts or drinking to the point of losing consciousness. He admits to using cocaine when he was fifteen years old and methamphetamine starting approximately in 2006.

Mr. Ramos reported that he played soccer. Although he "dreamed" of being a professional player, he never played as a member of a team. He played most weekends. He stated that he hit the ball with his head frequently but never had any incident in which he lost consciousness.

As a child, pretending to be "Superman," he jumped from a tall fence and hit his head but he did not hurt himself to the point of requiring hospitalization. He has had multiple motor vehicle accidents but has never lost consciousness or required medical intervention.

He stated that he is in good health. He received surgery on his right eye due to the glaucoma on November of 2010.

Mr. Ramos confided that he did not do well in school and was unable to understand and learn. He has never signed a lease, lived independently, had or managed a bank account, or applied and obtained a driver's license. He has always lived with his mother, relatives or a female partner.

Mr. Ramos stated that he became religious and accepted Christ as his savior. He reads the Bible and attends Bible classes.

INTELLECTUAL DEVELOPMENTAL DISABILITY (IDD) (FORMERLY MENTAL RETARDATION):

The State of Nevada for legal purposes defines "intellectual disabled" as: "significant subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and manifested during the developmental period." NRS § 174.098(7)

The *Diagnostic and Statistical Manual of Mental Disorders* (5th ed. 2013) ("DSM-5") *Fifth Edition,* defines intellectual disability as follows:

Intellectual disability (intellectual developmental disorder) is a disorder with onset during the developmental period that includes both intellectual and adaptive functioning deficits in conceptual, social, and practical domains. The following three criteria must be met:

A. Deficits in intellectual functions, such as reasoning, problem-solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing.

B. Deficits in adaptive functioning that result in failure to meet developmental and socio-cultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such as communication, social participation, and independent living, across multiple environments, such as home, school, work, and community.

C. Onset of intellectual and adaptive deficits during the developmental period.

According to the American Association on Intellectual and Developmental Disabilities ("AAIDD"),

Intellectual disability is characterized by significant limitation both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical skills. This disability originates before age 18. The following five assumptions are essential to the application of this decision:

1. Limitations in present functioning must be considered within the context of community environments typical of the individual's age peers and culture.
2. Valid assessment considers cultural and linguistic diversity as well as differences in communication, sensory, motor, and behavioral factors.
3. Within the individual, limitations often coexist with strengths.
4. An important purpose of describing limitations is to develop a profile of needed supports.
5. With appropriate supports over a sustained period, the life functioning of the person with intellectual disability generally will improve.

Intellectual functioning is defined as an IQ score that is approximately two standard deviations below the mean, considering the standard error of measurement for the specific instrument used and the instruments' strengths and limitations.

Adaptive behavior is defined as performance that is approximately two standard deviations below the mean of either (a) one of the following three types of adaptive behavior: conceptual, social and practical or (b) an overall score on a standardized measure of conceptual, social, and practical skills.

See AAIDD, *Intellectual Disability: Definition, Classification, and Systems of Supports* ("AAIDD Manual") (11th ed. 2010)

Causes of Mental Retardation:

The diagnostic criteria for intellectual disability do not require identifying the causes of the condition. Nevertheless, an evaluation of the possible causes of and risk factors for developing intellectual disability may provide important corroborating information for a diagnosis.

> The etiology of [intellectual disability] is variable and complex. In fact, there are more than 350 known disorders and conditions; both genetic and acquired that can result in mental retardation at different developmental stages.

> . . . One of the most common causes of mental retardation are genetic factors. In addition during the pregnancy numerous events can contribute to [intellectual disability] . . . These include poor nutrition, toxic substances, maternal disease or infection, blood incompatibility, drugs and alcohol exposure, and cigarettes.

Sandra C. Redden, Stephen R. Hooper, & Martha Pope (2002). *Mental Retardation.* San Diego, CA: Academic Press.

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AAIDD TABLE OF RISK FACTORS (AAIDD Manual, at 60):

Risk Factors for Intellectual Disability

Timing	Biomedical	Social	Behavioral	Educational
Prenatal	1. Chromosomal disorders 2. Single-gene disorders 3. Syndromes 4. Metabolic disorders 5. Cerebral dysgenesis 6. Maternal illnesses 7. Parental age	1. Poverty 2. Maternal malnutrition 3. Domestic violence 4. Lack of access to prenatal care	1. Parental drug use 2. Parental alcohol use 3. Parental smoking 4. Parental immaturity	1. Parental cognitive disability without supports 2. Lack of preparation for parenthood
Perinatal	1. Prematurity 2. Birth injury 3. Neonatal disorders	1. Lack of access to prenatal care	1. Parental rejection of caretaking 2. Parental abandonment of child	1. Lack of medical referral for intervention services at discharge
Postnatal	1. Traumatic brain injury 2. Malnutrition 3. Meningoencephalitis 4. Seizure disorders 5. Degenerative disorders	1. Impaired child-caregiver interaction 2. Lack of adequate stimulation 3. Family poverty 4. Chronic illness in the family 5. Institutionalization	1. Child abuse and neglect 2. Domestic violence 3. Inadequate safety measures 4. Social deprivation 5. Difficult child behaviors	1. Impaired parenting 2. Delayed diagnosis 3. Inadequate early intervention services 4. Inadequate special education services 5. Inadequate family support

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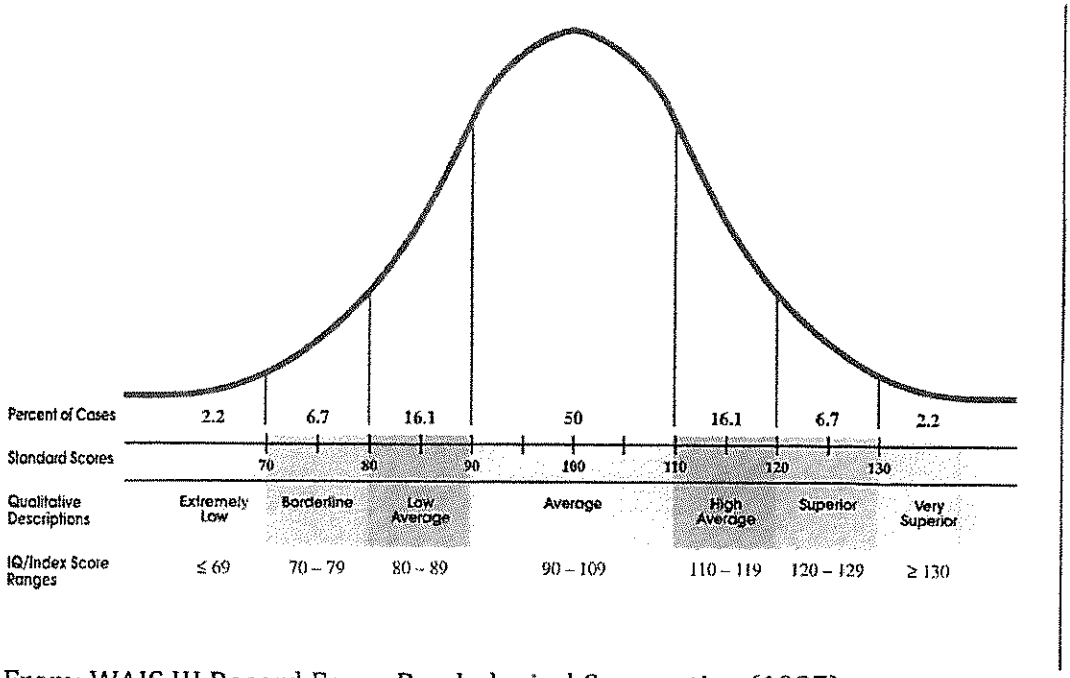
INTELLECTUAL FUNCTIONING

Under the DSM-5, IQ (Intelligence Quotient) scores are no longer the sole measure of an individual's intellectual functioning. Rather, intellectual functioning should be assessed by both clinical assessment and standardized intelligence testing.

Although originally the IQ was developed and obtained by dividing the individual's mental age by the chronological age, presently IQ scores are calculated in relationship to a normative sample that follows a normal distribution. Most of the intelligence tests used today have a value mean of 100 and a standard deviation of 15. The figure below depicts the normal curve with the percent of cases that fall within standard deviations, standard scores, the equivalent IQ/Index scores ranges and descriptive categories.



From: WAIS III Record Form. Psychological Corporation (1997)

Clinical practices also require adjusting IQ scores to account for the Flynn Effect, a scientifically established phenomenon that artificially inflates IQ scores on outdated versions of IQ tests. Kevin S. McGrew (2015). Norm Obsolescence: The Flynn Effect. In Edward A. Polloway (Ed.), *The Death Penalty and Intellectual Disability* (pp. 155-169). Washington, D.C.: AAIDD. McGrew, p. 162. AAIDD Manual, p. 37.

On The WAIS III, Mexican Version (US Norms) Mr. Ramos obtained the following VERBAL IQ scores:

Sum of Scale Scores	Verbal IQ Score	Percentile Rank	95% Confidence Interval	Flynn Effect Adjustment
38	78	7	73 - 83	72 95%: 67-77

The WAIS III was normed in in 1991. Considering the Flynn Effect the scores are approximately: Verbal IQ: 72 at 95% confidence Interval; 67(67 to 77).

On the C-TONI 2, Mr. Ramos obtained the following scores:

SCALE	SUM OF SCALED SCORES	COMPOSITE INDEX	95% CONFIDENCE INTREVAL	Flynn Effect Adjustment
PICTORIAL SCALE	17	71	66-76	
GEOMETRIC SCALE	20	78	73 – 83	
FULL SCALE	37	72	67 - 77	70 95%: 65-75

The C-TONI 2 was normed in 2007, considering the Flynn Effect the scores would be approximately: Full Scale 70 at 95% Confidence Interval 65 to 75.

