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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

Case No: 22-279506-FC
Hon. Kwamé L. Rowe

v.

ETHAN ROBERT CRUMBLEY,

Defendant.

OPINION AND ORDER RE: *MILLER* HEARING

PRESENT: KWAMÉ ROWE, Circuit Judge

This matter is before the Court on the prosecution's motion seeking life without the possibility of parole (hereinafter "LWOP") filed on November 14, 2022, for Defendant, Ethan Crumbley. The Court notes the prosecution's motion was filed timely pursuant to MCL 769.25(3). On October 24, 2022, Defendant pleaded guilty to twenty-four felony counts including: one count of Terrorism Causing Death, four counts of First-Degree Premediated Murder, seven counts of Assault with Intent to Murder, and twelve counts of Felony Firearm. Defendant was fifteen years old at the time of the offense; therefore, the Court is required to conduct a *Miller* hearing before determining whether to sentence Defendant to LWOP or a term of years. *Miller* v *Alabama*, 567 US 460 (2012). The Court conducted the *Miller* hearing, and this Opinion and Order follows.[1]

[1] The hearing took place, in-person, before the Court on July 27, 28, August 1, and August 18, 2023. The Court continued the hearing to September 29, 2023, to give its decision pursuant to MCL 769.25(7).
At the beginning of the hearing, the prosecution requested the Court to take judicial notice of its court file and previous placement hearings – defense did not object. Per MRE 201 and 202, the Court hereby takes judicial notice of its court file and previous placement hearings. The Court notes that under the Juvenile Justice and Delinquency Prevention Act, it has conducted monthly hearings regarding Defendant's placement at the Oakland County Jail since January 2022. The Court issued an Opinion and Order regarding Defendant's placement on March 1, 2022.

A "basic precept of justice" requires that punishment must be proportionate to both the offense and the offender. *Miller* v *Alabama*, 567 US 460, 469 (2012). In *Miller*, our United States Supreme Court struck down mandatory life without possibility of parole sentences when the offender was under 18 years old. "The Supreme Court has long recognized that children are constitutionally different from adults for sentencing purposes." *People* v *Parks*, 510 Mich 225, 235 (2022). Sentencing a child to life without parole is excessive for all but "the rare offender whose crime reflects irreparable corruption." *Montgomery* v *Louisiana,* 577 US 190, 195 (2016).

> *Miller* requires that before sentencing a juvenile to life without parole, the sentencing judge take into account 'how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison'. *Id.* at 208. The Court recognized that a sentencer might encounter the rare juvenile offender who exhibits such irretrievable depravity that rehabilitation is impossible and life without parole is justified. But in light of 'children's diminished culpability and heightened capacity for change' *Miller* made clear that 'appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon.' *Id.* at 208 (citing *Miller, supra*).

In *Jones* v *Mississippi,* the United States Supreme Court confirmed that *Miller* did not impose a formal factfinding requirement and added that "a finding of fact regarding a child's incorrigibility …is not required." *Jones* v *Mississippi,* 141 S Ct 1307, 1314-1315 (2021). "If the *Miller* or *Montgomery* Court wanted to require sentencers to also make a factual finding of permanent incorrigibility, the Court easily could have said so –and surely would have said so." *Id.* at 1318. "The [United States] Supreme Court set forth circumstances that a trial court should consider before concluding that it is appropriate to sentence a juvenile offender to die in prison." *People* v *Taylor*, 510 Mich 112, 126 (2022). The circumstances that a trial court must consider are called "*Miller* factors." *Id.*

The "*Miller* factors" are: (1) the juvenile's "chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the

juvenile's family and home environment—"from which he cannot usually extricate himself—no matter how brutal or dysfunctional"; (3) "the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him"; (4) "the incompetencies of youth," which affect whether the juvenile might have been charged with and convicted of a lesser crime, for example, because the juvenile was unable to deal with law enforcement or prosecutors or because the juvenile did not have the capacity to assist their attorney in their own defense; and (5) the juvenile's "possibility of rehabilitation." *Id.*

In Michigan, the prosecution must move the Court to impose a sentence of LWOP for a juvenile, and if it does, then the Court shall conduct a hearing on the motion as part of the sentencing process. MCL 769.25. "At the [*Miller*] hearing under subsection (6), the court shall specify on the record the aggravating and mitigating circumstances considered by the court and the court's reasons supporting the sentence imposed. The court may consider evidence presented at trial together with any evidence presented at the sentencing hearing." MCL 769.25(7). Each victim must be afforded the right to appear before the court and make an oral impact statement at any sentencing or resentencing of the defendant[2]. MCL 769.25(8). "If the court decides not to sentence an individual to imprisonment for life without parole eligibility, the court shall sentence the individual to a term of imprisonment for which the maximum term shall not be less than 60 years and the minimum term shall not be less than 25 years or more than 40 years." MCL 769.25(9).

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[2] The Court notes that Defendant has pleaded to Terrorism Causing Death, which has approximately two thousand or more victims. As such, the Court found it necessary to adjourn sentencing out far enough so that the Michigan Department of Corrections would have enough time to prepare the presentence investigation report and contact any victims who may want to make a statement to the Court. The Court scheduled sentencing for December 8, 2023. At that time, the Court will have a completed presentence investigation report and will also hear from victims. The purpose of this opinion and order is to simply decide whether the prosecution has met its burden by clear and convincing evidence that LWOP is not disproportionate.

