STATE OF SOUTH DAKOTA) :SS COUNTY OF LINCOLN)	IN CIRCUIT COURT SECOND JUDICIAL CIRCUIT
STATE OF SOUTH DAKOTA, Plaintiff, V. **AMIR HASAN BEAUDION, JR.,** Defendant.	41 CRI 20-60 MEMORANDUM OPINION RE: MOTION TO DECLARE THE DEATH PENALTY UNCONSTITUTIONALLY EXCESSIVE FOR A TEENAGE OFFENDER AND MOTION TO DECLARE SOUTH DAKOTA'S CAPITAL SENTENCING PROCESS UNCONSTITUTIONALLY UNRELIABLE FOR A TEENAGE OFFENDER

On January 9, 2023, Defendant filed a *Motion to Declare South Dakota's Capital Sentencing Process Unconstitutionally Unreliable for a Teenage Offender.* On the same date, Defendant filed a *Motion to Declare the Death Penalty Unconstitutionally Excessive for a Teenage Offender.* A *Pre-Trial Constitutional Motions and Atkins Hearing Scheduling Order* was entered by the Court on January 18, 2023. The State did not notice an expert witness, but the Defendant noticed their expert witness for these motions on February 10, 2023, in accordance with the *Scheduling Order.*

On February 17, 2023, the State filed *State's Response to Defendant's Motion to Declare South Dakota's Capital Sentencing Process Unconstitutionally Unreliable for a Teenage Offender* and *State's Response to Defendant's Motion to Declare the Death Penalty Unconstitutionally Excessive for a Teenage Offender.* On March 3, 2023, the Defendant submitted *Defendant's Reply to State's Two Responses to Motions to Declare the Death Penalty*

Unconstitutionally Excessive and Unreliable for a Teenage Offender. These motions may be referred to herein as the *Roper Motions*.

On March 16, 2023, the State filed *State's Motion for Leave to Schedule Additional Hearing Date for Defendant's Constitutional Motions*. In the *Motion for Leave*, the State represented that it had recently become clear to counsel that they would need to obtain an expert to provide rebuttal to the Defendant's *Roper Motions* and that they had contacted an expert who would be available in the next six weeks. Because the *Motion for Leave* was filed just 2 days before the start of the hearing that had been scheduled for two months, the Court set an immediate hearing to address the issue on March 17, 2023. Following the hearing, the Court allowed the State to identify an expert witness for the *Roper Motions*. Further, the Court allowed the Defendant an opportunity request a further hearing for the rebuttal testimony of their expert witness and indicated the Court would establish a post-hearing briefing deadline.

On March 20, 2023, the matter came before the Court for a hearing. The State was represented by State's Attorney Thomas Wollman and Deputy State's Attorneys William Golden and Amanda Eden. The Defendant was personally present along with his attorneys, Jason Adams, John Hinrichs, and David Stuart. During the hearing, the Court heard testimony from the Defendant's noticed expert, Dr. Laurence Steinberg, via Zoom. The matter next came before the Court for a hearing on April 6, 2023, where the Court heard testimony from the State's expert Dr. Stephen Morse. The Defendant declined the opportunity to present rebuttal testimony. The parties submitted post-hearing briefs on April 20, 2023. The Court, having considered all of these filings and testimony, issues the following *Memorandum Opinion*.

FACTUAL AND PROCEDURAL HISTORY

Defendant Amir Hasan Beaudion, Jr. (Defendant) is charged with seven (7) counts of First-Degree Murder; one (1) count of Second-Degree Murder; four (4) counts of Aggravated First-Degree Kidnapping; two (2) counts of Second-Degree Rape; and one (1) count of Second-Degree Robbery. The State has filed a *Notice of Intention to Seek Death Penalty.* The Defendant was 19 years and 7 months old at the time of the alleged crimes.

Dr. Laurence Steinberg testified on behalf of the Defendant. Dr. Steinberg is a professor of psychology and neuroscience. He is trained as a developmental psychologist with an emphasis and specialization in adolescence. He has written over 500 scholarly papers. Dr. Steinberg has previously testified numerous times in various court proceedings regarding the brain development of adolescents and late teenagers or emerging adults – those individuals who are still arguably in the development phase and are over the age of 18 but generally under the age of 21 or 22 (hereinafter "late teenagers" or "late teens").

Dr. Steinberg testified that, in general, late teenagers suffer from the same delayed brain development as traditional teenagers. He explained that scientific research has evolved over the last decade or two based upon neuroimaging research suggesting that the brain is not fully developed until someone reaches their mid-20's. Dr. Steinberg testified that much of this research has been developed since 2005 when the United States Supreme Court declared that the death penalty was unconstitutional as it applied to minors, meaning those under the age of 18.