On the Bateria III Mr. Ramos obtained the following scores:

SCORE REPORT

Name: Ramos, Gustavo
Date of Birth: 07/10/1979
Age: 36 years, 3 months
Sex: Male
Date of Testing: 10/09/2015

Examiner: RW

TABLE OF SCORES
Batería III Normative Update Pruebas de habilidades cognitivas and Pruebas de aprovechamiento
WJ III NU Compuscore and Profiles Program, Version 3.0
Norms based on age 36-3

CLUSTER/Test	Raw	W	AE	EASY to DIFF		RPI	SS (95% Band)	GE
GIA (Std)	-	496	8-10	7-4	11-3	31/90	79 (76-82)	3.6
HABILIDAD VERBAL (Std)	-	500	9-11	8-5	11-11	8/90	82 (78-86)	4.5
HABILIDAD PENSAR (Std)	-	490	7-5	5-11	9-9	45/90	80 (76-84)	2.1
EFICIENCIA COG (Std)	-	509	11-6	9-8	14-4	60/90	89 (83-95)	6.1
PERCEPCIÓN FONÉMICA	-	496	8-2	5-11	12-6	52/90	85 (80-90)	2.8
MEMORIA de TRABAJO	-	494	8-9	7-6	10-6	20/90	82 (76-87)	3.4
LENGUAJE ORAL (Std)	-	492	8-1	6-1	11-6	65/90	80 (74-87)	2.7
APROV BREVE	-	520	12-5	10-10	14-7	26/90	88 (85-91)	7.0
AMPLIA LECTURA	-	520	13-7	11-7	16-3	50/90	90 (86-93)	8.2
AMPLIAS MATEMÁTICAS	-	494	9-2	8-4	10-5	11/90	70 (66-74)	3.8
BREVE LECTURA	-	527	14-6	12-3	19	54/90	92 (89-96)	9.0
BREVES MATEMÁTICAS	-	497	9-5	8-8	10-4	6/90	74 (69-78)	4.0
DES en CÁLC MAT	-	500	9-11	8-8	11-8	33/90	74 (68-80)	4.6
DES ACADÉMICAS	-	529	14-3	12-2	18-0	59/90	92 (89-95)	8.7
FLUIDEZ ACADÉMICA	-	494	9-4	7-9	11-5	30/90	76 (72-80)	3.9

When the Standard Error of Measurement and the Flynn Effect are applied the IQ score obtained (GIA) would be significantly lower. The Bateria III was published in 2005 and therefore normed in 2003. With adjustment for the Flynn Effect, the Full Scale Equivalent is 76, with a 95% confidence interval of approximately 71 to 81.

While in custody with the Nevada Department of Corrections in 2006, Mr. Ramos obtained a scaled score of 72 on the Shipley Institute of Living Scale, which provides a brief estimate of an individual's cognitive functioning. This instrument was published in 1940, therefore, applying the Flynn Effect would significantly lower the score.

In addition, Mr. Ramos's social history and past school performance demonstrate deficits in intellectual functions such as reasoning, problem-solving, planning, judgment, academic learning, and learning from experience. Mr. Ramos performed

poorly in school in both Mexico and the United States. He repeated the fifth grade in Mexico, and in the United States, left school in the ninth grade due to failing grades. Mr. Ramos had difficulty following instructions since he was young.

ADAPTIVE FUNCTIONING

Mr. Ramos was consistently described by the sources interviewed as being slow, having problems understanding what he was told and following instructions. He had problems managing his own affairs. He was one of the slowest to learn from the siblings. He would become easily frustrated. He had problems achieving in school. He repeated a grade in Mexico and left school in the ninth grade in Oxnard because he had problems learning.

He was delayed in achieving developmental milestones. He wet his bed almost daily until he was approximately 12 years old. He was willing to work but lacked basic skills, and was unable to maintain stable employment for more than a few months. Many of his friends and siblings went on to achieve greater daily living abilities and work related skills.

He never lived independently, always cohabitating with a woman who took care of the daily necessities and family finances or with relatives who looked after him.

He never entered into a legal contract like a rental lease, he required assistance to fill out work applications or had friends or relatives obtain or provide employment for him. He never had a bank account or obtained a driver's license.

He exhibited poor judgment since he was a young child and was unable to complete simple tasks. He had problems understanding instructions. His mother did not send him to the corner store when he was a child for fear that he would not remember what to buy or lose the money.

The AAIDD recommends the use of Standardized Questionnaires (ie; Vineland, ABAS), to determine Adaptive Behavior Deficits. Although the reliability of the data has limitations, his sister Virginia Valdez, who took care of him for several years when their mother moved to a different city, completed the ABAS II questionnaire in Spanish. She was asked to recall to the best of her abilities how he behaved when he was approximately 12 years old, which is the time frame she was his primary caretaker. The following Scores were obtained:

COMPOSITE	SUM OF SCALED SCORES	COMPOSITE SCORE	PERCENTILE RANK	95% CONFIDENCE INTERVAL
GAC	13	44	< 1	41 - 47
CONCEPTUAL	3	49	<1	45 - 53
SOCIAL	3	58	< 1	53 - 63
PRACTICAL	7	46	< 1	42 - 50

AGE OF ONSET

The age of onset requirement "refers to recognition that intellectual and adaptive deficits are present during childhood or adolescence." DSM-5, at 38. A person need not present a previous ID diagnosis or childhood IQ tests to satisfy this requirement. Rather, "the clinician must use other sources of information . . . including the persons' history, in order to determine the manifestations of possible ID" during the developmental period. AAIDD Manual, p. 96. "The key . . . is not whether the person was seen as having ID . . . but, rather, whether there were clear signs that the person's post-18 impairment did not emerge suddenly . . . in adulthood." Stephen Greenspan et al. (2015). Age of Onset and the Developmental Period Criterion. In Edward A. Polloway (Ed.), *The Death Penalty and Intellectual Disability* (pp. 77-81). Washington, D.C.: AAIDD.

Based on the documents reviewed and the information obtained by interviewing collateral sources, it is evident that Mr. Ramos's deficits and limitation are developmental in nature and were present prior to the age of 18. Specifically, multiple relatives indicated that Mr. Ramos displayed intellectual and adaptive deficits since childhood.

Furthermore, Mr. Ramos was exposed to numerous risk factors for intellectual disability that further support the diagnosis and demonstrate that his condition is developmental in nature. It is reported that Mr. Ramos's mother did not receive prenatal care while pregnant with him. Mr. Ramos's childhood was characterized by extreme poverty and parental neglect. His mother, who had six children with five different men, did not show love and affection towards her children, and abandoned Mr. Ramos and his siblings when they were young. The family lacked basic necessities and often went hungry, as Mr. Ramos's stepfather spent the family's money on alcohol.

QUANTITATIVE ELECTROENCEPHALOGRAM (QEEG)

Brain imaging shows excessive slow activity in the frontal regions of the brain, which is indicative of impaired cognitive and executive functioning. The results are consistent although not diagnostic of an Intellectual Developmental Disability, which is developmental in origin as opposed to an acquired brain dysfunction.

CONCLUSION

It is my opinion to a reasonable degree of scientific certainty that Mr. Gustavo Ramos fulfills the criteria for the diagnosis of Intellectual Developmental Disorder (formerly Mental Retardation) according to the Nevada Statutory definition, the DSM-V and the American Association of Intellectual and Developmental Disabilities (2010).

The neuropsychological testing conducted reflects significant brain dysfunction consistent with the diagnosis of Intellectual Developmental Disabilities. Specifically he exhibits problems in all Executive Functions including, attention, memory, judgment, and impulse control. The results are valid and reliable since he demonstrated good effort in tests that specifically measure effort and he obtained similar results when asked to perform similar tasks. The results are further confirmed and supported by the Quantitative Electroencephalogram conducted.

If you have any questions please do not hesitate to contact me.

Sincerely,

Ricardo Weinstein, Ph.D.

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, Plaintiff, vs. GUSTAVO RAMOS, Defendant.	CASE NO: C-10-269839-1 DEPT. III

BEFORE THE HONORABLE DOUGLAS W. HERNDON,
DISTRICT COURT JUDGE

FRIDAY, SEPTEMBER 20, 2019

RECORDER'S TRANSCRIPT OF PROCEEDINGS
RE: MOTION TO STRIKE PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE AND SENTENCING

See Appearances on Page 2

RECORDED BY: TRISHA GARCIA, COURT RECORDER

APPEARANCES:

For the Plaintiff:	PAMELA C. WECKERLY, ESQ.
For the Defendant:	IVETTE A. MANINGO, ESQ. ABEL YANEZ, ESQ. JAMIE J. RESCH, ESQ.

ALSO PRESENT:

Interpreter:	MARIELLA LOPEZ
Victim Impact Speakers:	STACY SABRAW MICHELLE SULLIVAN KATHERINE BOCKHORST LESLEE SIEGEL ROSLYN SIEGEL JACK SIEGEL

Las Vegas, Nevada; Friday, September 20, 2019

[Proceeding commenced at 10:24 a.m.]

THE COURT: On the record of Mr. Ramos's matter, 269839.

You guys, do you want him to come sit at table with you? Is that better?

MS. MANINGO: Sure.

THE COURT: Yeah.

MS. MANINGO: That would be great. Thank you.

THE COURT: Okay. Thank you, Officer.

MS. MANINGO: Thank you, Your Honor.

THE COURT: Could you assist him, please, sir, Officer? Thank you.

Okay. Before we get started with sentencing, we have the motion that defense filed in regard to striking the note -- the life without the possibility of parole as a potential penalty.

All right. Abel?

MR. YANEZ: Thank you, Judge.

Let me preface my argument, Judge, with I guess what the precedent is and isn't. Obviously, if the U.S. Supreme Court or the Nevada Supreme Court speaks on a subject with the exact same facts that we would have -- that we have in this case, this court is bound by that precedent.