"Miller's substantive holding is that LWOP is an excessive sentence for children whose crimes reflect transient immaturity." *Taylor*, 510 Mich at 128. Taken together, *Miller* and MCL 769.25 create a rebuttable presumption against LWOP sentences for juvenile offenders. *Id.* at 121. "As a procedural mechanism, therefore, it makes sense for a sentencing court to start from the premise that the juvenile defendant before them, like most juveniles, has engaged in criminality because of transient immaturity, not irreparable corruption." *Id.* The *Taylor* court found that the Court need not make any particular finding of fact, but that does not relieve the prosecutor of the burden of demonstrating facts that support their extraordinary request to sentence a juvenile defendant to LWOP. *Id.* Additionally, the *Taylor* court found that "... the prosecutor must prove facts and circumstances that rebut the presumption against LWOP by the well-known standard of clear and convincing evidence." *Id.* The trial court must consider all the evidence before it and determine whether the presumption has been rebutted to impose LWOP. *Id.* "This is an exercise in discretion, not a fact-finding mission." *Id.* at 143-144 (citing *People* v *Skinner*, 502 Mich 89, 116 n 11 (2018)). There is no particular fact that a prosecutor must prove to establish that LWOP is appropriate. *Id.* at 143. The *Taylor* court cautioned trial courts' use of the *Miller* factors, and stated, "[w]e take this opportunity, however, to reiterate that it is 'undisputed that all of [the *Miller* factors] are mitigating factors." *Id.* at 139, n 25. "If a particular *Miller* factor does not militate against LWOP, for example, at most that factor will be considered as neutral." *Id.* The court again cautioned that trial courts are to ensure that *Miller* factors are not used as aggravators. *Id.*

Here, over the course of four days, this Court held a lengthy *Miller* hearing. Both the prosecution and defense called witnesses and the Court admitted numerous exhibits. *Taylor* does not require this Court to make any particular factual findings; therefore, the Court will focus on the *Miller* factors and the evidence that mitigates each factor as the *Taylor* court cautioned.

I. The juvenile's chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences.

The Court will begin its analysis regarding the first *Miller* factor: the juvenile's chronological age and its hallmark features including immaturity, impetuosity, and the failure to appreciate risks and consequences. *Miller,* US 567 at 477.

A. Defendant's chronological age is a mitigating factor.

First, this Court finds that Defendant's age is a mitigating factor. There is no dispute that at the time Defendant committed the underlying offense he was fifteen years and six months old. (People's Exhibit 63, page 4). The Court will focus its analysis regarding defendant's age based upon the testimony of Dr. Daniel P. Keating, who was qualified as an expert in adolescent brain development. (Transcript, Miller Hearing, Volume II (hereinafter MT, vol. II)[3], page 198). Dr. Keating testified that he has conducted research in developmental science broadly but has specifically focused on adolescent brain development and adolescent neurodevelopment. *Id.* He has been involved in research regarding early childhood development and effects of early life diversity on the life course. *Id.* He has never met Defendant. *Id.* at 199.

In sum, Dr. Keating testified that until a person reaches their early twenties, "the limbic system or bottom brain shows a period of very high activation, hyperactivation, beginning in middle adolescence and carrying on until their early 20s, and so the incentive and award-seeking system is at a height during that period of time." *Id.* at 201. Dr. Keating described Defendant's brain at the time of the offense as an adolescent brain. *Id.* 202-203. An individual possesses an adolescent brain between age eleven and twenty-four years old.

[3] The Court notes there are multiple transcripts of the *Miller* hearing that took place over the course of three days. The transcripts are not divided by volume. However, for ease of reference, this Court will reference transcripts from July 27, 2023 as "Volume I"; July 28, 2023 as "Volume II"; August 1, 2023, as "Volume III"; and August 18, 2023 as "Volume IV".

The Court also notes that Defendant, at just fifteen years old, had not had much life experience. Additionally, because of his age, Defendant relied on the care and support of adults, primarily from his parents. He could not make major decisions without the approval of his parents or an adult. As such, the Court finds his age is a mitigating factor.

B. Defendant's maturity is a neutral factor.

Next, the Court finds Defendant's maturity is a neutral factor. Although the Court finds that Defendant's age is a mitigating factor, his age alone does not persuade this Court that his maturity is a mitigating factor. In this case, Defendant's age and maturity do not go hand in hand. Prior to the shooting, Defendant appeared as mature, if not more mature, than those his age. He was employed at age fourteen at a diner near his home. (People's Exhibit 64, page 8). He worked until September of 2021, two months prior to the shooting, when he and his parents decided to allow Defendant more time to focus on improving his grades in school. *Id.* Defendant participated in bowling and wanted to make bowling his career. *Id.* at 35. Bowling was briefly cancelled due to COVID-19, but he returned to bowling in late fall of 2020. *Id.* Defendant indicated that between work, homework, and playing video games he could not find time to do other stuff. *Id.*

Defendant has been described as a person with average to above average intelligence. (People's Exhibit 63, page 31). Defendant advised Dr. Anacker that in August 2021, he "persuaded" his father to get him a new gun – a "22 Derringer two shot". *Id.* at 38. Defendant paid for the gun with his own money. *Id.* Defendant also advised that he "persuaded" his father to buy him a 9mm pistol that was ultimately used in the shooting. *Id.* at 42. Defendant advised that his father bought the gun with Defendant's money. *Id.* Defendant practiced at the gun range, shooting the gun with his mother, and he showed her how to use the gun. (People's Exhibit 24, MT, vol. I. pages 48-49). This does not illustrate the hallmark immaturity of a child.

