A05-2327

STATE OF MINNESOTA

IN SUPREME COURT

State of Minnesota,

Respondent,

vs.

John Jason McLaughlin,

Appellant.

APPELLANT'S BRIEF

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PROCEDURAL HISTORY

1.	September 24, 2003:	Date of offenses.
2.	February 10, 2004:	Grand Jury returned an indictment against McLaughlin on one count of first-degree murder, three counts of second-degree murder, one count of second-degree assault, and one count of possession of a dangerous weapon on school property.
3.	February 18, 2005:	Order for Examination under Rule 20.01 and 20.02.
4.	May 31, 2005:	Order finding McLaughlin competent to stand trial.
5.	July 5, 2005:	Appellant stipulated that there was enough evidence to find him guilty of the second-degree unintentional murder count against victim A[redacted] R[redacted].
6.	July 5-18, 2005:	The guilt phase of the bifurcated court trial was held before the Honorable Michael L. Kirk.
7.	July 18, 2005:	Judge Kirk found appellant guilty of first-degree premeditated murder, second-degree unintentional murder, and possession of a dangerous weapon on

	school property. Judge Kirk found him not guilty of second-degree assault.
8. July 18-26, 2005:	Court trial on mental illness phase of the bifurcated trial before Judge Kirk.
9. July 26, 2005:	Judge Kirk rejected McLaughlin's M'Naghten defense.
10. July 26, 2005:	Judge Kirk denied McLaughlin's argument that Minn. Stat. § 611.026 (2002) is unconstitutional.
11. August 30, 2005:	Sentencing before Judge Kirk. Judge Kirk imposed a 150-month sentence consecutive to a life sentence.
12. April 4, 2006:	Motion filed by McLaughlin's counsel requesting a one-month extension to file Appellant's Brief.
13. April 11, 2006:	This Court granted the motion.
14. May 5, 2006:	Motion filed by McLaughlin's counsel requesting an extension to order additional transcripts.
15. May 10, 2006:	This Court granted McLaughlin 21 days after the completion of the transcripts to complete the brief.
16. June 30, 2006:	The completed transcripts are received.

LEGAL ISSUES

I. **Because the adolescent brain differs greatly from the adult brain, does the due process clause of the Minnesota Constitution require a different standard than the standard that is applied for adults?**

The district court denied McLaughlin's constitutional challenge.

Apposite Authority

Roper v. Simmons, 543 U.S. 551 (2005)

State v. Rawland, 294 Minn. 17, 199 N.W.2d 774 (1972)

II. **Did the district court abuse its discretion by informing McLaughlin's counsel that he would accommodate his witnesses and then renege on this promise when counsel wanted to call Dr. Carten to rebut the state's attacks against the doctor's methodology?**

The district court denied the request for a continuance.

Apposite Authority

State v Barnes, 713 N.W.2d 325 (Minn. 2006)

III. **Did the district court abuse its discretion by imposing the typical sentence that a well-functioning adult would receive for McLaughlin's crimes when McLaughlin was barely 15 at the time of his offense, suffered from schizophrenia, and had been subject to years of abuse by his fellow classmates and the victim in particular?**

The district court imposed permissive consecutive sentences.

Apposite Authority

State v. Wall, 343 N.W.2d 22 (Minn. 1984)

STATEMENT OF THE CASE

On February 10, 2004 a Stearns County Grand Jury returned an indictment against McLaughlin on one count of first-degree murder in violation of Minn. Stat. § 609.185 (a)(1) (2002) (victim: S[redacted] B[redacted]), second-degree intentional murder in violation of Minn. Stat. § 609.19, subd. 1(1) (2002) (B[redacted]), second-degree felony murder in violation of Minn. Stat. § 609.19, subd. 2 (1) (2002) (B[redacted]), second-degree felony murder in violation of Minn. Stat. § 609.19, subd. 2 (1) (2002) (A[redacted] R[redacted]), second-degree assault in violation of Minn. Stat. § 609.222, subd. 1 (2002) (M[redacted] J[redacted]), and possession of a dangerous weapon on school property in violation of Minn. Stat. § 609.66, subd. 1d (a) (2002).

On July 5, 2005, appellant stipulated that there was enough evidence to find him guilty of the second-degree unintentional murder count against victim A[redacted] R[redacted]. (T. 5-6).[1]

Between July 5-18, 2005, the guilt phase of the bifurcated court trial was held before the Honorable Michael L. Kirk.

On July 18, 2005, Judge Kirk found appellant guilty of first-degree premeditated murder, second-degree unintentional murder, and possession of a dangerous weapon on school property. (T. 1172-73). Judge Kirk found him not guilty of second-degree assault. (T. 1173).

[1] "T." refers to the trial transcript which includes Phase I and II.

Between July 18-26, 2005, a Court trial on the mental illness phase of the bifurcated trial was held before Judge Kirk.

On July 26, 2005, Judge Kirk rejected McLaughlin's M'Naghten defense and his argument that Minn. Stat. § 611.026 is unconstitutional.

On August 30, 2005, sentencing was held before Judge Kirk. Judge Kirk imposed a 150-month sentence consecutive to a life sentence.

STATEMENT OF THE FACTS

Phase I:

S[redacted] B[redacted] and John Jason McLaughlin attended the same schools in the Rocori school district since 6th grade (Ex. 172 at 18). Apparently their relationship was cantankerous. (Ex. 172 at 18).[2] They had at least one physical exchange in middle school. (T. 906, 925). And B[redacted] teased McLauglin. (T. 1013).

At the beginning of 9th grade, they were in the same 4th hour gym class taught by M[redacted] K[redacted]. (T. 451). B[redacted] was considered a popular student, (T. 252), and McLaughlin was shy and quiet and not popular. (T. 361, 431). While participating in a gym activity, B[redacted] and McLaughlin got rough with each other. (T. 342). This included shoving and yelling but it was eventually broken up. (T. 342-44). B[redacted] was 5'11" and 121 pounds. (T. 68, 70). McLaughlin was 5'4" and 135 pounds. (T. 123, 988-89). McLaughlin was smaller than most freshman boys. (T. 455). McLaughlin claimed that B[redacted] teased him about his "zits." (Ex. 172 at 14). According to McLaughlin's father

[2] "Ex. 172" is the transcript of McLaughlin's interview with Kenneth McDonald shortly after the shooting. (T. 990).

David, McLaughlin had a bad acne problem on his face and back. (T. 870, 885). McLaughlin always wore a shirt to hide the problem. (T. 871).

McLaughlin was also teased by C[redacted] E[redacted] in 9th grade. (T. 344-45, 434, 1013). This included E[redacted] calling McLaughlin a "fag" and an "asshole." (T. 359, 434). McLaughlin also called E[redacted] names in response. (T. 435). McLaughlin took offense at E[redacted]'s comments. (T. 345). E[redacted] also pushed McLaughlin in school in 8th grade. (T. 718).

The teasing finally hit a breaking point for McLaughlin and he decided "to hurt [B[redacted]] like he hurt me." (Ex. 172 at 4, 23). On Monday September 22, 2003, McLaughlin decided to shoot B[redacted]. (Ex. 172 at 18). McLaughlin checked the school for security cameras and metal detectors. (Ex. 172 at 18-19). McLauglin wanted to shoot B[redacted] in gym class because that was the only class they had together. (Ex. 172 at 21).

On September 24, 2003, McLaughlin took his father's .22 handgun from his father's dresser drawer. (T. 865; Ex. 172 at 4). He picked the .22 because he did not think it would hurt B[redacted] as badly. (Ex. 172 at 23). He loaded the gun and he brought it in his gym bag to school. (Ex. 172 at 4). His plan was to "[s]hoot some people" because "[t]hey were teasing me all the time." (Ex. 172 at 5). More specifically, his plan was to hurt E[redacted]. (Ex. 172 at 6).