We don't have that in this case. We don't -- there's no

case on point. That being said, the contrary's true as well, of course, that I don't have a specific case that says you need to follow this exact case.

THE COURT: Right.

MR. YANEZ: I understand that -- I don't think it's a stretch or, as the State put it in their opposition, judicial activism from this Court if the Court were to grant my motion.

I think both in the analysis that's done in the motion when it comes to Supreme Court precedent over the past 15 years of *Roper Graham Miller* and then *Montgomery*, as well as the actions that the Nevada Supreme Court has taken related to the issue raised in my motion and the Nevada legislature, I think this Court has the power -- and I actually quoted *Marbury v. Madison* -- of judicial review to apply an analysis of the constitutional law that's out there to a new set of facts that we have in this case that the Supreme Court has never decided.

In fact, I also wanted to point out in the *Miller* case -- I put this in the footnote -- the *Miller* court explicitly said that it was not considering, therefore not deciding Miller's alternative argument that he made to the Court that the 8th Amendment requires a categorical ban on life without parole for juveniles.

So the facts of this case obviously require, I think, two things or two types of analysis that there's no case law on point. Number one, the furthest that the U.S. Supreme Court has gone when it comes to juveniles and life without is the *Miller* case, which

they explained you cannot have a mandatory life without parole sentence. That violates the 8th Amendment.

THE COURT: Right.

MR. YANEZ: However, currently pending before the U.S. Supreme Court -- and I noted this in my motion -- there's oral arguments that in October is the *Malvo* case -- I believe out of the 4th Circuit -- that the 4th Circuit held under any circumstance, you cannot have a life without parole sentence for juveniles. That's issue number one.

The other obvious issue is that Gustavo wasn't under the age of 18 at the time --

THE COURT: Right.

MR. YANEZ: -- that these crimes were alleged to have occurred. However, I've, provided I believe, not only scientific-backed research, but case law in a federal district court out of Connecticut that found there is no practical difference mental status-wise, maturity-wise, rehabilitation-wise between someone under the age of 18 and someone who, in fact, is 18.

THE COURT: Okay.

MR. YANEZ: So those are the two separate issues. I know there's no cases on point, but I think there's enough case law out there, and the actions of the Nevada Supreme Court and the Nevada legislature, that this Court, under it's power of judicial review, can find that the portion of the statute in Nevada for 18-year-olds who were 18 at the time that the crime's alleged to have been committed,

that you cannot impose a sentence of life without parole as it's a violation of the cruel and unusual punishment.

As to the Nevada Supreme Court, they've gone a step further than the U.S. Supreme Court because the U.S. Supreme Court has never decided the issue of whether if you have a cumulative sentence, that in effect is the same as life without, that's unconstitutional as well. The Nevada Supreme Court has found that in the Boston case.

And then the Nevada legislature, first in 2015 first came up with a statute that says juveniles who are convicted of non-homicide offenses must be eligible -- it's not mandatory parole, but eligible for parole after 15 years.

THE COURT: Correct.

MR. YANEZ: And at that time in 2015, they also put a statute that says for those who commit one -- and they isolated it to one murder -- that they're eligible for parole as long as they're under 18 and as long as it was just one murder. They're eligible for parole after 20 years.

Now, one thing I did want to clarify -- because I didn't want the Court thinking I was trying to mislead the Court -- the Assembly Bill 424 that the legislature considered this year was passed by the Assembly, but it died in the Senate --

THE COURT: Correct.

MR. YANEZ: -- because the 120 days ran out. The bill, Assembly Bill 267, in 2015, that passed with a 63-to-0 vote in favor of

those -- of that law.

THE COURT: Correct.

MR. YANEZ: And in Assembly Bill 424 this year it was -- in the Assembly, it was 33 votes in favor, 7 against, and 2 that were absent who didn't vote. Obviously, I know that's not the law.

THE COURT: Correct.

MR. YANEZ: But I think it's an indication of where -- not only where the nation is, but where this state is when it comes to life without parole for those who are under 18, and as the medical, psychological research indicates, I think is applicable to 18-year-olds as well.

So based on those arguments, Judge, I'm asking the Court to strike the sentence of life without parole as it applies in this case to someone who was 18 years old at the time the crime was alleged to have committed.

THE COURT: The problem, though, is, I mean, how far would you go, right? I mean, how do you develop a line to say, well, if they're 18 and they're really functionally the same as a 17-year-old, wouldn't that also apply if you're 19 and a day? I mean, it gets really slippery slope.

MR. YANEZ: It does, but it's something the Court doesn't have to consider. The Court can apply it just to these set of facts of an 18-year-old.

And I agree with the Court's analysis that eventually there has to be a line drawn, but that line can't be drawn arbitrarily as I

think it is right now. It's just we pick 18 for various reasons. That's the way it's always been. You're allowed to vote at 18. There's a lot of things that we're not allowed to do until we're 21: own or possess a gun --

THE COURT: Sure.

MR. YANEZ: -- alcohol, tobacco, stuff like that.

So our position is under a fairness due process, that line has to be drawn on basically a science and what that teaches us about the difference between a 17-year-old or an 18-year-old or a 19-year-old.

THE COURT: Right.

MR. YANEZ: One day that line will probably be drawn -- it's going to have to be drawn somewhere. I mean, unless the science advances to a point --

THE COURT: Well, but it's kind of been drawn; right? And I mean, it's really -- isn't it kind of the legislature's job to receive the type of information we're talking about and decide if a line is going to be drawn, where that line gets drawn as opposed to the Court kind of --

MR. YANEZ: Well, I don't think they're mutually exclusive. I don't think it's necessarily the legislature. That is one way to go.

THE COURT: Right.

MR. YANEZ: But as the Federal Court in Connecticut, the *Cruz* court indicated that they -- that the court system has a right to draw that as well under the 8th Amendment, on what's prohibited or

not under the cruel and unusual punishment clause. And that Court felt that 18 years old is the equivalent of a juvenile, and it applied the *Miller* decision to an 18-year old. So I don't think this Court is stepping out of its authority or being judicially active if it, in fact, grants my motion.

The fact that the legislature can change the law as well I don't think necessarily then equates to Your Honor can't make that decision as well. Obviously, that's the province of this Court to say what the law is or isn't and what's constitutional or not, in light of the fact that there's no precedent constraining this Court on what it can and cannot do because that issue has never been presented to the U.S. Supreme Court. And that's kind of the same rationale that the *Cruz* court -- that's the Federal Court in Connecticut -- used.

THE COURT: Okay. Ms. Weckerly?

MS. WECKERLY: So the State's position that it would be is judicial activism is based on a couple points. And actually, the Court discussed them with Mr. Yanez.

If the Court looks at this in terms of whether or not he's a minor, this defendant isn't a minor. There's no case and no court that says it's constitutionally improper to apply a life without sentence, except that Court in Connecticut, to someone who's over 18. He was almost 19 at the time he committed this crime.

And even if you take the court in Connecticut, they don't hold that the life without sentence would be improper constitutionally for someone who committed two homicides, which

we have in this case as well.

And so the only way the Court could do this is if the Court found that it was constitutionally improper to apply a life without sentence on a double homicide to someone who was over 18 at the time of the crime.

Short of that, the Court is -- would be essentially legislating because the -- it's pretty clear what the legislature in Nevada considered. They had the opportunity to consider Mr. Yanez's arguments or those proposals, and they chose not to enact. And we know what their intent was because of the statute limiting the sentences for juveniles who are under 18. And interestingly, even that statute provides for a lengthier or a life without sentence -- or a stacked sentence, I guess I should say --

THE COURT: Right.

MS. WECKERLY: -- in the event of a double homicide.

So we have a clear message from our legislature, and no holding upon which this Court could premise an unconstitutional interpretation of a life without sentence given the double homicide in this case and also that this defendant is over 18 at the time of the crime.

So from the State's perspective, there isn't a proper judicial basis upon which to grant the motion.

MR. YANEZ: And if I could just make one last point --

THE COURT: Sure.

MR. YANEZ: -- since it's relevant -- of a Nevada Supreme

Court case decision that just came out last week. The legislature could have also said that for battery DV trials, you're entitled to a jury trial.

THE COURT: Right.

MR. YANEZ: They never did. The Nevada Supreme Court said that is mandatory. So there are things obviously that the legislature has considered, has refused to do, that a court of law can do.

THE COURT: Well, you know, this is a really kind of difficult area, because every one of us in our lives knows 14-year-olds who probably by the circumstances in their life -- maybe their parents are not around a lot or whatever it may be -- are more mature and make better decisions than a lot of 30-year-olds we know; right? And then we know a lot of kids that make horrible decisions. And I don't think it is any stretch of anything to say, generally speaking, juveniles make bad decisions because they don't have the life experience that adults have, and they have certain -- haven't developed from a brain standpoint in a way that adults have.

And decision-making is at the heart of everything that happens in the criminal justice system; I say it all the time. I mean, people don't generally end up in court because they're horribly bad people; they end up in court because they make really bad decisions, series of decisions.

But I think that it's a very difficult slippery slope to say, look, we have this kind of idea of juveniles versus adults, but we

want to kind of move it a little bit to say an individual is kind of functionally a juvenile because they're a little over 18, or 18 months and -- or 18 years, 10 months, 5 days, whatever it is in this case. Whether it's 18 and a day or 28, I think what the law stands for that proposition is we are going to draw a very clear distinction, because it's the best thing we can do from a legislative standpoint is to say if you're a juvenile, i.e. under 18, there's going to be certain ways you get treated in juvenile courts as opposed to being taken to adult court, the way we don't adjudicate for juveniles, the way we do in adult court, and then the penalties that are going to available as well.