Further, Defendant had mature thoughts regarding how society functions that do not align with immaturity. In Defendant's journal, he discusses his view of the American school system. In part, Defendant stated,

> …I'm already forced to wake up at 6:30 5 days a week and be board [sic] out of my mind for 7 hours straight and I'm not going to let some self centered [sic] snowflake bitches tell me if I am allowed to talk or wether [sic] I have to put my head down or not. It's straight up fucking retarded. And when I talk about this to people at school they don't understand what I am saying but when I talk about this to an adult they understand. It basically like I found out the truth early and I guess the people who work in the school don't like that and try to force school is life on me.

Defendant reiterated the same or similar feelings in a video he recorded the night before the shooting. (People's Exhibits 56 and 57). In the video, he weighed his future employment prospects, including joining the military. *Id.* He even weighed the pros and cons of joining the military. *Id.*

The Court finds Defendant is mature. He can weigh the pros and cons of future employment, how he would live his life, and whether he would be happy in any career. *Id.* Unlike immature children or teenagers, Defendant thought in depth about his future and how he fits into the world. *Id.* To be clear, the Court is not saying that teenagers cannot or do not think about their futures, but the level of Defendant's in-depth thoughts about his future leads this Court to believe that he is not immature or has the hallmark immaturity of a child.

Lastly, he had been employed, participated in bowling with friends, and was able to convince his parents to buy him two guns and practice at a gun range. As will be discussed below, Defendant conducted significant research before he committed the underlying crime, including the type of weapon he would use and possible criminal penalties. Defendant's thorough planning and research does not reflect hallmark immaturity of youth. Taken together, Defendant appears more mature than others his age. His thought process, actions, and statements do not align with the hallmarks of youthful immaturity. As such, the Court finds his maturity is a neutral factor.

C. Defendant's impetuosity and potential failure to appreciate the risks and consequences of his actions are neutral factors.

Next, the Court finds Defendant's impetuosity and potential failure to appreciate the risks and consequences of his actions are neutral factors. Dr. Keating provided the Court with ample testimony regarding adolescent brain development and brain maturity. Dr. Keating testified that there are specific hallmarks of adolescent brain development, which include: development of the limbic system (bottom brain), the frontal vortex and ultimately the prefrontal system (top brain), the relationship between the bottom brain and the top brain, and the period of extremely high neuroplasticity. *Id.* at 201-202.

The prefrontal cortex is responsible for "executive functions", which is the ability to think through things in a systematic way, to focus attention, and to shift attention appropriately. *Id.* at 203. The prefrontal cortex is the primary way that individuals learn to inhibit impulsive or impetuous behavior. *Id.* Further, an adolescent brain continues to develop until it reaches maturity, which is in one's mid-twenties. By age sixteen, adolescents are not very different from adults in their ability to do things like solve logic problems. *Id.* at 204. The prefrontal cortex has limited capacity. (Defendant's Exhibit L page 3). "When fully engaged in one task involving effortful control, it has limited or no capacity to undertake additional tasks that require judgement." *Id.* "This has two implications: (1) having embarked on a plan to undertake a risky behavior, the execution of that plan may use up the available [prefrontal cortex] resources, further compromising the adolescent's ability to adjust behavior when circumstances warrant; (2) engagement with other activities that demand [prefrontal cortex] resources, such as dealing with emotionally arousing situations or in the face of peer pressure, may make the limited [prefrontal cortex] resource effectively unavailable". *Id.* at 4. Until the adolescent brain matures, the ability of the rational,

analytic, judgment, and governance functions of the prefrontal cortex to override unanalyzed, poor decision-making is limited. *Id.*

The limbic system, also known as the "bottom brain", is responsible for emotional and "hot cognition" elements that go into decision making. *Id.* at 206. The decision making for an adolescent depends upon the interaction between the prefrontal cortex and the limbic system. *Id.* at 206-207. An adolescent brain has less ability to inhibit and control behavior that is impacted by hormonal changes associated with puberty. *Id.* at 208. By age fifteen or sixteen, adolescents can respond accurately to how risky various scenarios are, but their ability is diminished when aroused. (MT, vol. II at 209). "The weighting that adolescents give to the benefits compared to the minuses that they would give to the risks tend to be substantially weighted more towards benefits rather than looking at the risks in adolescents compared to adults." *Id.*

The fact that there was planning or premeditation before committing a crime does not change Dr. Keating's finding that an adolescent brain functions differently than an adult brain. *Id.* at 210. Specifically, Dr. Keating testified in part that, "...the fact of planning obviously means that it's not an impulsive split-second kind of decision to do something, but it doesn't necessarily mean that's not an impetuous plan that has been carried out." *Id.* It is difficult for an adolescent to deviate from a plan – even a bad one. *Id.* at 211. Dr. Keating described the process as analogous to "getting on a train that's headed in a bad direction" and "trying to find a way to get off a runaway train". *Id.* For adolescents, "finding an exit ramp" is much harder than it is for adults. *Id.*

Dr. Colin King testified that Defendant is mentally ill. (Transcript, *Miller* Hearing, Volume III, hereinafter MT, vol. III page 8). The Court qualified Dr. King as an expert in mental health and forensic psychology. *Id.* at 11. Dr. King became involved in this case in December of 2022. *Id.* He spent twenty-three to twenty-four hours testing Defendant over the course of six virtual

sessions –using fifteen different assessment tools. *Id.* at 11-12. Additionally, he reviewed a litany of records including police reports, Defendant's schoolwork, Defendant's text messages (between the dates of April 5, 2021-April 7, 2021), Oakland County Sheriff's statements from two students, videos of the shooting, the "bird video" and Defendant's "manifesto". (People's Exhibit 63 page 3). Having reviewed the records, Dr. King concluded that "[a] review of [Defendant's] text messages months preceding his arrest and charges indicates that he was experiencing severe paranoia, delusions, and hallucinations." *Id.* at 41. Dr. King noted that Defendant meets the criteria for the following disorders: major depressive disorder, severe with psychotic features, generalized anxiety disorder, and obsessive-compulsive disorder. *Id.* at 42.