That same day, R[redacted] S[redacted] headed to the swimming locker room to get ready for fourth hour freshman gym class at Rocori High School. (T. 150, 152, 157-58, 160). The locker room is located in the basement below the gym. (T. 160). When S[redacted] entered the locker room, he noticed McLaughlin sitting on the bench. (T. 162,

Ex. 172 at 7). Although McLaughlin had a bag with him, he was not changing his clothes. (T. 162). McLaughlin asked S[redacted] if E[redacted] was in school and S[redacted] said he was not. (T. 163-64).[3] J[redacted] S[redacted], who was also in the fourth hour gym class, asked appellant why he was not changing his clothes but McLaughlin did not respond. (T. 251).

S[redacted] left the locker room with B[redacted]. (T. 155, 166). McLaughlin left the locker room shortly after B[redacted]. (T. 255). S[redacted] was walking closely behind McLaughlin. (T. 255). S[redacted] watched as McLaughlin removed a gun from his bag and shot at B[redacted]. (T. 255; Ex. 172 at 8). McLaughlin was unsure if he had hit B[redacted]. (Ex. 172 at 8-9). B[redacted] was sure he was hit because he turned to S[redacted], pulled up his shirt, and said, "Look, I'm shot." (T. 167). S[redacted] noticed blood on B[redacted]'s left side right above his belt. (T. 169).

A[redacted] R[redacted] and S[redacted] S[redacted] were also in the hallway heading to junior and senior gym class. (T. 286, 365). They were being followed by K[redacted]. (T. 472). They had changed clothes in the varsity locker room. (T. 287). When they entered the hallway, S[redacted] heard a loud noise. (T. 291). S[redacted] saw McLaughlin with a silver gun and it appeared that he was aiming his gun at them. (T. 293).[4] K[redacted] did not see McLaughlin. (T. 477). A second loud noise was heard and S[redacted] noticed that R[redacted]

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[3] On September 24, 2003, during third hour driver's education, McLaughlin asked two different students if B[redacted] and E[redacted] were in school that day. (T. 515, 530, 532).

[4] McLaughlin claimed after the incident that he was unaware he had shot someone other than B[redacted]. (Ex. 172 at 14). But he admitted that he may have shot a second person if he missed B[redacted]. (Ex. 172 at 14). McDonald indicated that McLaughlin may have had tunnel vision on B[redacted] and not noticed R[redacted]. (T. 1053).

put his hands to his chest and groaned. (T. 294, 472). When K turned the corner, R was spinning back toward her with his hand on his chest. (T. 474). R looked at K and said, "Help me, I'm hurt. Help me, I've been shot." (T. 474). K assisted him to the floor and laid him on his chest to stop the bleeding. (T. 475).

B and S continued up to the gym. (T. 169-71). McLaughlin followed them up the stairs because he "wanted to keep going." (T. 258; Ex. 172 at 11). McLaughlin approached B from behind and B turned toward him. (T. 329). R K, a 9th grader, thought they were approximately 5 feet apart. (T. 329). As B turned toward McLaughlin, McLaughlin raised the gun. (T. 330). McLaughlin pulled the trigger and B fell to the floor. (T. 175, 311).[5] McLaughlin thought he was 5 to 6 feet away from B when he shot him in the shoulder. (Ex. 172 at 13; T. 1000). McLaughlin claimed that he only wanted to "hurt" B and it was not his intention to kill him. (Ex. 172 at 14, 23).

M J, who taught the junior and senior fourth hour gym class, was sitting on the bleachers when he heard the gunshot. (T. 365-66). McLaughlin was between 5 and 15 feet away from B. (T. 368). McLaughlin had the gun on his side and he was staring at B on the floor. (T. 368). J stood up and walked toward B but he realized McLaughlin had a gun. (T. 366, 370). McLaughlin raised the gun and

[5] Witnesses provided varying information on the distance between the gun and B's head. S estimated that it was 2 or 6 inches. (T. 175, 206-07).[5] K thought it was 2 inches. (T. 316). M G testified that it was 8 inches. (T. 410). But the state's forensic expert testified that the muzzle of the gun was between 18 inches to 3 feet away from B's hat when it was fired. (T. 944).

pointed it at J[redacted]. (T. 370). J[redacted] raised his hand and yelled, "No." (T. 371). McLaughlin lowered the gun and discharged the remaining shells onto the floor and dropped the gun. (T. 371). McLaughlin had no intention to hurt J[redacted]. (Ex. 172 at 26). J[redacted] picked up the gun, grabbed McLaughlin, and escorted him to the office. (T. 371-72). As McLaughlin left the gym, S[redacted] D[redacted] and K[redacted] R[redacted], friends of McLaughlin, noticed a smirk on his face. (T. 351-52, 440).

When they reached the office, J[redacted] gave the gun to the school secretary, Dee Torborg, and he asked her to call 911. (T. 374, 549). He brought McLaughlin to the school counselor Craig Lieser. (T. 374, 559). Torborg called 911 and locked the gun in the school safe. (T. 546, 550).

Cold Spring Police Chief Philip Jones arrived at the school and took charge of the scene. (T. 576-79). When he reached Lieser's office, McLaughlin told him that he had acted alone. (T. 585). Richmond Police Chief put McLaughlin in his squad car and drove him to the Cold Spring Police Department. (T. 593-595).

Later that day, B[redacted] K[redacted] checked her e-mail and found one that McLaughlin had sent her an e-mail that morning at 7:40 a.m. right before typing class. (T. 723-24, 746-49, 754). McLaughlin and K[redacted] became friends in middle school. (T. 713). They e-mailed and called each other outside of school. (T. 714). The e-mail said:

> befor I go to far i have to ask you not to tell any
> one about this not the news cops or parents
> ok lets start fot the top i like you i have always
> liked you fome the first time i saw you until this varry day. i
> would have said some thing but i was too
> shy. But a you were the nicest person i ever met and
> i thank you for that.

so i guess this is goodbye my love.

(Ex. 157). McLaughlin's e-mail account name was Sharpestshot290. (T. 727).

McLaughlin had attended a firearm safety course in the spring of 2003. (T. 853). He completed the class and passed the final test. (T. 855). McLaughlin had fired the .22 gun at a firing range with his father. (T. 880).

When R[redacted] arrived at the hospital he had no pulse or blood pressure. (T. 846). He was pronounced dead at 12:54 p.m. (T. 849). R[redacted] died of a hemorrhage due to a gunshot wound to the chest. (T. 68). The bullet hit him in the upper left chest area near the base of the neck. (T. 69). R[redacted] was shot in the brachiocephalic vein and it was unlikely he could have survived the injury. (T. 83).

B[redacted] died of cerebral laceration and destruction due to a gunshot wound to the head. (T. 68). The bullet went through the brim of B[redacted]'s hat, entered his head at his eyebrow, and landed in his brain. (T. 90, 100). B[redacted] was also shot in the back but this injury was not fatal. (T. 95). B[redacted]'s ventilator was discontinued on October 10, 2003 and he died that day. (T. 830). He had a small chance of survival in a vegetative state but no chance of meaningful survival. (T. 893).