You know, the fact that the legislature recognizes that you can be charged in adult court even though you're a juvenile kind of is an indication of I think what the legislature thinks of certain types of the crimes, but they certainly -- and I believe the legislature is in a much better position than the courts to kind of come in and evaluate the science of everything and decide whether there needs to be any more movement of that line or any more specificity in saying what penalties are or are not available.

I believe the gentleman's 18 years old at the time, and the law provides that life without is a potential for that, and that's appropriate in this case to be able to consider that. Thereafter, it's incumbent on the courts to kind of make that individualized determination of whether that sentence applies in an appropriate case or not. You know, what does somebody's age and the certain circumstances of the offense dictate in terms of how we should

sentence them, but not strike certain abilities within the statute to sentence based upon the fact that they're probably closer to a juvenile than they are to, you know, you and I in terms of our ability to make decisions.

So I do think that the law provides that life without is an appropriate punishment and that he qualifies for it because he is an adult under Nevada law. Okay? All right. So the motion to strike that penalty's going to denied.

And then my understanding from the State is you have maybe six, maybe more, speakers.

MS. WECKERLY: That's correct, Your Honor.

THE COURT: But they'll be allowed to speak last, obviously.

So Ms. Weckerly -- well, first off, Mr. Ramos, you're going to be adjudicated guilty of the two counts of first-degree murder with use of a deadly weapon and the one count of sexual assault with the use of a deadly weapon.

Okay. State.

MS. WECKERLY: Your Honor, I know the Court had a particularly good view of this trial sitting as a bench trial, so I will be brief.

This case came in to the DA's office in October of 2010. The prelim was in 2010. And this case is actually typical of capital litigation under the old system before we had four courts hearing exclusively homicide trials.

There was a notice of intent within 30 days -- or filed within 30 days after the preliminary hearing or the information was filed in District Court. And so that was all in a pretty compressed time period.

Six years into the case, in December of 2016, literally six and a half years into the case or a little over six years into the case, that's when the *Atkins* motion was filed. And the defense took the position that Mr. Ramos was ineligible for the death penalty because of an intellectual disability, and they attached those reports to their sentencing memorandum. And the State had an expert examine the defendant, and that expert reached a different conclusion.

At that point the defense asked the State to consider a bench trial. Obviously, that would mean that we would have to give up the death penalty in the course of that agreement. And the State considered the nature of this crime and whether we wanted to give up the death penalty, given that we had two very innocent victims and the sexual assault and the incredibly violent nature of this crime. But at that point we're seven years into the case literally in District Court. And, you know, we make decisions based on that.

And so the State opted to give up the death penalty and agreed to a bench trial.

THE COURT: Okay.

MS. WECKERLY: From the State's perspective, that was a really big concession given to the defendant for sentencing, that he was no longer facing that possibility given the nature of this crime.

The system is much better now, cases move faster, but that is sort of a reality of capital litigation.

THE COURT: Right.

MS. WECKERLY: That, you know, we could have had the *Atkins* hearing and litigated three more years and been beyond ten years before this case ever went to trial.

I know this Court is very familiar with the facts of the case, sitting as the trier of fact. And the Court is aware that, you know, we are dealing with the most innocent of victims in this case.

I think the family of Wallace Siegel could maybe take some solace in the fact that he might have been asleep at the time he was struck, and maybe that gives them some sense of peace. I don't think the same thing can be said unfortunately for what happened to Helen Sabraw.

Looking at those crime scene photos, it is quite evident she fought back, that it was an attack that took place in several areas of her residence, and that it wasn't over quickly for her. And it was incredibly violent and also included an additional violation of a sexual assault. And her family, you know, is, I'm sure, aware of what she went through.

And I think it's a special kind of suffering that in cold cases victims' families -- you know, when cases aren't resolved, a lot of things happened and families suffer sort of an additional pain because of the nature of that. In reading the defense sentencing memorandum, I was struck by the argument that, well, this

defendant has been, you know, crime-free for the last 21 years. And what struck me about that is, he's been in custody for 10 of those years, so I'm not sure that's a real credit to his character.

But I'm not being flippant when I say, you know, not having additional arrests after committing two homicides, a sexual assault, and an attempt murder that was plead down to an assault with a deadly weapon, you know, that's not really saying a lot in terms of someone's character or violence or the crimes they've inflicted on the community.

And I would say that even if this were, you know, one isolated incident, the enormity of what happened at that retirement home and the nature of the injuries that were inflicted on Helen Sabraw and Wallace Siegel were enormous and very painful and with absolutely no reason whatsoever for any of it to have happened.

And so the State respectfully asks the Court to consider the totality of what happened to those individuals when sentencing. And, you know, what accounts for that level of violence, what accounts for taking the lives of two people, and what accounts for the fact that they were very vulnerable and had no interaction with the defendant whatsoever at the time they were murdered. It is closure perhaps a little bit 21 years later, but there should be justice. And from State's perspective, that would be a life without sentence on both of the murders.

THE COURT: All right. Mr. Ramos, is there anything you

want to say before your attorneys speak on your behalf? And the record will reflect that we do have the interpreter who has been present with Mr. Ramos the whole time through our hearing, so --

MS. MANINGO: Court's indulgence. Court's indulgence. I'm sorry, Your Honor.

THE COURT: That's okay. Take your time.

MS. MANINGO: Your Honor, he's not going to give a statement at this time.

THE COURT: Okay. All right. And, Mr. Ramos, you had the chance to discuss that with your attorney; correct?

THE WITNESS: Yes.

THE COURT: All right. Thank you very much.

Okay, Mr. Yanez.

MR. YANEZ: And, Judge, I'm assuming Your Honor had an opportunity to review our sentencing memorandum.

THE COURT: I did.

MR. YANEZ: Okay. As Mr. Weckerly indicated, this was a former death penalty case. So we had -- this is such an extraordinary case. And normally when you have a noncapital murder case, you don't have the opportunity to perhaps investigate in depth, as we were in this case, because this was originally a death penalty case. So as I explained in my memorandum, we've interviewed family members, friends, workers, both in Mexico and here in the United States.

And I'm just not going to repeat everything that I put in

here. But what I can summarize, Judge, is that every possible risk factor that someone can have that we typically argue in mitigation cases Gustavo has. And, you know, he's unwavering in maintaining his innocence, and of course, that's nothing that we can use against him.

My arguments to the Court now are obviously past that point. Your Honor has made --

THE COURT: Right.

MR. YANEZ: -- its decision. We respectfully disagree with it, but we respect it and we have to proceed forward as if, in fact, of course, he's in fact guilty, because this Court has adjudicated him guilty.

Those risk factors, Judge, the poverty that I detailed in my sentencing memorandum is horrific. And I think since we're spoiled here in the United States with our standard of life, even for those who are less fortunate, I think we take for granted what true poverty is compared to a country such as Mexico, when he was born in the late '70s, early '80s. That poverty is compounded by the abuse and neglect that he faced from family members, from stepfathers, an alcoholic abusive stepfather. All those risk factors, Judge, are present in this case.

And then those risks factors compound one another when we discuss his intellectual functioning. And I attached Dr. Weinstein's report to the sentencing memorandum, which in his opinion, his opinion within a reasonable degree of scientific

certainty, that he is intellectually disabled. And that's compounded by the fact that when he comes to this country, poor from Mexico, within an intellectual disability, he doesn't speak the language. And that's reflected in his school performance, which is also indicative of his cognitive abilities. He only goes up to the 9th grade.

Rather than attach all his school records, I just attached, as an example, the last school year that he had.

THE COURT: Right.

MR. YANEZ: And obviously his grades are deplorable. I think he even failed P.E. at that point.

That is a reflection of what Mr. Ramos has had to face his entire life, which puts him at risk -- according to the research -- which puts him at risk for what he was accused of in this case.

Ms. Weckerly took issue with our argument that, you know, he, in general, remained crime-free until he was arrested on this case in 2010. I don't think the Court should make light of that or give that no credibility.

Obviously, if the opposite was true, if he had been committing crime after crime after crime, the first thing Ms. Weckerly would be up here arguing is, Judge, he even had a chance for, you know, 10, 12 years, and he still couldn't prove that he could stay out of trouble.

This is that extraordinary case that the Court has a glimpse of his behavior after the alleged crimes in this case up until his arrest in 2010, and he remained, in general, crime-free. And that's the

point of my argument is that in general, the courts don't have that advantage. They -- the Court is receiving arguments that this person is super dangerous, he's going to commit another violent act, another crime, so he needs to be locked up for a long time. We have objective proof, because Mr. Ramos has lived it, that he remained relatively crime-free for those 12 years.

In addition, Judge, his medical condition, compounded again by the intellectual disability, the poverty, indicates that he's not a danger or a threat to society. And he's going to obviously have to serve some type of prison sentence. We all know that. This is all mandatory prison time. But his medical condition is a factor that this Court must consider in regards to an appropriate and reasonable sentence that he's not a danger to this community.

All those factors, Judge, our recommendation to the Court is a sentence of 20 to life on both murder charges and 10 to 25 on the sexual assault, with those counts to run concurrent. Even that recommendation is going to, in effect, be 80 -- it's going to be in effect 80 to life, even if Your Honor granted our request. I'm sorry, 40 to life. 20 for the underlying crime --

THE COURT: Right.

MR. YANEZ: -- and 20 for the weapon.

So at a minimum -- and he's 40 years old right now. He would be first eligible for parole after that time. So that, in effect, is almost a life sentence.

But based on those risk factors: the poverty; the abuse; the

neglect; his age at the time of 18 years old, which we've already litigated; his medical condition that he's blind, he cannot see; the fact that he has remained relatively crime-free since this incident happened -- we're asking the Court to at least give him something, some glimmer of hope at the end. He's probably never going to reach that based on his condition, his age, and the fact that he's just eligible for parole; it's not a mandatory parole after the 40 years have been completed.