In contrast, Dr. Lisa Anacker testified that at the time of the offense Defendant did not meet the statutory definition of mentally ill. (Transcript, *Miller* Hearing, Volume IV pages 13-14). The Court qualified Dr. Anacker as an expert in forensic psychiatry. *Id.* at 10. Dr. Anacker's understanding of Michigan's definition of mental illness is that it is a substantial disorder of thought or mood that significantly impairs a person's judgment, behavior, capacity to recognize reality, or ability to cope with ordinary demands of life. *Id.* at 13-14. On March 15, 2022, Dr. Anacker evaluated Defendant relative to his criminal responsibility. *Id.* The evaluation lasted approximately five hours. (People's Exhibit 64 page 1). Prior to interviewing and evaluating Defendant, Dr. Anacker consulted with defense counsel and the prosecution, reviewed police reports, Federal Bureau of Investigation interviews, U.S. Department of Justice reports, Defendant's written or drawn material, videos, and a host of other information as outlined in pages one through six of her written report. *Id.* at 1-6.

Defendant advised Dr. Anacker that he had never been formally involved in mental health treatment prior to the alleged offense. *Id.* at 9. Prior to the offense, Defendant described having

low mood, lack of motivation, low energy, occasional anhedonia (the inability to feel pleasure), suicidal thoughts and a suicide attempt in October 2021, and decreased appetite. *Id.* at 10. Additionally, he described hearing both external and internal voices and had frequent hallucinations. *Id.* Nevertheless, Dr. Anacker noted that a person can have anxiety or depression and can see a therapist, and they might not meet the criteria for a statutorily defined mental illness because it does not rise to the threshold of a substantial disorder of thought or mood. (MT, vol. IV page 14). Dr. Anacker disagreed with Dr. King's diagnoses of major depressive disorder, severe with psychotic features because Dr. King relied heavily on subjective data instead of objective data. *Id.* at 16-19. Dr. Anacker stated that it would be "incredibly atypical for someone who was acutely psychotic to then show no signs of psychosis, both during the shooting, immediately after the shooting, and then for months after in jail [sic] without treatment." *Id.* at 20. Additionally, Defendant advised Dr. Anacker that he was not hallucinating at the time of the shooting, nor did he hallucinate in the days prior to the shooting. *Id.* at 21. He denied command hallucinations, which are voices that command a person do to something. *Id.* Importantly, Defendant did not attribute any of his behavior to delusions or psychosis. *Id.* Dr. Anacker did not contest that Defendant had low mood but disagreed that he met the level of functional impairment that is necessary for a major depressive disorder diagnosis. *Id.* at 22.

Here, there is no reasonable dispute that Defendant planned to kill multiple people at Oxford High School. Defendant documented his plan in a journal, including who he would kill first – a pretty girl with a future. (People's Exhibit 3, page 18). Defendant's journal is 22 pages long. (Transcript, Miller Hearing, Volume I, page 27). Lieutenant Timothy Willis testified that all 22 pages in the journal referred to the school shooting. *Id.* On page 22 of the journal, Defendant wrote, "I wanna shoot up the fucking school so badly. Soon, I'm going to buy a nine-millimeter

pistol." Additionally, he wrote that he would shoot anyone he sees and that he would aim for the head until he had to reload and that he would find a full class and throw a Molotov cocktail in there. (People's Exhibit 3, page 22). He wrote that he would continue to shoot people until the police breached the building and then he would surrender and spend the rest of his life in prison. (People's Exhibit 3, page 22). Defendant did not plan on killing teachers but planned to kill a specific teacher. *Id.* at 8. He wrote, in part, "I'm sorry for this mom and dad. I'm not trying to hurt you by doing this, I have to do this. This is the last passage I write. It's currently 29/11/2021 1:23. Exactly one day before the shooting…" Defendant planned to cause the biggest school shooting in Michigan. *Id.* at 6. He did not want to kill himself because he wanted to see the world react to the shooting. *Id.*

The Court reviewed what has been referenced as Defendant's statement of intent video dated November 29, 2021 – the night before the shooting. (People's Exhibits 56 and 57). The first video is approximately nineteen minutes and fifty-nine seconds long. In general, Defendant confirmed that he was going to do the school shooting and gave reasons why.

Defendant knew the possible consequences of his actions because he conducted research regarding possible penalties. (People's Exhibit 31). He conducted research regarding other school shootings. Defendant's web history shows that he searched for:

- "Should you do something that can imprison you"
- "Should you do something that scares you"
- "Aftermath of the deadly shooting at Stoneman Douglas High School in Parkland, Florida"
- "What is the worst prison sentence you can get in Michigan" (searched four different times)
- "What is a life sentence for a 15yr old" (searched three different times)
- "What is the legal age to be sent to prison"
- "Michigan youth correctional facility"
- "What prisons are there in Michigan"
- "Has anyone ever been executed in Michigan"
- "What states have death penalty"

- "Is Nikolas Cruz sentenced to death"
- "What does maximum death penalty mean"

Further, Defendant researched and considered the type of gun and ammunition that he would use during the shooting. In Defendant's journal he wrote, "[s]o now I'm pissed because I want to do the shooting with a 9 millimeter [sic] pistol as they are effective for killing. But right now all I got is a puny 22 LR KelTec that I don't know where my dad hid it." *Id.* at 54. (People's Exhibit 3, page 15). In his journal, Defendant drew two separate rounds of bullets. *Id.* at 54. He specified that the kill range for a .22 caliber rifle is twenty-five meters maximum, whereas the kill range for a 9mm Parabellum pistol is one hundred meters. *Id.* at 54-55. On multiple occasions, Defendant practiced shooting a gun at a shooting range. (People's Exhibits 20, 21, 24, and 25).