Dr. Steinberg described that late teens, because their brains are not yet fully developed, are still predisposed to impulsive and risk-seeking behavior. Late teens strive for rewards and are less concerned about punishment than adults. The personalities of late teens are not yet fixed, and they lack self-control. Dr. Steinberg further opined that at approximately the age of

22 or 23 the brain will finish maturation. Many of these scientific developments have occurred due to the expanded use of research through the use of neuroimaging. That research, according to Dr. Steinberg, became prevalent after 2010. By 2015, he opined, the science underlying these developments had reached a consensus in the scientific community.

Dr. Stephen Morse testified on behalf of the State. Dr. Morse is a professor of psychology and law having obtained his law degree and his PhD in personality and development studies. Dr. Morse has written over 100 scholarly articles and contributed to over five books in the area of criminal responsibility, and addiction and mental health intersections with the law. Dr. Morse described his relationship with Dr. Steinberg as "very friendly professional acquaintances." Dr. Morse agreed with Dr. Steinberg's description of the brain development of late teens.

Dr. Morse differed with Dr. Steinberg on the question of whether science should be called upon to dictate legal or moral questions. Legal questions are legal questions, not scientific questions in his opinion. His research concluded that in response to the continued evolution of late teen brain development science, courts across the country have been using age as a mitigation factor but have not ruled to extend the protections of *Roper* beyond age 18. In essence, according to Dr. Morse, the courts looking at this issue since *Roper* have emphasized that the appropriate consideration is based upon the individual defendant, not a generalized scientific consensus. Courts have chosen to look at the behavior of individual defendants and whether they ought to be held responsible for their individual actions. In short, Dr. Morse testified that science ought not dictate a legal result and that *Roper's* conclusion was the same.

LAW AND ANALYSIS

A party challenging the constitutionality of a statute bears a heavy burden:

> There is a strong presumption that the laws enacted by the legislature are constitutional and the presumption is rebutted only when it clearly, palpably and plainly appears that the statute violates a provision of the constitution. Further, the party challenging the constitutionality of a statute bears the burden of proving beyond a reasonable doubt that the statute violates a state or federal constitutional provision.

State v. Berget, 2014 S.D. 61, ¶ 21, 853 N.W.2d 45, 53 (quoting *Vilhauer v. Horsemens' Sports, Inc.*, 1999 S.D. 93, ¶ 16, 598 N.W.2d 525, 528 (quoting *Green v. Siegel, Barnett & Schutz*, 1996 S.D. 146, ¶ 7, 557 N.W.2d 396, 398)). Further, "'A defendant cannot claim that a statute is unconstitutional in some of its reaches if it is constitutional as applied to him.'" *Berget*, 2014 S.D. 61, ¶ 21, 853 N.W.2d at 53 (quoting *State v. Jensen*, 2003 S.D. 55, ¶ 13, 662 N.W.2d 643, 648 (quoting *City of Pierre v. Russell*, 228 N.W.2d 338, 341 (S.D. 1975))). Therefore, Beaudion must establish beyond a reasonable doubt that the application of the death penalty to a defendant who was 19 years old at the time of the offense violates the South Dakota or the United States Constitution. The United States Supreme Court has dictated that only it can overrule its decisions. *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 1921-22, 104 L.Ed.2d 526 (1989) ("[T]he Court of Appeals should follow the case which directly controls, leaving to [the Supreme Court] the prerogative of overruling its own decisions.").

In 2005, the United States Supreme Court held that execution of those under the age of 18 at the time of commission of an offense were prohibited from execution under the Eighth and Fourteenth Amendments. *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005). In *Roper*, the Supreme Court referenced *Akins* and decided that a national consensus had been achieved against the execution of juveniles as it had for the execution of the intellectually disabled. 543

U.S. at 564, 125 S.Ct. at 1192. At the time of the *Roper* decision, 30 states had prohibited the death penalty for juveniles, including 12 states that had rejected the death penalty entirely. *Id.* South Dakota was one of those states. *See* S.D.C.L. § 23A-27A-42 (2004). The Supreme Court explained that three general differences between those under 18 and adults demonstrated that juvenile offenders cannot, with reliability, be classified among the worst offenders deserving of the death penalty. *Roper,* 543 U.S. at 569, 125 S.Ct. at 1195. First, young offenders lack maturity and have under-developed notions of responsibility and act impulsively. *Id.* Second, juveniles are more susceptible to peer pressure and other outside negative influences. *Id.* And third, the character of juveniles are not yet entirely formed and their personality traits are transitory. *Id.* at 570, 125 S.Ct. at 1195.