Phase II

Jason McLaughlin was born on July 19, 1988. (Ex. 209 at 5). On September 24, 2003, McLaughlin was living with both his parents in Cold Spring. (Ex. 209 at 5). McLaughlin's parents were separated for 6 months in 2000. (Ex. 209 at 5). McLaughlin was in the 6th grade at the time. (Ex. 209 at 6). During the separation, McLaughlin lived with his mother in St. Cloud. (Ex. 209 at 5). Although McLaughlin's psychological

symptoms began around this time, McLaughlin did not mention them to his parents because he feared this would cause them to separate again. (Ex. 209 at 6).

When McLaughlin was in the 6th grade, he heard a voice call his name as he was walking home from a friend's house. (V. 240). McLaughlin originally thought someone was tricking him but when he saw no one else around, he got scared and ran home. (V. 241-44). He heard the voice again at the bus stop a few days later; again it just repeated his name. (T. 248-49). In 7th grade, the voice started ordering McLaughlin to build bombs. (V. 253-54). The voice also ordered him to blow up a drugstore. (V. 271). McLaughlin originally referred to the voice as Dante Lou Casselvara, but the name was later changed to Jake. (Ex. 209 at 10; V. 265-66).[6]

At McLaughlin's school, he was being picked on by S[redacted] B[redacted]. (V. 320). This started in 6th grade when B[redacted] moved to his school district. (V. 320). This would include B[redacted] pushing and shoving him and calling him names like "fag, wus, and weak." (V. 320-21). Although McLaughlin used to be popular in the 5th grade, he believed that B[redacted] turned other kids against him in 6th grade. (V. 321-22). By the time McLaughlin reached 7th grade, he was no longer popular at all. (V. 322). McLaughlin guessed that B[redacted] beat him up 3 or 4 times. (V. 323). McLaughlin did not tell anyone about the teasing because he did not want his parents to worry about him. (V. 323).

Possibly to ease the pain from the teasing, McLaughlin made up grandiose stories about himself to his classmates. (Ex. 209 at 10). This included stories about his

[6] McLaughlin's voice will be referred to as Jake for the remainder of this brief.

involvement in paintball tournaments that had never happened. (Ex. 209 at 10). McLaughlin also made up fantastic stories to impress his classmates. (T. 1245). These included e-mails to a classmate, B[redacted] K[redacted], that made McLaughlin appear the exact opposite of his shy personality. (T. 1684).

In the summer after 7th grade and through the summer after 8th grade, McLaughlin said he developed a relationship with a group of people that he interacted with in the woods. (V. 276-77, 289). McLaughlin had been playing in the woods with friends when he observed someone running. (V. 277). McLaughlin chased the person and he ended up being tied up and hung from a rope. (V. 277). He had been captured by a gang that purchased cocaine and methamphetamine and then got rid of the drugs. (V. 277-78). McLaughlin eventually became friends with the group and they used him to create maps from the internet. (V. 279-80). McLaughlin would meet with the gang in the middle of the night after he sneaked out of his house. (V. 280). McLaughlin claimed that he sneaked out of his house 20-40 times to hang out with the gang. (V. 284). He also described being picked up by the gang at his house in their white van. (V. 288, 304). The gang would take him out to eat at Red Lobster and McDonald's and they would purchase treats for him. (V. 306). McLaughlin was always worried that his dad, a drug enforcement officer, would catch him with them. (V. 306-07). McLaughlin also hid the methamphetamine gang from his neighborhood friend Neil Wackwitz because he was worried that he would tell. (V. 331). To avoid Wackwitz finding out, McLaughlin distanced himself from him during the summer after 8th grade. (V. 331). McLaughlin was told by his voice that helping this group was a good idea. (V. 281). McLaughlin

believed that the gang is real but he acknowledged that they may be a hallucination. (V. 276, 285, 291; Ex. 209 at 11). After McLaughlin had been arrested, the gang visited him at Prairie Lakes Detention Center (PLDC) but they just sat outside. (V. 291).

During 8th grade, the teasing from B got worse. (V. 329). Now B's teasing focused on McLaughlin's acne problem and his lack of height. (V. 329-330). McLaughlin contemplated beating B up but decided against it because he always had friends with him. (V. 330).

McLaughlin's school work also worsened during 7th and 8th grade and this is a common occurrence for people with schizophrenia. (T. 1283-84). But McLaughlin admitted that he did poorly because he did not do his homework. (T. 1443).

During the summer after 8th grade, McLaughlin began to isolate himself from his friends; isolation is another symptom of schizophrenia. (Ex. 209 at 10; T. 1239, 1691). He also experienced smelling metal and vibrations or a pain running from his hands to his feet. (Ex. 209 at 10). McLaughlin told a neighborhood friend that he was going to Minneapolis to be diagnosed with a split personality; this may have been a reflection of McLaughlin becoming aware of his mental changes. (T. 1696).

When McLaughlin started high school, B continued to pick on him and the teasing got worse. (V. 341-42). B continued to push and shove him into lockers and call him names. (V. 342). On September 21, 2003, McLaughlin noticed a bruise on his shoulder that had been inflicted by B. (V. 343). At this point, B had pushed him approximately 20 to 30 times since 6th grade. (Ex. 209 at 12). McLaughlin was told by the voice that the teasing had "gone on long enough" and he "thought of a

plan to get him back." (V. 343, 345). McLaughlin planned to shoot B[redacted] in the shoulder so he would always remember the pain that he caused McLaughlin. (V. 343, 347). Later the voice had second thoughts about shooting B[redacted]. (V. 348). But McLaughlin decided to go ahead with his plan anyway. (V. 361). McLaughlin was going to stand up to B[redacted] for everyone else who had been teased. (T. 1278).

On Monday, September 22, 2003, McLauglin checked the school for security. (V. 348). He was aware that he would be caught afterwards but he did not want to be stopped prior to hurting B[redacted]. (V. 349). McLaughlin decided to shoot B[redacted] in gym class because that was their only class together. (V. 392). When McLaughlin saw B[redacted] in school that day he thought to himself, "Your time's almost up." (V. 393).

McLaughlin remembered taking two shots at B[redacted] in the hallway. (V. 401-02). Although one of the shots hit B[redacted], McLaughlin was not sure that he had connected. (V. 402). McLaughlin followed B[redacted] up to the gym but he accidentally ran past him. (V. 403). When he realized his mistake, he turned toward B[redacted] and attempted to shoot him in the shoulder. (V. 404). As he was pulling the trigger, B[redacted] looked back at him and McLaughlin remembered seeing half of B[redacted]'s face. (V. 405).

McLaughlin told the methamphetamine gang that he was going to shoot B[redacted]. (V. 310). McLaughlin asked the gang to shoot and kill him afterwards. (V. 310). As McLaughlin was being driven to the jail, he noticed that the gang had arrived too late because he saw them driving towards the school. (V. 311).

After the incident, the police found two notes that had been left in McLaughlin's room.

Ex. 200: Message
People are talking to me and telling me to do things and they say if I do them I will be royal to them But so far I didnt do any thing yet but they are saying they can give me anything I want.

Ex. 201: Help
I need help! now befor
I take my anger out
on some else. I try so
hard but nothing seems
to go right

(Ex. 200, 201). McLaughlin told Dr. Gilbertson that he made these writing in 7th grade, but he told Hackett that he doesn't remember making the writings. (Ex. 209 at 11; T. 1309, 1693).

From September 24, 2003 until the time of trial, McLaughlin spent most of his time in the Prairie Lakes Detention Center (PLDC). At the beginning of the stay, Jake became both an auditory and visual hallucination. (Ex. 209 at 11). Jake appeared one morning at PLDC and McLaughlin originally thought he was a new inmate. (Ex. 209 at 11). McLaughlin realized a short time later that no one else could see Jake. (Ex. 209 at 11). Since this meeting, Jake talked to him on a daily basis. (Ex. 209). But when McLaughlin started his medications, Jake appeared less and the medications hurt Jake. (V. 294-96; Ex. 209 at 11). The medications also helped McLaughlin control Jake. (Ex. 209 at 11).