Additionally, in preparation for the shooting, Defendant researched the school's layout and downloaded a map of Oxford High School (People's Exhibit 33). The map showed locations of classrooms, restrooms, entrances, and exits. Prior to downloading the school map, he conducted an internet search regarding the average police response time for a shooting. (MT, vol. IV page 74). He created a list of the items needed for the shooting that included: a 9mm pistol, two to five Molotov cocktails, one to three powered NOS flares [sic], a pair of gloves, hat, jacket, mask, and a knife. (People's Exhibit 3, page 21). While at the school, but prior to the shooting, Defendant plugged his ears with tissue paper to muffle the gunshot noise.

Not only did the Defendant plan every action, but he also followed through with his plan. First, Defendant shot Phoebe Arthur and Elijah Mueller, who were shot in the face and neck area. (MT, vol. I. page 96). He then shot John Asciutto – who was running for his life. *Id.* He then shot Kylie Ossege, Riley Franz, and he killed Hana St. Juliana. *Id.* Defendant shot and killed Madisyn Baldwin. *Id.* He shot Tate Myre in the back of the head from approximately one hundred feet away, killing him. *Id.* He walked past an occupied classroom, turned around, and fired several shots into

an office – shooting Molly Darnell. *Id.* Aidan Watson was shot as he was running for his life. *Id.* at 97. Defendant killed Justin Shilling in a restroom. (MT, vol. II, page 89-90). All in all, Defendant killed four people and injured seven others.

Again, this Court finds impetuosity and potential failure to appreciate the risks and consequences of his actions are neutral factors. The Court cannot find impetuosity mitigating here based upon Defendant's significant plan to conduct the school shooting. The Court notes that Defendant may have had a mental illness, but that does not persuade the Court that this factor is mitigating. As outlined, he researched the weapon he would use, he downloaded a map of the high school, he put tissue in his ears to protect himself prior to the shooting, and he methodically shot and killed several individuals with precision after having practiced at a gun range. This is not a case where Defendant had no time to think about what he was going to do. He had several opportunities not to conduct the school shooting, but he went through with it anyway. Additionally, he had several opportunities to stop shooting during the incident, but he did not. After shooting the first person, he was not deterred from shooting others. Defendant's decision to conduct the school shooting was not an impulsive or impetuous decision; it was a thoroughly thoughtful one.

Next, he appreciated the risks and consequences of his actions. How can this Court possibly find mitigating that Defendant did not appreciate the risks and consequences of his actions where Defendant said he would spend the rest of his life in prison, and even wrote about it, and conducted significant research regarding a potential prison sentence? Defendant wrote in his journal, "I'm probably going to live the rest of my life in prison. I hope I can talk to someone though, so I don't take my anger out on the other prisoners". (People's Exhibit 3, page 6). As outlined above, he conducted significant research regarding possible criminal penalties. In one internet search, he specifically searched, "What is a life sentence for a 15 yr old [sic]" on three different occasions

and "What is the worst prison sentence you can get in Michigan" on four different occasions – albeit the searches were conducted on the same day. Presumably, Defendant would have received a response to his internet search that would have advised him of the possible penalties. He even researched Michigan's prisons. Additionally, he researched other school shooters and their sentences. He knew the full outcome of his actions and appreciated the consequences. Dr. Keating testified that an adolescent's ability to override **unanalyzed,** poor decision-making is limited, but here Defendant analyzed every action that he would take. Defendant certainly analyzed his poor decision to conduct the shooting, so his ability to override the bad decision should not have been limited.

In sum, impetuosity and potential failure to appreciate the risks and consequences of his actions are neutral factors.

II. The juvenile's family and home environment are mitigating factors.

The Court finds that the juvenile's family and home environment – "from which he cannot usually extricate himself – no matter how brutal or dysfunctional"— are mitigating factors. There is no question that Defendant's home environment was not ideal.

Prior to the offense, Defendant was a resident of Oxford, Michigan. "In 2020, Oxford, MI had a population of 3.54k people with a median age of 43 and a median household income of $67,130". (People's Exhibit 63, page 7). Defendant's family fit the profile of the average family in Oxford. *Id.*

The Court reviewed Defendant's admitted Exhibit V, which is Dr. Jillian Peterson's report from "The Violence Project." Dr. Peterson is the co-founder and co-president of The Violence Project Research, which is known for its public database of mass shooters in the United States. (Defendant's Exhibit V). Dr. Peterson outlined in her report that,

> Witnesses will testify about [Defendant's] early childhood growing up in Washington State. Multiple neighbors heard yelling, screaming, smacking, and crying from inside the Crumbley's various residences on multiple occasions. Neighbors thought there was domestic violence happening, complained to management, and even called the police. Friends and neighbors witnessed [Defendant] punished violently by James and Jennifer Crumbley. [Defendant's] elementary school teachers will testify that James and Jennifer Crumbley were not active in his education.
>
> Witnesses will testify that daily fighting continued into [Defendant's] adolescence, up until the time of the shooting. James and Jennifer Crumbley fought loudly on a daily basis, until late in the night and early hours in the morning. They were often intoxicated during these altercations…
>
> (Defendant's Exhibit V).

The Court notes that over the course of the four-day *Miller* hearing, it did not hear from any of the witnesses that Dr. Peterson outlined. Nevertheless, Dr. Peterson's report is consistent with Dr. Colin King's testimony regarding Defendant's upbringing and home environment prior to the shooting.