I did provide to the Court -- and I received this this morning, so I didn't have to a chance to have it translated -- but letters from his family members. And I -- since I speak Spanish, I can basically summarize. They're almost all identical, except the names are changed and how long these persons have known Gustavo. They all indicate that he's a hard worker and a good person. So I did provide a copy to the District Attorney and Your Honor has that. But in summary, that's what those letters indicate.

THE COURT: Okay.

MR. YANEZ: There is a slight modification on --

THE COURT: I'm going to file them as a court exhibit, just as a packet --

MR. YANEZ: Thank you.

THE COURT: -- knowing that they're all in the Spanish language, though.

MR. YANEZ: Thank you. The presentence report -- and I can hand it to you -- there's a modification we believe that needs to

be made for the credit for time served, Judge.

THE COURT: Okay.

MR. YANEZ: This case -- he originally arrested by Metro officers on September 30th. The PSI reports indicates October 13th. What had happened is when he's arrested by Metro officers on September 30th, they take him over to immigration and he's held there for those -- I think it was a difference of 13 days. But he was in --

THE COURT: And then rebooked?

MR. YANEZ: He was in custody --

THE COURT: And then rebooked?

MR. YANEZ: Yes. So our calculation, Judge, is 3,278 days of credit.

THE COURT: Okay.

MR. YANEZ: So if I can just summarize, Judge. The sentence that we're recommending is nothing light, especially in light of the factors that are described in the sentencing memorandum and which I've touched upon today. So we'd ask the Court to impose that sentence.

THE COURT: Okay. All right, Ms. Weckerly.

MS. WECKERLY: Your honor, the first speaker is Stacy Sabraw.

THE COURT: Okay.

MS. WECKERLY: And you want them on the witness stand; correct?

THE COURT: Yeah.

MS. WECKERLY: Okay.

THE COURT: They can come up to the witness stand.

Could you raise your right hand, please? Thank you very much.

STACY SABRAW

[having been called as a speaker and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. If you could state and spell your name for the record, please.

THE WITNESS: My name is the Stacy Sabraw, spelled S-T-A-C-Y, S-A-B-R-A-W.

THE COURT: All right, Ms. Sabraw. Thank you very much for coming today. Did you have something that you wrote that you wanted to read or --

THE WITNESS: Yes.

THE COURT: Okay. You can go ahead.

THE WITNESS: May I ask a quick question?

THE COURT: Sure.

THE WITNESS: We had decided to go from oldest to youngest, and we have a letter from my father who could not come.

THE COURT: Sure.

THE WITNESS: So may I read that first?

THE COURT: Yeah, absolutely.

THE WITNESS: Okay.

THE COURT: You're going to read that one first?

THE WITNESS: I'll read the one from my father first, yeah.

THE COURT: Okay.

VICTIM IMPACT STATEMENT OF STACY SABRAW

THE WITNESS: To the Honorable Judge Herndon: Dear sir, I'm the oldest and sole surviving son of Helen M. Sabraw. I would like to present a picture of her so that perhaps the Court may know her and her relationship to her whole family.

First and foremost, she was a beautiful person both outwards and inwards. She was kind and charitable to all people. Her beauty even as an elder was remarkable. She was 86 years old but had longevity on her side. Her grandmother and her aunt Marie both lived to be 94 years old. The point being that horrendous assault denied seven grandchildren and their families her presence in their lives, possibly for many years to come. I mentioned this to parlay the idea that she was an old lady and therefore no longer had useful contributions to anyone.

The only positive thing to come out of open casket at the viewing was although the funeral home tried their best, they could not make her recognizable. The viciousness of the attack upon her rendered my mother unrecognizable. That was the lesson. Never again.

To discover her, like my brother Mark Sabraw did, with nothing but blood everywhere was horrendous enough in itself. But to find out later that she was not only viciously attacked, but sexually

assaulted, is almost too much to bear even after so much time has passed.

This man should never breathe the air outside, much less see the blue sky except from behind bars. No one deserves to die the way my mother did at the hands of this monster.

John C. Sabraw.

THE COURT: Thank you. Was there a picture that he had that he wanted me to view or that you all have or --

THE WITNESS: Pictures, gang?

THE COURT: He referenced a picture at the beginning. And I don't know if you meant --

THE WITNESS: Oh, a mental picture, yes.

THE COURT: Figuratively. Figuratively, okay. Thank you.

THE WITNESS: Thank you for asking.

Okay. And this is from me.

THE COURT: Okay.

THE WITNESS: Again, to Your Honor, Judge Herndon.

Dear sir, I am the oldest granddaughter of Helen M. Sabraw. I would like you to understand what she meant to me and the impact her violent death has had on me and my family.

My grandmother and I never lived in the same state, but she faithfully wrote letters in which shared her news and advice. She always signed off with: Vaya con dios. To me that phrase carried a sense of worldliness and taste and romance and a belief in God. She would also send me handmade crafts and cards that she

had carefully created.

During family visits and later on my own, my grandmother shared her love of antiques, and she would tell me the story of each piece she owned. She always made my visits feel like a special occasion.

She had such class in the way she dressed, in the way she would prepare a meal with carefully composed dishes and a compete place setting, in her graciousness and generosity towards others. I loved her enthusiasm when we would join my Uncle Mark to watch the Green Bay Packers. I remember her laugh, which came easily and belied all of the sad events that she had experienced in her life, such as her mother's early death, the struggles of the Depression, and my Uncle Tom's early death. I think she took that pain and turned it into resilience. I think she passed that onto us as well.

Most of all, in her presence I felt loved and special just as I was. To have someone delight in you just because is a rare gift.

With these gifts -- while these gifts from her remain with me, it is the circumstances of her death that will forever be the first thought of her because they were so brutal, so heartbreaking, and so unnecessary.

It is now 21 years since my grandmother was killed, and yet the pain is never less. This act has rendered a permanent scar on my soul. Nothing can be done to really set things right. Yet, I do hope that the highest measure of legal justice can be obtained, that

this man will spend the remainder of his life in prison where someone as depraved as he has shown himself to be belongs.

Thank you, Judge.

THE COURT: Thank you. Thank you for coming.

MS. WECKERLY: The next speaker, Your Honor, is Michelle Sabraw Sullivan.

THE COURT: Thank you. Could you raise your right hand for me, please? Thank you very much.

MICHELLE SULLIVAN

[having been called as a speaker and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. If you could state and spell your name for the record, please.

THE WITNESS: My name is Michelle Sullivan, M-I-C-H-E-L-L-E, S-U-L-L-I-V-A-N.

THE COURT: All right. Ms. Sullivan, do you also have something that you wrote?

THE WITNESS: I do.

THE COURT: Okay. You can go ahead.

VICTIM IMPACT STATEMENT OF MICHELLE SULLIVAN

THE WITNESS: Okay. Dear Judge Herndon, my name is Michelle Sullivan. I am the granddaughter of Helen M. Sabraw, the victim in this case.

My lovely grandmother was 86 years old and was peacefully living in a retirement home in Las Vegas when in May

1998 she was brutally beaten, sexually assaulted, raped and stabbed to death by the defendant in her own home. No one should endure such a heinous death, especially an 86-year-old woman.

My grandmother, Grams, as we call her, did not deserve to have her life taken from her in this horrible way. The defendant robbed me and my family of any precious time that we would have had left to spend with her. Her life was cut short, and instead of being able to die peacefully of natural causes, her life was taken.

My grandmother's murder case went unsolved for 12 years. If not for DNA evidence, it may still be unsolved. It tore me and my family up not knowing who was accountable for committing these acts to her. Me and my family have waited 21 years for the defendant to be tried for her murder. No one should have to wait this long for justice to be served against someone who brutally murdered my beautiful grandmother.

It still haunts and saddens me to this day knowing that my grandmother was violated so horribly and must have been extremely scared and helpless as she was being beaten, violated, and stabbed and left to die all alone.

It is my opinion that anyone would commit these crimes is a monster. I ask you to provide no leniency and give the max sentencing allowed.

THE COURT: Thank you.

THE WITNESS: Thank you.

MS. WECKERLY: The next speaker is Katherine Bockhorst.

THE COURT: Thank you. Okay.

KATHERINE BOCKHORST

[having been called as a speaker and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. If you could state and spell your name for the record.

THE WITNESS: Katherine Bockhorst, K-A-T-H-E-R-I-N-E, B-O-C-K-H-O-R-S-T.

THE COURT: All right, ma'am. Do you have something you wrote? Okay. You can go ahead.

VICTIM IMPACT STATEMENT OF KATHERINE BOCKHORST

THE WITNESS: Dear Judge John -- I'm sorry. Not John -- Judge Herndon. Regarding Helen Sabraw, or as I call her, Grams.

Just a little insight to what she meant to me. She was my best friend. She was my confidant. She was my strength. She taught me to be strong. She saved my life and I couldn't save hers. She never had a daughter; I was her daughter. I have a hole in my heart that can never be filled.

The pain I feel for the loss of her is forever. Time has not made it better; it just shows the loss greater. She has missed growing old with me in her life.

I never heard her voice again after Mother's Day 1998. I spoke with her on that Sunday, and she was gone that Friday. I miss her more than words can say. We would call one another and she or I would say, I was thinking really hard about you. I knew you were

going to call. It was a great memory and just like we had this connection; it was incredible. She believed in me before anyone else did. I became the woman I am today because of her.

Her courage, strength, compassion, and love is missed every day. Vaya con dios, as my cousin said, was a saying she used all the time -- may god be with you. For this I forgive the defendant. I will just never forget. And I ask for the maximum sentence possible.

Thank you for your consideration.

THE COURT: Thank you for coming.

MS. WECKERLY: The next speaker, Your Honor, is Leslee Siegel.

THE COURT: You can go ahead and sit down first. It's okay.

Okay. Can you raise your right hand, please?

LESLEE SIEGEL

[having been called as a speaker and being first duly sworn, testified as follows:]

THE CLERK: Thank you. If you could state and spell your name for the record, please.