During his stay at PLDC, McLaughlin also developed paranoid thoughts about being teased and tricked by other inmates. (T. 1478; Ex. 209 at 4).

During his confinement, McLaughlin reported seeing dead people hanging in the bathroom when he went to brush his teeth. (V. 408). He could smell their bodies decaying and it smelled gross. (V. 408). McLaughlin assumed that it was not real since no one else noticed them. (V. 410).

After McLaughlin was charged, an adult certification proceeding took place. All three psychiatrists who evaluated McLaughlin concluded that he was suffering from a psychotic disorder and some thought he was developing paranoid schizophrenia. (T. 1212).

About two weeks prior to his visit to St. Peter to be evaluated under the M'Naghten standard, McLaughlin quit taking his psychological medications. (T. 1266, 1987).[7] McLaughlin reported that the voices became more prevalent once he stopped taking the drugs. (T. 1262). When McLaughlin was brought to St. Peter, he claimed that Jake held a gun to his head and told him not to discuss his symptoms. (T. 1261).

Dr. Maureen Hackett

Dr. Maureen Hackett was hired by the defense. (T. 1204). She is a psychiatrist with a subspecialist in forensic psychiatry. (T. 1185). Hackett interviewed McLaughlin on December 3, 2004. (T. 1209). She also interviewed him on December 31, 2004 and June 10, 2005. (T. 1211; V. 1-2).[8]

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[7] "It appears that the refusal of schizophrenics to take their medication is common, almost a symptom of the disease." *State v. Wall*, 343 N.W.2d 22, 24 (Minn. 1984).

[8] "V." refers to the transcripts from the videotapes and DVDs that were introduced at trial.

Dr. Hackett provided the following opinion regarding McLaughlin's mental state at the time of the offenses:

> A thourough review of the case of John Jason McLaughlin indicates that he began to experience symptoms of psychosis likely at least a year prior to the events of September 24, 2003. As part of his symptom profile as discussed previously, he was self-absorbed and obsessively relived his interactions with S[redacted] B[redacted] It is now clear that the "teasing" that Jason describes as occurring at that time and continues to believe occurred even at the present time is a delusional persecutory belief which in combination with his other thought disorder systems culminated in his actions on September 24, 2003. Jason McLaughlin experiences stereotypic or concrete thinking observed in individuals with Schizophrenia. Despite the fact that Jason McLaughlin previously learned about gun safety and the potential for harming someone with a gun he was too impaired by his disordered thinking to associate these principles with his intended actions. He suffers from grandiose delusions which directly affected his behavior, believing that he could skillfully cause a minor injury that would then stop S[redacted] B[redacted] from teasing him. This concrete thinking with regard to his ability of being able to shoot through S[redacted]'s arm or shoulder, like a cartoon or a movie indicates a very distorted and childlike concrete interpretation of his actions. Immediately, after the shooting Jason reported that this is what he did. He gave no indication that he envisoned his actions in any other way. He actually perceived his actions as having accomplished the deed that he set out to do, which was to shoot S[redacted] B[redacted] in the shoulder. At the time of his actions and as a direct result of his mental illness, Jason McLaughlin suffered a defect of reasoning and a serious distortion of reality so that he did not know the nature of his act. It is my opinion that because Jason experienced a severe distortion of reality seeing himself shooting S[redacted] B[redacted] in the arm that he did know the nature of his act at the time that he committed the act and it is my opinion that at the time of this act he did not know and he did not appreciate the wrongfulness of his act constituting the offense with which he is charged.

* * *

Individuals suffering severe mental illness can plan and make intentional actions that are based on delusional thinking. [A p]erson with mental illness can experience such severe distortions of reality as to not know the real nature of their actions. Jason concretely and delusionally believed that "he must stop S[redacted]." In a general sense, he knows that killing is wrong so he intended his actions to simply hurt him and this is where his disordered thinking caused him to not know the nature of the wrongfulness of his actions. His cognitive impairments as a result of his schizophrenia interfered with his ability to consider that he might seriously harm S[redacted] B[redacted] or harm someone else. This was not simply a boy who was negligently ignoring the risks. He didn't even think of the risks as a result of his thought disorder. It was like he was thinking at the level of a young child who believes that he could shoot someone in an extremity with a small gun and cause no serious harm like in a movie or as part of a video game. At that time, Jason McLaughlin believed that this was the only way to stop S[redacted] B[redacted]. He later described to other examiners that he considered he could go to prison for bringing a gun to school and assaulting someone with it. There is no indication in his police statement that he was thinking about legal or criminal penalties for his behaviors at the time or immediately following the shooting. Though there is an e-mail in which Jason says "goodbye" to B[redacted], it is unclear if this is due to his delusional belief that he will have the Methamphetamine gang shoot him in the head as he is taken out of the school. That is, he will die a martyr and S[redacted] will always remember him by the scar he will have left on S[redacted]'s shoulder. Though he later discussed prison with other examiners, there is no evidence in his police statement that he was thinking he did a crime that would require a penalty. Instead, he matter of factly informed the BCA officer of his actions that he did to "hurt" S[redacted], to stop S[redacted] from teasing him. * * * He was experiencing a severe distortion of reality at the time of the shooting and he did not think anything more of his actions, thus displaying his idiosyncratic concrete thinking.

It is my opinion that Jason McLaughlin did not know the nature of the act constituting the offense for which he is charged and thus he did not appreciate and he did not know

> the wrongfulness of his actions on September 24, 2003. Thus in my opinion Jason McLaughlin qualifies for Minnesota's insanity defense according to Criminal Statute 20.02.

(Ex. 209 at 23-24).[9]

Dr. Hackett confirmed that McLaughlin's psychological testing supported her conclusions. (Ex. 209 at 12). McLaughlin's MMPI-A results indicated that he suffers from impaired reality and psychotic symptoms. (Ex. 209 at 12). McLaughlin's test scores also established behaviors that were influenced by delusions or hallucinations. (T. 1293).

McLaughlin's MMPI results showed no evidence of malingering. (T. 1233). Dr. Hackett did not believe that McLaughlin was malingering because it is hard to remain consistent and it is especially hard for someone McLaughlin's age to make these stories up. (T. 1254-55). She also indicated that his symptoms are explained consistent with other mentally ill people and if he was malingering he would not know what to say. (T. 1271). Dr. Hackett thought the delay in discovering McLaughlin's symptoms was common and not unusual because of McLaughlin's isolation from others. (T. 1340-42).

Although most people do not develop schizophrenia until they are 19 or 20, Dr. Hackett pointed out that it does happen with younger children. (T. 1220-21). Because McLaughlin displayed active symptoms for 6 straight months, he met the required criteria. (T. 1216, 1295-98).

[9] "Ex. 209" is a copy of Dr. Maureen Hackett's forensic psychiatric evaluation.

Dr. Hackett has evaluated 300 people to determine whether they qualified for not guilty by reason of insanity under the M'Naghten standard. (T. 2288). She has concluded that only 8 out of 300 met the standard. (T. 2289).

Dr. Richard Lentz

Dr. Lentz was contacted by McLaughlin's family to treat him while he was incarcerated for his mental illness. (T. 1451-53). Dr. Lentz met with McLaughlin for treatment only and not to conduct a forensic evaluation. (T. 1458). Dr. Lentz worked with McLaughlin from February 2004 until January of 2005. (T. 1508). During this treatment, Dr. Lentz had McLaughlin take the MMPI. (T. 1455). McLaughlin's test results were "overwhelming compatible with schizophrenia." (T. 1455). The test was marginally valid and it provided no indication of a personality disorder, antisocial behavior or malingering. (T. 1457).