The Court finds that Defendant's parents neglected him. As early as age six, Defendant was left home alone. (MT, vol. III page 15). Dr. King interviewed a neighbor who advised that Defendant would go across the street to the neighbor's home, especially during "thundershowers", to report that he was afraid and would ask for help. *Id.* at 15-16. While at home alone, Defendant spent countless hours playing video games and spent an "inordinate amount of time" going to different websites and indulging in various graphic media. *Id.* at 16. Defendant began to fantasize about being a part of violent scenes. *Id.* Dr. King referred to Defendant as a "feral child." *Id.* at 18-19. He defined a feral child as a child who has been abandoned. *Id.* Dr. King profiled Defendant as a feral child because he had high levels of isolation, lack of parental support, lack of guidance, and lack of resources. *Id.*

Despite Defendant requesting mental healthcare, his parents failed to take him for a psychological medical evaluation. (People's Exhibit 64, page 9). In Dr. Anacker's report she stated

> [w]hile Mr. Crumbley denied any formal mental health treatment prior to the alleged offenses, he recalled requesting mental health care within the last year. He noted on his 15th birthday, he 'got really upset and said I want to see a therapist.' He was asked why he wanted to see a therapist at the time, and he stated, 'I guess I didn't want to move forward in life. I wanted to stay at that point, so when I realized I'm getting older, I needed help to get past that.' He stated his mother reportedly said, 'All right, I'll get someone you can talk to.' [Defendant] stated, 'It never really happened, and I forgot about it.'" *Id.*

Defendant's father bought him a gun that was ultimately used in the shooting despite knowing Defendant needed a psychological medical evaluation.

Defendant's aunt and step-grandmother submitted letters for this Court's review. (Defendant's Exhibit T). The Court has read both letters. Defendant's aunt has been in weekly contact with him since his incarceration in November 2021. He has also had almost weekly contact with his step-grandmother. *Id.* Defendant's aunt visited him in July 2021. *Id.* She describes him as an individual who possesses several remarkable traits. *Id.* Defendant's aunt wrote to the Court, "[i]n my opinion Ethan had a good childhood filled with love, family vacations and happy memories." *Id.* The last time she saw Defendant was in July 2021. She described him as very helpful and respectful and assisted her in any way needed. *Id.* They had a great conversation regarding his employment and his pets. *Id.* He even advised his aunt how he nursed an abandoned kitten back to health. *Id.* This was four months prior to the shooting. Both his aunt and step-grandmother continue to support him. *Id.*

Per Defendant, he did not experience trauma or abuse growing up. (People's Exhibit 64, page 8). Defendant provided Dr. Anacker with historical information regarding his upbringing and home environment. Dr. Anacker reported that,

> Mr. Crumbley was asked if he experienced trauma or abuse growing up. He denied this. He was asked specifically about a witness statement from a student at Oxford High School in which she told police that Mr. Crumbley had informed her that his father shot him with BB guns on a regular basis. He responded, 'I lied about that.' He stated he had indeed told his classmate that his father shot him with BB guns, but indicated he only told her in an attempt to 'relate with her' and her own struggles. He again denied any experience of physical, sexual or emotional abuse. He instead recalled pleasant memories of camping with his parents and owning a wide variety of animals at their home including a ferret, rabbit, chinchilla, and various cats and dogs. *Id.*

There is conflicting evidence regarding Defendant's home environment; therefore, the Court places little to moderate weight on this factor. For example, Defendant reports that his childhood was "good", but Dr. King referred to Defendant as a "feral child"; Dr. King reported that Defendant's physical abuse "was debatable"[4], but Defendant denied any history of physical abuse; Dr. King reported that Defendant suffered from trauma, but Defendant denied any history of trauma; Dr. King reported that Defendant suffered emotional abuse, but Defendant denied any history of emotional abuse. Dr. King advised that Defendant's parents abandoned him, but they both discussed trying to get Defendant's school counselor to talk to him. (Defendant's Exhibit G). Further, multiple texts from Defendant's mother show that she took interest in how Defendant was doing, whether he made it home from school, and whether he had eaten before work because she did not want him going to work not feeling well. *Id.* For example, Defendant's mother texted his father, "[i]s he being weird and depressed?" *Id.* However crude, it shows an interest in Defendant's wellbeing. Defendant's mother showed an interest in how Defendant was doing, and communicated those issues to Defendant's father; therefore, it does not appear to this Court that Defendant was a feral child as Dr. King described. Nevertheless, Defendant's parents failed to get him the psychological medical evaluation that he needed, despite Defendant asking for help.

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[4] MT, vol. III page 98

Defendant was exposed to substance abuse, but he denied that it negatively impacted him; in fact, he stated that he viewed his parents as a reminder of what not to do and specifically looked to his father as what not to do, so he never touched "weed" or alcohol. (People's Exhibit 64, page 11). Indeed, it appears that his parents' consumption of alcohol contributed to their neglect, but it does not appear Defendant was significantly affected, so the Court finds that Defendant's parents' substance abuse minimally impacted Defendant.

The Court finds that his parents' neglect is a mitigating factor; however, his general home life, while not ideal, was also not terrible. Despite his parents' shortcomings, Defendant appeared to have a loving and supportive family. (Defendant's Exhibit T). He went on family vacations, owned several pets, and had visits from family. He had housing, lights, gas, water, and by his own statements he was not subject to physical or sexual abuse. In Defendant's own words, his childhood was "good." (People's Exhibit 64, page 7).