THE WITNESS: Leslee, L-E-S-L-E-E, Siegel, S-I-E-G-E-L.

THE COURT: Okay, Ms. Siegel. Do you have something that you wrote, or you just want to chat?

THE WITNESS: No. It's from the heart.

THE COURT: Okay. What would you like to tell me?

VICTIM IMPACT STATEMENT OF LESLEE SIEGEL

THE WITNESS: My father, Wallace Siegel, I was his oldest daughter. And without sounding redundant because I know we all feel the same, I have been behind these false imprisoned bars, our family has, going through this. This is 20 years of our lives plus, because it's going to continue.

My dad fought for this country; he fought for our freedom. And his life was taken not in a war, but just out of meanness. Our health has also gotten worse because mentally this has been really hard on us. And as far as any solace of thinking my father didn't see this is -- there is none, you know.

I'd love to use all the cuss words I could, but I know I can't and I'm sorry.

THE COURT: You'd be surprised what I hear in court.

THE WITNESS: I know, but.

THE COURT: Express yourself however you want to. But one thing I'll tell you -- and I apologize for interrupting you. And this happens a lot, whether it's parents grieving because their children have died from violent crime or children testifying about their parents dying from violent crime, the metaphorical behind the imprisonment of bars is relayed to me in a variety of ways by people every day.

And look, just as Ms. Weckerly tries to provide a little solace in what she said about the suffering of your father -- I mean, what I always try and tell people is the same thing I've told my

daughters about when it's my time to go, whenever that's going to be is don't stop living; right? I mean, that's the one thing I don't ever want to happen. No matter how I meet my end they need to keeping living their lives and not live within the bars of any type of feeling of imprisonment.

This is really hard because it was so long for you all to be able get to this point, much less to even get to an arrest, and I understand that. But I'm confident that your father would want you guys to kind of let the sunshine in a little bit in our lives, and --

THE WITNESS: Oh, definitely.

THE COURT: So --

THE WITNESS: He's a good man.

As far as the inmate's intelligence, his financial status, how he grew up -- we weren't a rich family. I am -- and I'll say this in court -- I'm below poverty level, but I would never go out and murder anybody, you know. We pushed ourselves to go to school. Both parents worked; of course they pushed us as well. But one has to think of themselves, you know.

I know people with no intelligence that wouldn't think of committing this kind of crime. As far as I'm concerned because the death penalty was thrown off the table because of his mental status, that the true justice was taken away from us. And to be honest with you, when something like this happens, even if he spends the rest of his life in prison, we'll never seek justice.

And I too, for myself, I forgive him because I'm going to

go to heaven. I'm going to sit at God's table, and I'm going to be the secretary. And there's going to be people that aren't going to be there.

THE COURT: I wouldn't say secretary. You need to be running the show when you get there.

THE WITNESS: Well, no, he runs the show. I'm going to write down what he's going to say. But I think because of the crimes committed that he should spend the rest of his life in jail with no possibility of parole. And because I couldn't -- not that my dad would be here today. He was taken away where I couldn't call him. I couldn't see him. He couldn't come to see us. He couldn't see my daughter; she was the closest grandchild he had. She was young when he was horrifically murdered. And more than anything, she loved him so much, as we all did.

But I think he deserves to be in jail, in prison without the possibility of parole and without being able to see his family, you know. He tore our family apart. He did. This is something that stays with us. Mental health affects physical health, and these last 20 years, it's been incredibly terrible. We try to move on. It's just hard. It's just hard.

God will do the final judgment, but in the meantime, please. The victims that can no longer speak for themselves. Listen to the ones that were left behind. And he can't -- he can't be let out, you know. I'm sorry.

I don't know if I could say this, but he should have been

zapped a long time ago.

THE COURT: Well --

THE WITNESS: You know. And I'm sorry I say that, but, you know, I'm from California and -- I don't know. I don't agree with some of these laws that you guys have here. But I am --

THE COURT: There's a lot of times that we're in the position of saying we don't agree with California, but --

THE WITNESS: I know.

THE COURT: We're all a little different as to --

THE WITNESS: Our President doesn't agree with California either.

THE COURT: And don't ever apologize for your feelings. Look, we're all entitled to have our feelings and our thoughts and how we view things. I mean, that's what makes us unique individuals. It's okay.

THE WITNESS: But mentally it's taken -- it's taken away from a lot of our family members where it's hard to describe. It is. It's -- this is something that I'm never going to forget. The reason the dog barked at the bailiff was because --

THE COURT: It's okay. I'm a dog person, so -- what kind of dog do you have?

THE WITNESS: She's my service dog. She's a Shih Tzu/ Chihuahua.

THE COURT: Okay.

THE WITNESS: But don't you dare come near me,

because he came near me, she barked because he was walking by.

But I'm going to say thank you for letting me say what I needed to say. And the tears are going to still be in my eyes missing my dad. My daughter's going to redo his headstone, his and my mom's. But, you know, and -- I'm glad you dismissed this thing with 18, because I know that so many young kids are tried as an adult, so -- but I just want to say thank you and thank the Lord for at least finding who did this.

THE COURT: Okay.

THE WITNESS: But give us some type of justice. He needs to suffer. His family needs to suffer. His family needs the tears that we've all shed, you know. They need to know what it's like not to be able speak to anybody, to see that person anymore, to have absolutely no relationship except spiritually.

And I thank you.

THE COURT: All right. Thank you for coming. I appreciate it.

THE WITNESS: Thank you.

MS. WECKERLY: The next speaker, Your Honor, is Roslyn Siegel.

THE COURT: Okay. You can go ahead and sit down. All right. Can you raise your right hand, please?

ROSLYN SIEGEL

[having been called as a speaker and being first duly sworn, testified as follows:]

THE CLERK: Thank you. If you can state and spell your name for the record, please.

THE WITNESS: Roslyn Siegel, R-O-S-L-Y-N, S-I-E-G-E-L.

THE COURT: All right. Did you have something you wrote, or do you just want to chat with me?

THE WITNESS: Yes. Mine is short and brief, because otherwise I would have wrote you a book.

THE COURT: It's okay.

VICTIM IMPACT STATEMENT OF ROSLYN SIEGEL

THE WITNESS: I'll start with my letter. My name is Roslyn. I am youngest child of my family. On the morning of May 16th, 1998, I received a phone call at 5:30 a.m. At that time my brother proceeded tell me my dad had been murdered. At that moment my life changed forever.

My dad, who was a disabled man, and also recovering from surgery, could not defend himself from the person who brutally and heinously took his life, a life that was God's choice to make when he was ready to do so, not the person -- the person left me in fear and immense anger. I hope the State of Nevada gives him a sentence he deserves.

Thank you.

THE COURT: Thank you very much.

THE WITNESS: This letter is from my oldest brother Mitchell.

THE COURT: Okay.

THE WITNESS: May it please the Court --

THE COURT: Is his last name Siegel?

THE WITNESS: Yes, it is.

THE COURT: Okay. Thank you.

THE WITNESS: May it please the Court, my name is Mitchell J. Siegel. I am the child of Wallace Siegel, a gentleman who was approaching 76 years of age in August 1998, the year of his murder. My dad was recovering from medical injury, when our brother Jack, a trained medic by the Navy who took a leave of absence from his California-based job to assist Dad in his recovery.

On May 16, 1998, Jack came home to find that Dad had his life brutally taken from him by the defendant. On May 16th, 1998, the day of discovery of my father's mutilated body, I was in a cancer walk to raise money for cancer victims when my wife rushed onto the track and told me I had a phone call from my sister Ros immediately. That phone call changed my life and that of my family forever. Sadly, I learned of father's brutal murder.

By anticipating a visit from me, my wife Lisa and her two children, Noah and Mahaleya (phonetic), we were celebrating Noah's graduation from high school and Mahaleya's graduation from middle school on May 31st. He would see us all, including Grandpa and Gram and Dad. My father would be in his element. We would guests in his city, and he was ready to put on the job.

The defendant destroyed that plan and visit so much. Dad's life, destroyed by a vicious act resembling that of a demonic

individual, caused shocking waves through our collective families and left us with anger. We were so angry at the nursing facility for being so lax in its protection of its vulnerable residents, we wanted revenge.

The defendant displayed no essence of mercy in his savage act, and my father's killing wasn't enough. The defendant chose to perform an equal sadistic act of murder towards another resident at the nursing facility.

To add to this incomprehensible act of violence, my brother, Jack Siegel, was a primary suspect of our father's murder, thus preventing our family from seeking negligent damages against the nursing facility.

We were unable to find a Las Vegas attorney willing to take our case, and our brother has never been able to truly continue his life again. Today, whether Jack admits that he suffered PTSD from finding our father's mutilated body or not, that added insult of being the primary suspect until the defendant was apprehended, add to the complexity of coping ability. Our entire family recognizes this suffering.

Through an act of divine intervention, the defendant's DNA was met secondary to the trial itself. Thus, he awaits sentencing.

I ask that the most severe punishment allowed by Nevada law be imposed upon this court. I want the Court know that he -- that the immense pain and suffering the defendant caused our

families remains even today.

I close by thanking the Court for due diligence in locating this violent criminal, concluding the defendant was definitely guilty of these three heinous crimes he committed and delivering the sentences he deserved. I hope my petition has influence in considering the sentence the defendant will receive.

Thank you. Sincerely, Mitchell J. Siegel.

THE COURT: Thank you. And please tell Mr. Siegel I appreciate his letter as well.

THE WITNESS: And he has changed my life forever. I haven't shed a tear since because of the anger he has caused me, and I will never be the same.

THE COURT: Thank you.

MS. WECKERLY: Your Honor, the last speaker is Jack Siegel.

THE COURT: Okay. Could you -- welcome back, sir. Raise your right hand. Thank you.