Based on his time with McLaughlin, Dr. Lentz concluded that he was suffering from schizophrenia, predominantly paranoid. (T. 1459). This included a delusion that B[redacted] teased McLaughlin in an attempt to make himself look better, delusions about the people in the woods, olfactory hallucinations of metal, and his interactions with Jake. (T. 1461-62). Dr. Lentz asked a specialist in adolescent psychiatry, Dr. Bryan Berg, to evaluate McLaughlin for a second opinion. (T. 1472). Dr. Berg agreed with Lentz's diagnosis.

Because of these conclusions, Dr. Lentz prescribed psychological medication to McLaughlin. (T. 1466). After McLaughlin started taking medications, his hallucinations

decreased. (T. 1478). It is common for the symptoms to slowly decrease and diminish after taking medication. (T. 1478).

McLaughlin was also treated with medication for his depression in July of 2004. (T. 1487). Dr. Lentz did not believe McLaughlin was depressed at the time of the incident. (T. 1488).

It is typical for people to miss symptoms of schizophrenia because the adolescent usually does not understand what is going on and the symptoms are not overt. (T. 1469-70).

Dr. Lentz believed that McLaughlin's smirk after shooting B[redacted] was consistent with schizophrenia. (T. 1479).

Dr. Lentz reported that he has treated 2 to 3 patients for schizophrenia in the 14 to 15 age range. (T. 1468). Dr. Lentz also testified that new research shows that schizophrenia begins earlier but it is often not noticed until age 20. (T. 1525).

When asked about malingering, Dr. Lentz stated emphatically, "I think it would be virtually impossible to malinger those symptoms. (T. 1574). Moreover, his overall evaluation is totally "incompatible with [McLaughlin] conning me." (T. 1580).

Dr. James Gilbertson

At the end of Phase II of the trial, the district court concluded that Dr. Gilbertson's testimony was the most persuasive of all of the experts. (T. 2411).

Dr. Gilbertson was hired by the defense to evaluate McLaughlin for the adult certification proceeding. (T. 1654). Dr. Gilbertson has been practicing for 35 years. (T.

1661). He previously worked for the Minnesota Department of Corrections and he was in charge of all youths under 18. (T. 1651). Dr. Gilbertson focused his evaluation on three things: 1) reliable social history, 2) psychological history, and 3) clinical interview. (T. 1658-59, 1672).

As part of Dr. Gilbertson's forensic examination, he had McLaughlin take the MMPI-A. (T. 1663). An F scale is a reading from that test that helps the evaluator determine if the test taker is exaggerating or amplifying their symptoms. (T. 1666). McLaughlin's score on this test was extremely low; thus there was no indication that he was trying to fake his symptoms. (T. 1668). McLaughlin scored high on the anxiety scales and on the schizophrenia scale. (T. 1669). McLaughlin's highest scores were on the social introversion and social uncomfortableness scale. (T. 1670). McLaughlin's depression scale was in normal limits and it was not clinically significant. (T. 1671).

Dr. Gilbertson explained that the reporting of symptoms is generally an ice berg phenomenon. (T. 1683). First you see the tip, and as you build rapport, more details come out. (T. 1683).

After the certification process, Dr. Gilbertson diagnosed McLaughlin as suffering from a psychotic disorder, not otherwise specified. (T. 1684). Although he displayed symptoms of schizophrenia, he had not established these symptoms for a long enough period of time to make a firm diagnosis. (T. 1685).

Dr. Gilbertson gave the following explanation for what led to the shootings:

> During the summer of 2003 we see him becoming retreated and isolative. I believed he retreated and collapsed into his own fantasy. And in that fantasy he could be anything he

> wanted to be. And what he wanted to be would be strong, powerful, effective, manly, protective of his rights and the rights of others. And that he, in that same vein, started to obsess and become resentful about S[redacted] B[redacted], somehow signaled him out as a respository of all evils, of all the reasons he wasn't what he was-Jason now-and that became kind of a single focus.
>
> Combination then of a focus upon S[redacted] B[redacted] and this autistic fantasy, which I said became perseverative; that is, he's spending all this time alone fantasizing, fantasizing, fantasizing, believing he's bigger, badder, better, and capable of striking out in the way he finally did, and that out of that came the plan to actually take a gun to school and to shoot.
>
> [McLaughlin's] fantasy broke in actually into his behavior.

(T. 1711-13). Moreover, because McLaughlin did not explain his "unusual strange, and incorrect distortions, cognitive distortions were never checked, were never criticized." (T. 1713).

Dr. Gilbertson concluded that McLaughlin did not meet the M'Naghten standard because he understood what he was doing was morally wrong. (T. 1714-15). But he did conclude that McLaughlin was a paranoid schizophrenic and that if he was not mentally ill, he would not have committed the crimes. (T. 1717-21). He believed that McLaughlin's mental illness "robbed him of good insight[,] compromised his judgment, prevented him from looking at other options, [and] reduced his impulse control." (T. 1718). Under some states' mental illness standard, McLaughlin would be considered not guilty by reason of mental illness. (T. 1718). Essentially, McLaughlin had "volitional deregulation" that "did not allow him to adequately control his behavior at the time, as a result of mental illness." (T. 1719).

Dr. Katheryn Cranbrook
Licensed Psychologist

Dr. Katheryn Cranbrook was hired by the state to evaluate McLaughlin for the certification process. (T. 1737). During the certification process, Dr. Cranbrook concluded that McLaughlin had a psychotic disorder not otherwise specified. (T. 1762). She reached this conclusion because McLaughlin was not claiming that the mental illness was the reason for the offense and his testing was consistent with someone experiencing psychotic symptoms. (T. 1762-63).[10] But she changed her conclusion after meeting with McLaughlin again on June 10, 2005 and he did not display the symptoms she was expecting. (T. 1764-67). Based on this meeting, she provided the following conclusions regarding McLaughlin's mental illness.

> Jason McLaughlin's behaviors leading up to and during the alleged offense appear to have been well organized, goal directed, and the product of rational planning. Prior to the offense, no one who knew Jason had identified the presence of significant psychiatric symptoms. Immediately following the offense, Jason was able to provide a rational and reality based account of offense behaviors, which in no way appeared divorced from reality or disorganized. From the time of the offense until December of 2004, Jason specifically denied that auditory hallucinations had played any role in the alleged offense behaviors. Instead, he indicated that he had considered his actions, weighed the expected potential consequences, and made a determination to shoot S[redacted] B[redacted] after engaging in an analysis of personal costs and benefits. Only when he was faced with more serious consequences than expected did Jason begin to report symptoms of mental illness that had any relationship to the alleged offense. Current symptom reports appear to be reflective of purposeful

[10] During cross-examination, Dr. Cranbrook admitted that McLaughlin never presented mental illness as a defense for his actions. (T. 1898-99).

> attempts to feign or exaggerate mental illness, in order to avoid legal consequences.
>
> * * *
>
> In Jason's descriptions of the offense and the process of preparation, his comments have consistently been well organized, rational and reality based. While Jason did assert to Dr. Hackett and the undersigned that auditory/visual hallucinations had played some role in the offense, these reports did not occur until significantly after the event and were inconsistent. Such reports appear to be overtly self serving and the product of an intentional attempt to feign or exaggerate psychiatric symptoms for secondary gain The same appears true for Jason's report that he instructed members of a Methamphetamine gang to shoot him subsequent to the offense.
>
> * * *
>
> It is my opinion that Jason McLaughlin was not, because of mental illness or deficiency at the time of the commission of the offense charged, laboring under such a defect of reason as not to know the nature of the act constituting the offense or that it was wrong.