In sum, the Court finds that Defendant's parents frequently left him home alone since an early age, that his parents frequently used alcohol and argued in front of Defendant, that his parents failed to take his mental health seriously, and that his father bought him a gun that he used in the school shooting. Taken together, Defendant's family and home environments are mitigating factors.

III. The circumstances of the homicide offense are a neutral factor.

The Court finds the circumstances of the homicide offense are a neutral factor. There is no doubt that Defendant committed a premediated, heinous crime. There is no need to be repetitive. The facts speak for themselves.

Nevertheless, the Court finds that Defendant was the sole participant in the underlying crime. This was not an impulsive decision, nor was he peer pressured into committing the crime.

He methodically walked through the school picking and choosing who was going to die. He wanted to kill the innocent. The Court finds this factor neutral.

IV. The incompetencies of youth is a neutral factor.

The Court finds that the incompetencies of youth, which affect whether the juvenile might have been charged with and convicted of a lesser crime, whether the juvenile was unable to deal with law enforcement or prosecutors, or whether the juvenile did not have the capacity to assist their attorney in their own defense, is a neutral factor. The Court notes that Defendant filed an insanity defense and subsequently withdrew the defense. Defendant has never been referred for competency. The Court appointed three attorneys to assist Defendant, which includes a legal guardian ad litem. The Court appointed a legal guardian ad litem because Defendant's parents are incarcerated at the Oakland County Jail. He has had more than adequate legal representation. Defendant can consult with his attorneys, he understands the charges against him, and he has a factual understanding of the charges. (MT, vol. III, page 39). In fact, he has participated in his own defense and submitted to numerous evaluations and interviews from defense experts.

Dr. King categorized Defendant as a "highly intelligent person." *Id.* at 45. Defendant, in consultation with his attorneys and legal guardian ad litem, pleaded guilty as charged to all counts within the general information. There is no evidence on the record that Defendant's youthfulness caused him to be charged with higher crimes versus lesser crimes. Nor is there any evidence that he does not have the capacity to assist his attorneys in his own defense. Based upon his careful planning, maturity, and intelligence at the time of the offense, there is no evidence that Defendant would have dealt with the police or prosecution any differently if he was an adult. In fact, Defendant specifically planned how he would deal with police at the time of the shooting – surrender and allow police to take him into custody. As such, the Court finds this factor is neutral.

V. The juvenile's possibility of rehabilitation is a neutral factor.

Lastly, the Court finds the juvenile's possibility of rehabilitation is a neutral factor. According to both the prosecution and defense, this case poses an issue of first impression in the United States because it involves the court weighing the *Miller* factors prior to sentencing and not on resentencing. Normally, in determining a juvenile's possibility of rehabilitation, the Court has prison records or other records to rely on because the individual is before the Court on resentencing for crimes in which they received LWOP sentences while minors – also known as "juvenile lifers". Currently, Defendant is seventeen years of age and has been incarcerated since November 2021. Therefore, the Court has limited information regarding Defendant's possibility of rehabilitation. So, the Court finds it important to note his behavior prior to the underlying offense and his behavior thereafter in weighing his possibility of rehabilitation.

Prior to the underlying offense, it is clear from the record that Defendant was obsessed with violence. Defendant's internet history shows him visiting a specific violent website daily, months prior to the shooting. (MT, vol. II, page 13). Lieutenant Willis described the site as an extremely graphic website that shows actual footage of crimes, murders, and assaults. *Id.* On November 23, 2021, one week prior to the shooting, Defendant searched for violent footage of brutal murders done with a machete and "chopped machete" compilations. (Defendant's Exhibit B, pages 4-5). On November 29, 2021, the day before the shooting, Defendant watched videos of several school shootings and their aftermath. *Id.* at 3.

The Court reviewed school assignments and emails from school employees. (Defendant's Exhibit C). Defendant drew pistols and rifles on several classwork assignments. *Id.* An assignment asked Defendant about his favorite books, movies, and TV shows. *Id.* at 1852. Defendant wrote, in part, that his favorite book is "Resistance and Making Bombs for Hitlar [sic]". *Id.* A teacher

caught Defendant looking at different bullets on his cell phone while the teacher passed out essays. *Id.* at 1860. "There were 93 pages of homework papers found in [Defendant's] backpack. There were guns drawn on at least 33 pages of homework…" (Defendant's Exhibit V).

Additionally, the Court has read Defendant's journal. (People's Exhibit 3). Defendant wrote, "[i]f I would have never thought of the brilliant idea of shooting up the school then I probley [sic] would have become a serial killer and I don't know which one is worse lol." *Id.* at 11. Additionally, Defendant wrote that he had started a plan to kidnap, rape, and kill a young woman in his neighborhood and that he found out she lived five minutes from him. *Id.* He stated that he would kidnap her with an industrial garbage bag and would then torture and rape her until he slit her throat. *Id.*

He further wrote about how he killed eight infant baby birds by slowly torturing them until death. *Id.* The Court has reviewed videos that depict Defendant torturing a baby bird as he talked to it. (People's Exhibits 37 and 38). He slowly killed the baby bird. *Id.* In May 2021, Defendant texted his friend "B" about torturing baby birds. (People's Exhibit 18). "B" advised Defendant that most psychopaths start with small animals and eventually get bored with killing small animals and move on to killing bigger animals and then people. *Id.* Defendant responded "Yessssss sir." *Id.* It is important to note that Defendant stated to "B" that "… most serial killers get their damage from their family or of accident's [sic] but I have no trauma from my past I was just born this way." *Id.* When Dr. Anacker asked him what thoughts or feelings arose when he tortured birds, the Defendant responded, "[i]t's like a feeling between good and pleasurable. A relief feeling. Feeling in power. I don't know it just felt good." (People's Exhibit 64, page 37). There is other disturbing evidence, but it is clear to this Court that Defendant had an obsession with violence before the shooting.