JACK SIEGEL

[having been called as a speaker and being first duly sworn, testified as follows:]

THE CLERK: Thank you. Please be seated. If you could state and spell your name for the record.

THE WITNESS: Jack Siegel, J-A-C-K, S-I-E-G-E-L.

THE COURT: All right Mr. Siegel, what would you like to tell me today?

VICTIM IMPACT STATEMENT OF JACK SIEGEL

THE WITNESS: Well, Your Honor, when my dad was discharged from the hospital, they only taught him how to get out of the bathtub. At the time I was going through a worker's comp case in Los Angeles, so I had time to come on down.

And we -- I was walking him to rehab. And the first time he walked down to the kitchen, the whole kitchen just collapsed. You know, he was doing real good.

But they wanted to kick him out. And so I made a deal with the management to give me at least two months to keep him or they would put him in a home for six people --

THE COURT: Okay.

THE WITNESS: -- instead of taking him myself. He had the strength to get up. He could have gone to the bathroom. He needed help to get up. I needed to get away for a week.

We hired a Homestead, senior care. This woman was drunk, dropped him, did all sorts of stuff. It was just terrible when I got back and my dad told me.

But there was -- to have -- I had gout on my knee. My dad -- well, my dad and I didn't get close until we were like -- there was a generation gap. Finally, I got to know him after I got out of the Navy and we connected.

I haven't cried since everything happened.

But I got home from -- I signed in about 1 o'clock in the morning, seven minutes in Las Vegas saved my life. I was the only

suspect the police department had. And if you don't no -- money from the government to help them with forensics, I am the only suspect.

THE COURT: Right.

THE WITNESS: Ten years later -- so ten years later they finally, through DNA evidence, picked up this gentleman here. And what you do with him -- even the paramedics, because I walked into the room after the emergency room. And I looked down and I go, what the heck? Because there's a newspaper all over the floor, and I looked up and I -- Dad.

And I was in the Navy, and I have my medical background. And I go and try to -- I looked at his face, and there was this purple tongue hanging out of his face. And so I pulled the cord, because I made the arrangements to have somebody come over. And they came over -- they didn't even look in the room. They didn't do nothing. He was supposed to go get the nurse to bring the -- they didn't do a darn thing.

And he -- and all of a sudden the police -- I go back in, I pull the cord, I called my brother, 911. The sheriff showed up, and then I walked out and I'm arrested. Right away I'm told I'm taken out of the room.

And to -- saw how gruesome it was, I never got to chance to go through it, because in my military background, just get the guy alive and get out of there. They even were talking about how gruesome it was. It's -- and for the whole time I've been on the

hook.

Until you guys find someone, there's -- and I agree with my brother Mitch. And so this gentleman -- this is Nevada law; you guys do whatever you do. I have nothing to say about it. I just know what happened. I never really got a chance to see what it looked like, because my one focus was the purple tongue and I think I saw a white spot, maybe the white matter of the brain or whatever it was. And right away it was just make 911, call my brother, call people around me and get some help. And the sheriffs took me right out of the hospital.

But my life's been a miserable wreck since this whole darn thing. I've lost my -- there's been other situations that aren't pertaining to here. But it's that constant reaching out.

And it's -- you know, even in -- I know in East LA -- I've lived in California. East LA, even their youngsters, they don't go -- they drop out of school, and they know what murder's about. You can't say gangsters or even street people don't know what murder or what happens when you murder somebody.

And I hate to be mean about it, but I would say Thorazine shuffle with the diapers and don't give him a bath until the morning time and that would be fine by me too.

But this man was healthy. He had three open bypasses. He was better than new. All he needed was a couple months to get him to walk. Take this medication. Homestead Health senior care took care of him.

And he told me this lady just abused him something awful a week before. It was like, I can't -- I walked out of there in shock. And it's just -- I've been -- you know, I can't get nobody to believe that anything could happen to me with a murder case being --

THE COURT: You had a unique constellation of trauma; right? To lose your father, to be the one that found your father in the state that he was in, and to be kind of under a cloud of suspicion for a long time. I recognize that as a unique constellation of trauma to go through.

THE WITNESS: But they also changed the laws in Nevada because of these three individuals in this one place that all got -- I believe the first one was murdered also. Because of these murders, they never had any security available at the retirement homes at these times. They created laws because of these people. It took two massive murders with Helen and my dad to have someone go in there and just rip them apart like they did and to walk away and say, I don't have the intelligence to know the difference between life and death and what it means? I don't know where the law stands on that.

It's -- I know that Mexico is two years ahead of us except for they don't speak English and math and English and everything else. They're two years ahead of us according to the *Los Angeles Times* magazine. But still the lack of intelligence.

And I do believe I should receive some retribution also. I mean, this -- I have been going through hell since '86 with this whole

thing going on because I've got issues with LA County. I'll talk to you later if it's possible to show -- it might pertain to the other case.

THE COURT: Well, no.

THE WITNESS: That's beside the point.

THE COURT: There's nothing about that that has anything to do with today.

THE WITNESS: But, you know, this whole ordeal and nobody believes me. They think I should be able to get over it. They don't understand the difference between this gentleman here and the long arm of the law, and they snagged him because of the DNA evidence, from what I understand. I don't know. But that's how they caught up to him.

But if they don't, I can -- with what's going on with me and LA County, they can come back and get me. I could be (indiscernible). It has left me in limbo for the longest time. I do get some sort of closure, yes. But total closure, no.

THE COURT: Well, you know, when you lose somebody, particularly to traumatic violent events, I don't know that you ever get complete closure. I mean, I'm hopeful that today with sentencing him --

THE WITNESS: I never -- I'm just saying.

THE COURT: -- kind of helps along that path.

THE WITNESS: I never got to know my dad until in my 30s because of the generation gap. I'm the youngest of four brothers, fifth child, and because of the generation gap, we finally -- I was in

the Navy. I got out. We started -- sports was our connection. And my dad and I bonded, and we would stick together.

I had an opportunity, because of the timeframe, to come down and take him, and he didn't trust me because I'm the baby of the child. My sisters sowed their oats too. I had to earn his trust and to get him to walk and then to hear the people who live with him, just cheer him on to see him walk again, it's -- it's a wonderful thing to hear. And to know that he was stronger and better, except for some diabetes. He was a good person.

I never knew Helen. I couldn't say anything about it. I do know a rumor that wasn't true. It came out on a Law & Order episode. Some of the same --

THE COURT: I'm not worried about --

THE WITNESS: -- but that's another thing.

THE COURT: I'm not worried about Law & Order right now.

THE WITNESS: But there's got to be some, I don't know, retribution, something -- I became bored also. I'm -- it really messed me up in LA. I don't know what to say. I'd asked for a life for a life is what I would ask for.

THE COURT: Okay.

THE WITNESS: And I don't know any way else to go about it.

THE COURT: That's okay.

THE WITNESS: And I do have someone that I would love

to get a life back for.

THE COURT: All right.

THE WITNESS: I don't know what to do about it. And you can do whatever you want with him, but I would like a life for the life that was taken.

THE COURT: All right. Thank you. I appreciate you coming back.

Were there any others that wanted to speak today?

MS. WECKERLY: No, Your Honor.

THE COURT: No? Okay.

So I have a lot of thoughts. And you guys can all remain seated; it's okay.

You know, sentencing, folks, first off, it is -- it is incredibly common. And I completely understand where it comes from to express desires for retribution, to express desires that other people should suffer. I completely understand it.

My sentencing isn't based on trying to inflict suffering on anybody, however. It's not based on trying to provide retribution. I mean, it's all the very simple but sometimes very complex idea of what's justice? What is the appropriate punishment for things that occurred and the people that are involved in committing those things? Does it mean people suffer? Absolutely. It means people suffer by going to prison for really long times. It means their family suffer. It means sometimes that victims don't feel or victims families don't feel that they got as much as they wanted out of something in

terms of that idea of retribution or suffering.

So people generally don't walk away from criminal cases and sentencing and feel really good about things. I mean, there's obviously a lot of really difficult ideas and concepts and emotions that people struggle through. Not just up into getting to today, but moving on from today as well.

So I appreciate everything that you all had to say to give me a little insight into your parents and your loved ones and the emotions and struggles that you all have gone through. Those are really, really important.

And like I said to Mr. Siegel there at the end, all I can do is come up with what I think is an appropriate punishment and the hope that there is some modicum of closure that that provides to help you move forward on behalf of both Mrs. Sabraw and Mr. Siegel. And I thank you all for coming today and expressing yourselves.

As far as Mr. Ramos is concerned, I mean, it is -- you know, there are a lot of things here that I think would absolutely be found by a jury to be mitigation. Despite -- and I don't disagree with anything Ms. Siegel said about, look, we have lots of people with intellectual disabilities that grow up in poverty, that grow up in difficult situations, and they don't commit murder. They don't commit any violent crimes. Sometimes they don't commit any crimes at all. Other times, you know, maybe they do commit crimes, but it's certainly not violent crime.

We expect that people should understand despite whatever their poverty level or financial problems are that you don't go out and kill people, even though you're going to go steal from the supermarket or things like that.

But there's levels within homicide crimes as well when you're trying to adjudicate somebody's sentence. And I've always viewed it as, look, on the lower end of that you have things that are really, really impulsive, people that act in a heat of passion, the traditional scenario of finding your loved one in a relationship with somebody else. You know, we call it the heat of passion kind of manslaughter-type killings. You have people getting involved in killings because it's a group mentality, gang killings, things like that. You have people that get involved or adjudicated of murder because of their involvement in other dangerous felonies like a robbery and somebody dies.

And then you move into the higher end aspect of it, in my mind, which is when you're dealing with willful, premeditated, and deliberate murder. And I think Mr. Ramos not only was guilty of first-degree murder because of the felony murder aspect, but because of willful, deliberate, and premeditated murder as well.