(Ex. 176 at 16-17).

St. Peter Report

McLaughlin was evaluated at St. Peter Mental Hospital by Dr. Michael Koch and Dr. Kelly Wilson. (T. 1985). Although Dr. Michael Koch is a psychiatrist, he is not a forensic psychiatrist. (T. 1983). Dr. Kelly is a forensic psychologist with only a short time period of experience. (T. 2037). Because St. Peter does not have a program to evaluate juveniles, they had to set one up to evaluate McLaughlin. (T. 2131).

The St. Peter group concluded that McLaughlin was malingering and that he suffered from an emerging personality disorder. (T. 1986-87). They also concluded that he was suffering from a major depressive disorder. (T. 2078). Dr. Wilson believed that

McLaughlin created his symptoms based on watching *The Simpsons*, *The Sixth Sense*, and *A Beautiful Mind*. (T. 2114-18).[11] She thought McLaughlin's portrayal of Jake was similar to the portrayal of hallucinations in *A Beautiful Mind* and possibly the Columbine school shooters. (T. 2115-16). She also thought that McLaughlin claiming to see dead people was too similar to a scene from *The Sixth Sense*. (T. 2119). McLaughlin told Dr. Wilson that he had never seen either movie. (T. 2196). Jared O'Neill, who worked at PLDC, claimed that McLaughlin watched both movies during his stay there. (T. 2236).

ARGUMENT

I. THE M'NAGHTEN STANDARD VIOLATES THE DUE PROCESS CLAUSE UNDER THE MINNESOTA CONSTITUTION WHEN IT IS APPLIED TO A JUVENILE BECAUSE THE STANDARD FAILS TO TAKE INTO ACCOUNT THE DRASTIC DIFFERENCES IN BRAIN DEVELOPMENT BETWEEN ADULTS AND ADOLESCENTS.

McLaughlin's trial attorney filed a memorandum of law below challenging the constitutionality of the M'Naghten standard under the Minnesota Constitution. The state filed a response opposing the challenge. The district court rejected McLaughlin's argument.

Laws are presumed constitutionally valid. Minn. Stat. § 645.17 (3) (2002). The constitutionality of a statute presents a question of law that this court reviews de novo. *State v. Tennin*, 674 N.W.2d 403, 406 (Minn. 2004).

[11] During McLaughlin's rebuttal argument, Dr. Hackett explained that it was extremely common for the mentally ill to incorporate experiences from their daily lives, which includes movies, into their hallucinations. (T. 2201).

The right to an insanity defense is guaranteed by the due process clause of the United States and Minnesota constitutions. *State v. Huffman*, 328 N.W.2d 709, 715 (Minn. 1982). But challenges to the constitutionality of the M'Naghten defense have been summarily rejected by this Court on previous occasions. *See State v Rawland*, 294 Minn. 17, 39, 199 N.W.2d 774, 786 (1972) ("As we construe the Minnesota statute, § 611.026, and apply it in this case, we do not find constitutional invalidity."); *Huffman*, 328 N.W.2d at 716 (acknowledging that the M'Naghten rule is a minority position but concluding "that the *M'Naughten* rule provides a fair and just means of evaluating the actions of a defendant who claims the defense of mental illness.").

But in *Rawland*, this Court overturned a district court's conclusion that the defendant did not meet the M'Naghten standard. *Id.* at 46-47, 199 N.W.2d at 790. Because this Court reversed his conviction, it did not need to address the constitutionality of the statute. The remainder of the opinion appears to call into question the constitutionality of the M'Naghten standard. *See id.* at 37, 199 N.W.2d at 785-86 ("We now question whether the strict and literal construction of the statute indicated by our previous opinions is consistent with the objectives of the judges in M'Naghten, the intent of our own legislature, basic principles of criminal law, or constitutional requirements.").

In light of the questions presented by *Rawland*, and based on extensive empirical studies about juvenile brain development, it is time for this court to reevaluate the M'Naghten standard when it is applied to juvenile defendants. This Court has never

specifically addressed whether the M'Naghten standard violates due process when applied to juveniles.[12]

In *Roper v. Simmons*, 543 U.S. 551 (2005), the United States Supreme Court acknowledged that the Constitution should be evaluated according to "its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design." *Id.* at 560-61. But it went further and explained the necessity in evaluating "the evolving standards of decency that mark the progress of a maturing society." *Id.* at 561. Under this reasoning, this Court should look at recent studies that explain the adolescent brain and determine whether the M'Naghten standard is consistent with those studies.

Studies dealing with the adolescent brain show that there is an anatomical difference in the brain development for adolescents compared to adults. (A. 12).[13] For example, adolescents rely on the amygdala, the area of the brain associated with aggression, anger, and fear, more than adults do. (A. 13). Adults, however, process this same information through the frontal cortex, which is associated with impulse control and

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[12] McLaughlin's trial counsel did not challenge the M'Naghten standard on this basis. But this Court can still review this issue in the interests of justice, *Johnson v. State*, 673 N.W.2d 144, 147-48 (Minn. 2004), and in light of recent studies establishing the drastic differences between the adult and adolescent brain.

[13] McLaughlin's appendix contains a copy of the brief for amicus curiae of the American Medical Association, American Psychiatric Association, American Society for Adolescent Psychiatry, American Academy of Child & Adolescent Psychiatry, American Academy of Psychiatry and the Law, National Association of Social Workers, Missouri Chapter of the National Association of Social Workers, and National Mental Health Association, filed in *Roper v. Simmons*, 571 U.S. 36 (2005).

good judgment. (A. 13). Moreover, research establishes that "adolescent brains are more active in regions related to aggression, anger, and fear, and less active in regions related to impulse control, risk assessment, and moral reasoning than adult brains." (A. 13). Since an adolescent's frontal lobe is still maturing (and is still structurally immature into late adolescence) it exerts less control over the amygdala than an adult brain and thus it has "less influence over behavior and emotions than a fully mature frontal lobe." (A. 15-16) (citation omitted). Thus, "the region of the brain associated with impulse control, risk assessment, and moral reasoning is the last to form, and is not complete until late adolescence or beyond." (A. 18).

Because of these differences, adolescents have deficiencies in the way they think and they are unable to "perceive and weigh risks and benefits accurately." (A. 9) (citation omitted). Thus,

> because of developmental influences, teens differ from adults in the subjective value[s] that they attach to various perceived consequences in the process of making choices. They focus more on opportunities for gains and less on protection against losses. They put greater emphasis on short-term consequences than adults and discount future consequences more than adults. It is not that adolescents do not perform cost-benefit analyses; rather, they skew the balancing, resulting in poor judgments.

(A. 9) (quotations and citations omitted).

The outdated M'Naghten standard, however, appears to reflect the mindset of an adult. The current Minnesota statute requires:

> No person shall be tried, sentenced, or punished for any crime while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or making a defense; but the

> person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong.

Minn. Stat. § 611.026 (2002). Under this standard, the focus is on whether the person knew the nature of their act or that it was wrong. Both of these prongs assume that if the person is acting rationally, they will not meet the test. Adolescents, however, may understand their actions or know that they are wrong, but still be unable to control those behaviors because of their lack of brain development. When these limitations are combined with an adolescent's mental illness, a different insanity standard is necessary to satisfy Minnesota's due process standards.