The Supreme Court opined, "the susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult." *Id.* (quoting *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S.Ct. 2687, 2699, 101 L.Ed.2d 702 (1988) (internal quotations omitted.)) In *Thompson*, the Supreme Court prohibited the death penalty for juveniles under the age of 16. 487 U.S. at 838, 108 S.Ct. at 2700. The Supreme Court applied the same reasoning to those under 18 in *Roper*. 543 U.S. at 571, 125 S.Ct. at 1196. The Supreme Court in *Roper* stated,

> [d]rawing 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.

543 U.S. at 574, 125 S.Ct. at 1197–98.

In *Roper*, the Supreme Court referenced Dr. Steinberg's research. Unlike *Atkins*, where the Supreme Court decided to rely on the prevailing medical consensus for the definition of intellectual disability, in *Roper* the Supreme Court retained its supremacy over the age at which the death penalty should apply by stating "[t]he task of interpreting the Eighth Amendment remains our responsibility." 543 U.S. at 575, 125 S.Ct. at 1198. As a result, the science does not control this issue.

Dr. Morse testified that at the time of the *Roper* decision, through the amicus briefs and cited works on developmental psychology and neuroscience submitted to the Supreme Court, the Supreme Court had much of the information the scientific community reached consensus on ten years later. The Supreme Court at the time of *Roper* had the behavioral science information that exists today, which could have led them to draw the line at 20 or 21, but did not.

Since *Roper*, the United States Supreme Court has continued to view the age of 18 as a critical juncture. In *Graham v. Florida*, the Supreme Court prohibited life without parole sentences for individuals who commit crimes other than homicide prior to age 18. 560 U.S. 48, 74-75, 130 S.Ct. 2011, 2030, 176 L.Ed.2d 825 (2010). In *Miller v. Alabama*, the Supreme Court prohibited mandatory life sentences without parole for defendants under the age of 18 who commit homicide. 567 U.S. 460, 489, 132 S.Ct. 2455, 2475, 183 L.Ed.2d 407 (2012).

The Defendant relies on *Hall v. Florida* and *Moore v. Texas* for the proposition that this Court's decision must be made in accordance with the current standards of the scientific community as was required for the issue of intellectual disability. *See Hall*, 572 U.S. 701, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014), and *Moore*, 581 U.S. 1, 137 S.Ct. 1039, 197 L.Ed.2d 416 (2017) (*Moore I*). The Defendant argues that the Eighth Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v.*

Dulles, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958) (addressing Congress' warpower to enact a statute authorizing expatriation of a person who was convicted by a military court martial of desertion during wartime but had not declared allegiance to a foreign power). However, the Defendant's arguments must be tempered by this Court's obligation to apply controlling authority, and this case is squarely controlled by *Roper*.

A number of federal courts of appeal have refused to extend *Roper*. *See, e.g., Kearse v. Secretary, Florida Department of Corrections*, 2022 WL 3661526 (11th Cir. 2022) (declined to extend *Roper* to 18 year and 84 day old who committed murder under emotional age theory); *Melton v. Secretary, Florida Dept. of Corrections*, 778 F.3d 1234 (11th Cir. 2015) (refusal to extend *Roper* to those whose "mental and emotional age" was below 18); *Jasper v. Thaler*, 466 Fed. Appx. 429 (5th Cir. 2012) (holding that *Roper* was facially inapplicable because the defendant was over the age of eighteen at the time of the capital crime); *In Re Garner*, 612 F.3d 533 (6th Cir. 2010) (refused to extend *Roper* to a 19 year old with a mental age of less than 18); *Parr v. Quarterman*, 472 F.3d 245, 261 (5th Cir. 2006) (refusing to extend *Roper*'s holding and denying a certificate of appealability to a defendant who committed the capital crime four days after his eighteenth birthday). These courts refused to extend *Roper* on the basis of chronological age as well as mental or emotional age. Other federal and state courts have also refused to extend *Roper*. [1]

In *Miller v. Alabama*, the United States Supreme Court held that an individual who committed homicide under the age of 18 can be subject to a sentence of life without parole as

[1] See, e.g., *Thompson v. State*, 153 So.3d 84 (Ala. Ct. Crim. App. 2012); *Foster v. State*, 258 S.3d 1248 (Fl. 2018); *Stinski v. Ford*, 2021 WL 5921386 (S.D. Ga. Dec. 15, 2021); *Rogers v. State*, 653 S.E.2d 31 (Ga. 2007); *Hariston v. State*, 472 P.3d 44 (Idaho 2020): *Young v. Stephens*, 2014 WL 509376 (W.D. Tex. Feb. 10, 2014) (vacated in part on other grounds).