And then at the upper end of that spectrum you have kind of the long-term planning and killing of people and just pure evil; right? And that's where the death penalty applies itself towards.

So while I think there was a lot of mitigation here, I think that mitigation would have been impressive to a jury in terms of

whether to impose a death sentence. I don't know that it would have lowered in their minds the idea that the punishment for this was appropriately life without the possibility of parole. And it doesn't lower it in my mind either, because I view Mr. Ramos up there at that end of the spectrum.

The issue here of prior criminal history or not, I'll tell you the way I view it -- and I know we didn't have a penalty hearing and everything that was presented. But nonetheless, when I get a PSI, I do look at whatever other cases are referenced in there.

So you're really dealing with this period from 1998 to 2010 and the arrest here and what was or wasn't going on during that time period. And I have two homicides in May of 1998 which we're talking about today, and then a month later, the other attempted murder case that the gentleman was arrested for. And I believe what I had read about that was for hitting and trying to stab his girlfriend or a woman he was in relationship with and hitting her over the head several times with a metal folding chair. And he ultimately pled guilty to assault with a deadly weapon, got put on probation, had some problems on probation, including a DUI arrest. Ultimately got revoked on probation, went to prison, got out in 2007, and three years later finally got arrested in this case.

So to me, that's kind of some substantial issues there in terms of another violent case occurring close in time to this, the inability to comply with probation, the idea that that other case also involved trying to stab somebody with a knife, and then obviously

here we are.

Look, it's -- I know Mr. Ramos isn't a young man as he sits here right now. I recognize very much that he was when he committed the crime. And I don't think -- you know, society always loses when you send young people to prison for very long periods of time. But I think society also gains when people that commit really horrible and brutal acts of violence more than once are taken out of society so that those acts can't occur any further in the future and represent appropriate punishment for what occurred here.

The things that struck me kind of about these two killings: The very first thing was -- and the word unnecessary was used today, and I think that is probably the most appropriate word -- neither one of these individuals was in a position to fend off a young 18-year-old man committing robbery, sexual assault, whatever it was going to be. Those crimes could have occurred without any type of ability of either of these individuals in my mind to meaningfully resists those happening to them, and then the person could leave.

Mr. Siegel never even got out of the chair. It was almost as though that killing -- and I would agree with the word meanness -- it was used today -- was almost gratuitous. That, I mean, you could've robbed him, you could've taken anything from him, but he was attacked without even getting out of that chair and beaten to death with that dumbbell.

And then again, Ms. Sabraw, I think the characterization of a fight going on for some time and her struggling to survive is a very

fair characterization of that. And there was no reason that that elderly woman had to be brutally stabbed to death in order to accomplish whatever else was intended, or was it just gratuitous killing?

But they were both brutal enough, they were both separated enough, and in conjunction with everything else, I do believe that life without the possibility of parole are the appropriate sentences to impose here.

So for each of the two first-degree murder convictions, Mr. Ramos, you're going to sentenced to life without the possibility of parole. This falls under the equal and consecutive time period. So the weapon enhancements will also be life without the possibility of parole, Count 2 will run consecutive to Count 1.

On Count 3, sexual assault with use of a deadly weapon, the sentence will be life in the department of prisons with a minimum 10 years before parole eligibility plus the equal and consecutive life minimum 10 for the weapon enhancement. That's going to run consecutive to Count 2.

I do agree that there was additional credit time served. So the total amount of credit time served in the case is going to be 2,000 -- excuse me, 3,278 days.

There is also a $25 administrative fee, $150 DNA fee as well. But I think this predated a lot of the other fees and assessments.

All right, guys.

MS. MANINGO: Thank you.

THE COURT: Thank you all very much for your time today. I appreciate it.

MS. MANINGO: Your Honor.

THE COURT: Yeah.

MR. YANEZ: There is one other matter. We have counsel, Jamie Resch, who is going to be doing the direct appeal on this case.

THE COURT: Okay.

MR. YANEZ: So I don't know if we -- if you want us to submit an official withdrawal motion from me and Ms. Maningo or is this --

THE COURT: Did you guys talk to Drew?

MR. YANEZ: Yes.

THE COURT: Okay.

MR. YANEZ: Drew is the one who contacted him and made sure he was here today.

THE COURT: Go it. And you can accept the appointment?

MR. RESCH: I can. Thank you.

THE COURT: Okay. So we will -- you just want to orally move to withdraw?

MR. YANEZ: Yes.

MS. MANINGO: Yes, Your Honor.

THE COURT: All right. So we'll grant the oral motion to withdraw from Mr. Yanez and Ms. Maningo. We'll appoint Mr. Resch to pursue direct appeal. Okay?

MR. RESCH: Thank you, Judge.

THE COURT: Yeah, just go ahead and submit a written order that shows that that took place today just so we're kind of dotting Is and crossing T's.

MS. MANINGO: Okay. Thank you, Your Honor.

THE COURT: All right.

MR. YANEZ: Appreciate it. Thank you.

THE COURT: Thank you.

[Proceeding adjourned at 10:47 a.m.]

* * * * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Shannon Day
Transcriber

Electronically Filed
9/20/2019 2:53 PM
Steven D. Grierson
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GUSTAVO RAMOS, #1516662,

Defendant.

CASE NO. C-10-269839-1

DEPT. NO. III

JUDGMENT OF CONVICTION

(NON-JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNTS 1 and 2 – OPEN MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS 200.010, 200.030, 193.165, 193.167); COUNTS 3 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON (Felony – NRS 200.364, 200.366); and the matter having been tried before the Court and the Defendant having been found guilty of the crimes of COUNT 1 – MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS 200.010, 200.030, 193.165, 193.167); COUNT 2 - MURDER WITH USE OF A DEADLY WEAPON (Felony – NRS 200.010, 200.030, 193.165, 193.167); and COUNT 3 – SEXUAL ASSAULT WITH USE OF A DEADLY WEAPON – (Felony – NRS 200.364, 200.366), thereafter, on the 20th day of September, 2019, the Defendant was present in court for sentencing with his counsel IVETTE MANINGO, ESQ., and ABEL YANEZ, ESQ., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said crimes as set forth in the Court's verdict and, in addition to the $25.00 Administrative Assessment Fee, and

☐ Nolle Prosequi (before trial) ☐ Bench (Non-Jury) Trial
☐ Dismissed (after diversion) ☐ Dismissed (during trial)
☐ Dismissed (before trial) ☐ Acquittal
☐ Guilty Plea with Sent (before trial) ☐ Guilty Plea with Sent. (during trial)
☐ Transferred (before/during trial) ☒ Conviction
☐ Other Manner of Disposition

the $150.00 DNA Analysis fee, including testing to determine genetic markers, the Defendant is SENTENCED as follows:

COUNT 1 – to LIFE in the Nevada Department of Corrections (NDC) WITHOUT the possibility of parole, plus a CONSECUTIVE sentence of LIFE in the Nevada Department of Corrections (NDC) WITHOUT the possibility of parole for the deadly weapon enhancement,

COUNT 2 – to LIFE in the Nevada Department of Corrections (NDC) WITHOUT the possibility of parole, plus a CONSECUTIVE sentence of LIFE in the Nevada Department of Corrections (NDC) WITHOUT the possibility of parole for the deadly weapon enhancement; CONSECUTIVE to COUNT 1;

COUNT 3 – to LIFE in the Nevada Department of Corrections (NDC); with parole eligibility beginning after a MINIMUM of TEN (10) YEARS has been served; plus a CONSECUTIVE sentence of LIFE in the Nevada Department of Corrections (NDC); with parole eligibility beginning after a MINIMUM of TEN (10) YEARS has been served for the deadly weapon enhancement; CONSECUTIVE to COUNT 2; with THREE THOUSAND TWO HUNDRED SEVENTY-EIGHT (3,278) DAYS credit for time served.

DATED this 20th day of September, 2019.

DOUGLAS W. HERNDON
DISTRICT JUDGE

slr

NOAS

RESCH LAW, PLLC d/b/a Conviction Solutions
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Telephone (702) 483-7360
Facsimile (800) 481-7113
Jresch@convictionsolutions.com
Attorney for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. GUSTAVO RAMOS, Defendant.	Case No.: C-10-269839-1 Dept. No: III **NOTICE OF APPEAL** Date of Hearing: N/A Time of Hearing: N/A

Defendant Gustavo Ramos hereby appeals to the Supreme Court of Nevada from judgment of conviction and sentence filed on September 20, 2019.

DATED this 7th day of October, 2019.

Submitted By:

RESCH LAW, PLLC d/b/a Conviction Solutions

By: _____
JAMIE J. RESCH
Attorney for Petitioner

Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, Nevada 89128

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Resch Law, PLLC d/b/a Conviction Solutions and that, pursuant to N.R.C.P. 5(b), on October 7, 2019, I served a true and correct copy of the foregoing Notice of Appeal via first class mail in envelopes addressed to:

Mr. Gustavo Ramos #91166
High Desert State Prison
PO BOX 650
Indian Springs, NV 89070

Clark County District Attorney
200 Lewis Ave.
Las Vegas, NV 89155

And electronic service was made this 7th day of October, 2019, by Electronic Filing Service to:

Clark County District Attorney's Office
Motions@clarkcountyda.com
PDmotions@clarkcountyda.com

_____
An Employee of Conviction Solutions

Conviction Solutions
2620 Regatta Dr., Suite 102
Las Vegas, Nevada 89128

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUSTAVO RAMOS, Appellant, v. THE STATE OF NEVADA, Respondent.	Supreme Court Case No. 79781

APPELLANT'S APPENDIX

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 31st day of March, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven Wolfson, Clark County District Attorney's Office
Aaron Ford, Nevada Attorney General
Jamie J. Resch, Resch Law, PLLC d/b/a Conviction Solutions

By:_____
Employee, Resch Law, PLLC d/b/a Conviction Solutions