As an alternative to M'Naghten for juveniles, this Court should impose one of the three following rules:

1) The Hampshire Rule applies if the person is suffering from a mental disease and "the act was the offspring or product of the mental disease."

2) The Durham Rule applies if the defendant's unlawful act was a "product of mental disease or mental defect."

3) The Model Penal Code applies if at the time of the defendant's act he/she lacked "substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law."

Rawland, 294 Minn. at 33, 199 N.W.2d at 783. All of these rules provide a lesser standard that would more accurately accommodate the differences between juveniles and adults. All three standards focus more on the effect of the mental illness and whether it

played a substantial role in the crime. And each standard would account for juveniles' gigantic limitations in their decision making process,

If one of these more appropriate standards had been applied in this case the result would have been different. The district court concluded that it was "most persuaded" by Dr. Gilbertson's description of McLaughlin's illness. (T. 2411). And Dr. Gilbertson testified that although McLaughlin did not meet the M'Naghten standard, he would meet the standard in other states. (T. 1717-18). Thus, if the district court would have applied a lesser standard than M'Naghten, McLaughlin would have met that standard.

Because of the drastic differences in how adults and adolescent brains operate, it violates the due process clause of the Minnesota Constitution to use the same mental illness standard when evaluating the actions of two drastically different groups.[14]

II. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT FAILED TO GRANT MCLAUGHLIN A SHORT DELAY TO PRODUCE A REBUTTAL WITNESS TO SUPPORT HIS MENTAL ILLNESS DEFENSE.

On July 26, 2005, at the completion of the state's presentation of evidence during Phase II of the trial, McLaughlin's counsel requested a continuance so that Dr. Roger Carten could be called as a rebuttal witness. (T. 2273-74). Dr. Carten indicated to McLaughlin's attorney that he was interested in following up on his initial evaluation of McLaughlin in light of the security hospital's report but that he would likely be unavailable for trial. (T. 2274). McLaughlin's counsel found out over the weekend that

[14] The state may argue that *Clark v. Arizona*, 126 S.Ct. 2709 (2006), is controlling here. But *Clark* does not address the Minnesota Constitution and it did not discuss the differences between adolescents and adults.

Dr. Carten would be returning August 1, 2005 and he requested a short continuance to allow for his presence. (T. 2274). McLaughlin's counsel wanted to call him as a rebuttal witness because the state had questioned his methodology during its case in chief. (T. 2275). Moreover, he was important because:

a. Dr. Carten was the first psychologist to meet with and do a clinical interview with the Defendant. Some question[s have] been raised as far as how the issue of the Defendant's mental illness was first raised and we believe Dr. Carten can supplement the record to clear up any confusion regarding this issue
b. That an issue has been raised as to whether or not Dr. Carten may have made certain suggestions to the Defendant in the course of his clinical interviews which suggested to the Defendant the symptoms of mental illness, specifically schizophrenia.
c. That an issue has been raised regarding the credibility of the Defendant's statement regarding the voice or voices that he heard prior to September 24, 2003 and what responsibility, if any, such voices may have had as to the Defendant's actions. Dr. Carten was the only examining doctor in the original three evaluations who expressed an opinion as far as whether he believed the defendant when the defendant told him that the voices had nothing to do with what occurred.
d Finally, Dr. Carten testified at the certification hearing that in his opinion, "but for the mental illness" the event would have never occurred.

(McLaughlin's Motion for a Continuance filed on July 25, 2005).

The district court denied McLaughlin's request for a continuance and concluded that it may not be appropriate rebuttal, but if it was, it was "cumulative and repetitive of the testimony we've already heard over the past week on the issue of mental illness. And since it's never been the court's understanding that Doctor Carten would opine that the defendant's condition would support a M'Naghten defense, I don't think that it's

particularly helpful." (T 2277). McLaughlin's counsel questioned the district court's assumption that Dr. Carten would not support McLaughlin's M'Naghten defense. (T. 2278). Because Dr. Carten's testimony was important to McLaughlin's burden of establishing his mental illness defense, the district court abused its discretion by rejecting the short delay.

> "The decision to grant or deny a continuance lies within the discretion of the trial judge." A defendant must show that the denial "prejudiced defendant by materially affecting the outcome of the trial."

State v Barnes, 713 N.W.2d 325, 333 (Minn. 2006) (citations omitted). This Court gives greater deference to the district court's decision when the continuance request is made after trial has started. *Id* at 333-34.

Here, unlike the typical case, the trial was before the court and the delay would not have affected a full jury panel. Moverover, during the first phase of the trial, McLaughlin's counsel asked the judge if he would "be lenient * * * if we have problems getting certain people here at certain times." (T. 459). The district court agreed to "accommodate [his] schedule." (T. 459). Essentially, the district court provided defense counsel with the false hope that he would accommodate his schedule. When it came to living up to his promise, the district court reneged. This prejudiced McLaughlin's attempt to sustain his burden of proving his mental illness defense.

The staff at St. Peter directly attacked Dr. Carten's methods during the state's case in chief. Dr. Wilson claimed that Dr. Carten asked leading questions that allowed McLaughlin to make up psychological symptoms. (T. 2097). Rebuttal would have been

totally appropriate for Dr. Carten to defend his questioning and whether he agreed that he influenced McLaughlin's psychological symptom reporting. The failure to allow the continuance prejudiced McLauglin's trial and a new one is warranted.

III. THE DISTRICT COURT ABUSED ITS DISCRETION BY GIVING MCLAUGHLIN, A 15 YEAR OLD, MENTALLY-ILL PERSON, THE SAME SENTENCE A TYPICAL ADULT WOULD HAVE RECEIVED FOR THE SAME CONDUCT.

McLaughlin's sentence is the same sentence he would have received if he had been a typical sane adult. But *Roper* makes it clear that adolescents should not face the same consequences that adults do. Although McLaughlin made a gigantic mistake, that mistake was made just a few months after he turned 15. It was a direct response to constant bullying that started in the 6th grade and increased for three straight years. Finally, it was a direct result of his mental illness. When all of these factors are combined, the district court's sentence is disproportionate to McLaughlin's culpability.

Because McLaughlin was convicted of two separate crimes for two separate victims, it was permissive for the district court to impose consecutive sentences. Minn. Sent. Guidelines II.F.2. This Court "will not reverse a district court's decision to impose a consecutive sentence unless there has been a clear abuse of discretion." *State v. Blanche*, 696 N.W.2d 351, 378 (Minn. 2005) (citation omitted). "Although the abuse of discretion standard is exacting, it is not a limitless grant of power to the trial court." *State v Warren*, 592 N.W.2d 440, 451 (Minn. 1999) (citation omitted). This Court will interfere with that discretion if the sentence is "disproportionate to the offense," *id.* (citation omitted), or if "the resulting sentence unfairly exaggerates the criminality of the

defendant's conduct." *State v. Sanchez-Diaz*, 683 N.W.2d 824, 837 (Minn. 2004). Because there are numerous reasons to negate McLaughlin's culpability, a consecutive sentence was disproportionate and the district court abused its discretion by imposing it.

In *Roper v. Simmons*, the United States Supreme Court held that it violated the 8th Amendment to impose the death penalty on persons under 18 at the time of the offense. 541 U.S. at 578-79. In reaching its conclusion, the court relied on three important differences between adults and juveniles. *Id.* at 569. First,

> as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions."

Id.

Second, juveniles are more susceptible to outside forces and peer pressure than adults. *Id.* ("It is a time and condition of life when a person may be most susceptible to influence and to psychological damage." (citation omitted)). For example, juveniles have much less control over their environment. *Id.*

Third,

> The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals

> mature, the impetuousness and recklessness that may dominate in younger years can subside." *See also* Steinberg & Scott 1014 ("For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood").