As stated, the Court also finds it appropriate to note Defendant's post-arrest behavior in determining his possibility of rehabilitation.

Since Defendant's incarceration at the jail, he has attempted to obtain his GED. The Court has read the report of Defendant's legal guardian at litem, Ms. McKelvy. (Defendant's Exhibit U). Defendant passed all practice GED tests, including the math portion, with which he struggled. Defendant was unable to take the GED test due to the inability to find a proctor approved to enter the jail. Per Ms. McKelvy, she believes if Defendant had the opportunity to take the test, he would pass.

While at the jail, Defendant has had several misconducts. (Defendant's Exhibit J, page 3). On January 23, 2023, Defendant was investigated for an incident where the juvenile next to his cell was able to use the GED tablet to post a video on Instagram from his jail cell. *Id.* at 4. Defendant told deputies that he was the person who hacked into the protected password on the tablet and that he also told the other juvenile inmate how to hack the tablet. Defendant advised deputies that he had hacked the tablet to play video games and read articles online regarding his case. *Id.* This was not entirely true. Law enforcement was able to recover the tablet's deleted internet search history. (People's Exhibit 44). The deleted search history showed that Defendant searched the same violent website he searched prior to the shooting to watch violent videos of the police, work accidents, and a prisoner killed during a fight in a cell. *Id.*

On February 10, 2023, Defendant received his first violation for allowing another juvenile inmate to use his phone pin and allowing the other inmate access to Defendant's phone credits and account. *Id.* at 3. On the same day, jail staff observed Defendant using a thin rope to wiggle a sugar packet to another juvenile inmate in a cell next to his. *Id.* Defendant refused a deputy's order to give him the rope and instead flushed it down the toilet. *Id.* In the jail, rope is considered dangerous

contraband. *Id.* at 4. On February 11, 2023, Defendant received a Category I violation for making contraband dice and a gaming board out of toilet paper and a cardboard box lid. *Id.* Defendant received a fourth violation for failing to follow deputies' orders to remove trash bags on his windowsill. *Id.* at 3. The deputies removed the trash bags and placed them on the floor, but Defendant put them back up. *Id.*

The jail has also cited Defendant for three additional rule violations that occurred on May 23, 2023, which included two violations of the jail's health and safety rules and one violation for destruction of jail property. *Id.* The health and safety violations were for Defendant's failure to keep his room clean and sanitary, whereas the destruction of jail property violation was because Defendant removed a screw from the toilet seat in his cell. *Id.*

In sum, Defendant's expert in corrections, Dr. Romanowski, noted that Defendant has demonstrated moderate difficulty adjusting to incarceration at the county jail. Dr. Romanowski, when asked about his opinion regarding Defendant's potential for rehabilitation, stated

> … I've had very limited information, basically [Defendant's] records in jail. But honestly, I think everybody has a potential for change, and I think Mr. Crumbley would be no exception to that rule, but I think he has to make that choice. He has to be the one to say I want the changed [sic]. (MT, vol. II, at page 158).

Additionally, Dr. Colin King testified that he believes Defendant can be rehabilitated. (MT, vol. III, at page 61). In support of his opinion, Dr. King referred to working in the field of brain injury for twenty-five years and his treatment of people with "mental health." *Id.* He further referred to neuroplasticity, which is the ability of the brain to create new pathways. *Id.* Dr. King indicated that Defendant's brain is still maturing, and his brain may not reach full maturity for another ten years. *Id.* at 62.

The Court finds that the evidence, at this point, shows that Defendant's possibility of rehabilitation is slim. Defendant continues to be obsessed with violence and could not stop his

obsession even while incarcerated at the jail. His obsession with violence is, in part, what caused Defendant to commit the underlying offense. If Defendant continues to be obsessed with violence in the jail, how can there be a possibility of rehabilitation? He continued the same type of behavior that he exhibited pre-incarceration. Although Defendant may have received his GED if he could have taken the test, that, alone, does not show a possibility of rehabilitation. As Defendant's own expert stated, Defendant has to be the one who wants to change if he is to be rehabilitated. The evidence does not demonstrate to this Court that he wants to change.

Further, the Court notes and considered Dr. King's testimony regarding rehabilitation. Dr. King testified that Defendant's brain has not reached full maturity and therefore Defendant can be rehabilitated. The Court gives this conclusion little weight because it only focuses on Defendant's brain maturing. It does not appear to consider other factors such as how prison will affect Defendant's rehabilitation or Defendant's family support or lack thereof or if Defendant even wants to be rehabilitated. In short, the Court cannot find that there is a possibility that Defendant can be rehabilitated based solely on his brain maturing. Daily, there are people who have mature brains that commit heinous crimes and show no signs of rehabilitation or possibility of rehabilitation.

The Court finds Defendant's possibility of rehabilitation is a neutral factor.

Conclusion

In conclusion, the Court finds that Defendant's age and home and family environment are mitigating factors. The Court finds the remaining factors neutral. This crime is not the result of impetuosity or recklessness, nor does the crime reflect the hallmarks of youth. Defendant carefully and meticulously planned and carried out the shooting. Accordingly, the Court, having weighed all factors and noting the Michigan Supreme Court's admonition in *Taylor*, *supra*, finds that the

prosecution has rebutted the presumption, by clear and convincing evidence, that a sentence to LWOP is a disproportionate sentence. This case will proceed to sentencing on December 8, 2023.

IT IS SO ORDERED.

Date: September 29, 2023

HON. KWAMÉ ROWE