long as the sentencing body had the discretion to impose a lesser sentence. 567 U.S. 460, 132 S. Ct. 2455, 183 L.Ed.2d 407 (2012). As a result of the decision, a mandatory life without parole sentence for an offender under the age of 18 violates the Cruel and Unusual Punishments Clause of the Eighth Amendment. Essentially, the Court found that an offender's youth was a mitigating factor at the time of sentencing. *Miller* simply required that courts consider youth as a mitigating factor before imposing a life without parole sentence. Numerous courts have also refused to extend *Miller* protections to those between the ages of 18 and 20. *See Cruz v. United States*, 826 Fed.Appx. 49 (2nd Cir. 2020); *US v. Sierra*, 933 F.3d 95 (2nd Cir. 2019); *US v. Chavez*, 894 F.3d 593 (4th Cir. 2018); *Zebroski v. State*, 179 A.3d 855 (Del. 2018); *Munt v. State*, 880 N.W.2d 379 (Minn. 2016); *State v Vrba*, 638 S.W.3d 604 (Mo. Ct. App. 2022); *State v. Barnett*, 598 S.W.3d 127 (Mo. 2020); *State v. Ware*, 870 N.W.2d 637 (Neb. 2015). A review of the caselaw supports the conclusion that courts across the United States are maintaining the bright line rule of the age of 18 for juvenile protections under the Eighth Amendment.

As discussed above, numerous courts across the country have rejected attempts to extend *Roper's* protection to late teens or emerging adults.[2] Dr. Steinberg testified that the scientific community has been declaring the late teen brain to have the same limitations as a middle teen brain since approximately 2005. In the near twenty years since then, the United State's Supreme Court has not sought to extend *Roper* to meet this emerging consensus and move the line to age 21 or below. In the near twenty years since *Roper*, no federal court of appeals has moved the line. In *Hall*, the Supreme Court analyzed the number of states that had addressed the issue of

[2] One study published in the *New York University Law Review* referenced that 494 petitions had been filed in various courts seeking the extension of *Roper*, *Graham*, and *Miller* to late teens and none had been successful. Francis X. Shen et al., Justice for Emerging Adults After *Jones*: The Rapidly Developing Use of Neuroscience to Extend Eighth Amendment *Miller* Protections to Defendants Ages 18 and Older, 97 N.Y.U. L. Rev. Online 101, 108 (2022).

intellectual disability and commented on the consistency of the direction of change. *Hall v. Florida*. 572 U.S. 701, 134 S.Ct. 1986, 188 L.Ed.2d 1007 (2014). On the issue of the extension of *Roper*, the consistency noted here is in the direction of *no* change. Nearly every court that has considered the issue has relied upon *Roper* and declined to extend the age for a bar to execution.

The Supreme Court at the time *Roper* was decided acknowledged that juveniles do not automatically become adults on their 18th birthdays. They recognized that some 18-year olds are mature and some are not. Knowing this information, the Supreme Court drew the line at 18 and predicted that there would be objection to the bright line rule. "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." *Roper*, 543 U.S. at 574, 125 S. Ct. at 1197. Unlike *Hall*, *Roper* relied upon the Court to determine the reach of the Eighth Amendment, not the medical or scientific community.

As noted by the Defendant, Dr. Steinberg's testimony was unrefuted. However, the consensus of the medical community is not the standard the Court must apply to this question. In fact, *Roper* predicted Dr. Steinberg's argument with the statement "qualities that distinguish juveniles from adults do not disappear when an individual turns 18." 543 U.S. at 574, 125 S.Ct. 1183. There has been no legislative decision, executive action, or caselaw that is binding upon this Court that would lead to a declaration of South Dakota's death penalty statutes as unconstitutional, either as unreliable or excessive, for a late teen. This Court agrees with the many courts that have previously denied the request to extend the prohibition on the death penalty to late teens between the ages of 18 and 21.

ORDER

Consistent with the analysis above, Beaudion's *Motion to Declare South Dakota's Capital Sentencing Process Unconstitutionally Unreliable for a Teenage Offender* and *Motion to Declare the Death Penalty Unconstitutionally Excessive for a Teenage Offender* are DENIED.

Dated this 27th day of April, 2023.

BY THE COURT:

Robin J. Houwman
Circuit Court Judge

ATTEST:
Brittan Anderson, Clerk of Court

By _____, Deputy