Id. (citations omitted). All of these differences should be considered in evaluating McLaughlin's sentence.

As explained earlier, many of these differences between how adults and adolescents behave is directly linked to the slow brain development in adolescents. Studies are clear that McLaughlin's decision-making skills, his ability to weigh, risks and rewards, and his impulsive thinking, which all played a role in this case, are more attributable to his age than his culpability. *See* (A. 1-24). Because McLaughlin's age and inability to accurately weigh costs and benefits, his culpability is substantially less than an adult who committed similar crimes.

McLauglin's mental impairment should also be considered in weighing his culpability. At the completion of Phase II of the trial, the district court rejected McLaughlin's argument that his conduct met the M'Naghton standard. (T. 2412). But he did indicate that "[i]t is apparent to this court that the defendant was suffering from some sort of mental impairment in September of 2003, and it is clear that that impairment contributed to his actions on September 24 of that year." (T. 2410). Moreover, the district court was "most persuaded" by Dr. Gilbertson's description of McLaughlin's

illness. (T. 2411).[15] The sentencing guidelines acknowledge that mental impairment can justify a more lenient sentence. Minn. Sent. Guidelines II.D.2.a.(3).

Since the district court implicitly adopted Dr. Gilbertson's analysis, his opinion is particularly important in evaluating an appropriate sentence for McLaughlin. Dr. Gilbertson explained that McLaughlin's mental illness blocked his good insight, it compromised his good judgment, it removed his ability to seek out other options, and it negated his impulse control. (T. 1714). Dr. Gilbertson concluded that if McLaughlin would not have been suffering from paranoid schizophrenia, he would have not committed the crimes. (T. 1717-20). Since McLaughlin would not have committed this crime "but for" his mental illness, (T. 1730), it is simply unfair to impose the same punishment a normal functioning adult would receive.

There is support in this Court's precedent for reversing the district court's decision. In *Wall*, this Court reversed a district court's imposition of an upward departure on a defendant who suffered from paranoid schizophrenia. *State v. Wall*, 343 N.W.2d 22, 25-26 (Minn. 1984). It concluded that the upward departure was not appropriate because the "defendant lacked substantial capacity for judgment" and this factor could not "be ignored" to determine if Wall's "conduct was particularly deserving of punishment." *Id.* at 25; *see also State v. Martinson*, 671 N.W.2d 887, 893-94 (Minn. App. 2003) (upholding the district court's decision to grant a probationary sentence to a

[15] In response to this argument, the state may argue, relying on Dr. Cranbrook and Dr. Wilson, that McLaughlin is a malingerer. But because the district court made a finding regarding McLaughlin's mental illness, this potential argument should be summarily rejected.

defendant, who suffered from paranoid schizophrenia, who killed his wife although he did not qualify for the M'Naghten defense), *review denied* (Minn. Jan. 20, 2004). Although the decision here involves the district court's imposition of a permissive consecutive sentence, the same reasoning applies because both cases involve the district court's discretionary decision. Since the district court agreed with Dr. Gilbertson that McLaughlin's mental illness played a roll in this offense, imposing the same penalty a sane person would receive is an abuse of discretion.

A concurrent sentence was also appropriate because McLaughlin suffered daily abuse by his fellow classmates starting in 6th grade and up until this incident.[16] Many of the witnesses who testified at trial were high school students who had been through a horrific event. For whatever reason, their testimony at trial was not consistent with their earlier statements to the police indicating that McLaughlin was the subject of repetitive abuse. (S. 8; McLaughlin's Sent. Memo at 6). [17] Zach Torborg, a classmate of McLaughlin's, told a newspaper reporter that "[McLaughlin] got a lot of stuff from people. You know, nobody [would] leave him alone. People would call him pizza face." (McLaughlin's Sent. Memo at 6). Nicholas Phillips, a neighbor of McLaughlin told Officer McDonald on October 10, 2003:

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[16] As explained numerous times during this trial by McLaughlin's trial counsel, he is not contending that his actions are warranted or justified by the teasing. (McLaughlin's Sent. Memo at 5). But the repetitiveness and the harshness of the teasing cannot simply be ignored when weighing an appropriate sentence.

[17] "S." refers to the transcript from the sentencing hearing on August 30, 2005.

> In regards to teasing, Phillips indicated that S[redacted] B[redacted] has been teasing McLaughlin since the 6th grade. B[redacted] would tease McLaughlin about his acne almost every day at school.

(*Id.* at 6). At the grand jury, Phillips said that McLaughlin was teased on a daily basis in 7th and 8th grade. (*Id.* at 7). Phillips attributed the teasing to B[redacted]. (*Id.* at 8). Another witness at the grand jury proceedings remembered sticking up for McLaughlin on 4 or 5 occasions when he was being picked on. (*Id.* at 8-9). This included McLaughlin being called "pizza face" because of his acne and people pushing books and papers out of his hands. (*Id.* at 9-10).

Dr. Gilbertson described McLaughlin as an "extremely shy, easily hurt, hyper-sensitive individual, who in [his] opinion it didn't take much to hurt his feelings." (T. 1689). And these sensitivities were tied directly to his mental illness. (T. 1690). Dr. Cranbrook, the state's expert, considered B[redacted]'s behavior towards McLaughlin as "malicious" and "severe." (T. 1884-85). When you combine McLaughlin's sensitive nature with the seriousness of the mental and physical abuse he endured, this factor should weigh in his favor in determining his culpability.

When you combine all these factors, the only rational conclusion is that McLaughlin consecutive sentences are not commensurate with his culpability. McLaughlin committed a heinous crime but he did so shortly after he turned 15 years of age, a time where his adolescent brain is impulsive and unable to weigh costs and benefits accurately. As Dr. Gilbertson explained in his report,

> [W]e'll never be able to establish a one-to-one correspondence to what S[redacted] B[redacted] did and what Jason felt, but I felt it was the hypersensitivity and what I call the

> vulnerability of Jason that he singularly focused on that issue, experienced it [and] that became, in addition to all other psychological factors, [] the triggering of these eventual homicides.

(McLaughlin's Sent. Memo at 13). When you couple appellant's age, with his mental illness and the constant abuse he suffered, some sympathy is warranted. The district court could not shorten McLaughlin's mandatory 30-year life sentence, but adding a consecutive sentence on top of that extremely long sentence was an abuse of discretion.

The district court relied on this Court's decision in *Warren*, for the proposition that it may be limited in its ability to impose a concurrent sentence. (S. 147-48). In *Warren*, this Court found that the district court abused its discretion by imposing three concurrent first-degree murder sentences where Warren's killing of three separate victims was not commensurate with a more lenient sentence. 592 N.W.2d at 452. But *Warren* did not involve a 15 year old defendant who suffered from mental illness or who had been subject to a three year period of severe teasing. Although this incident did occur in a school, which was one of the factors the district court cited as an aggravating factor, this is the most logical place for a 9th grader to commit an offense. If a school is supposed to be a safe haven for children, McLaughlin would not have been subject to daily abuse there. If McLaughlin would have committed his crimes in a park after a school picnic, it would not have made the affect on the victims less substantial. Unlike the defendant in *Warren*, proportionality weighs heavily in McLaughlin's favor.

CONCLUSION

For the foregoing reasons, McLaughlin's convictions must be reversed and a new trial ordered. In the alternative, McLaughlin's first-degree murder and second-degree unintentional murder convictions should be concurrent.

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Respectfully submitted,

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).