

IN THE IOWA SUPREME COURT

NO. 15-0829

STATE OF IOWA,

PLAINTIFF-APPELLEE,

vs.

KHASIF RASHEED WHITE,

RESPONDENT-APPELLANT.

**APPEAL FROM THE IOWA DISTRICT COURT
POLK COUNTY FECR230747; FECR232323; FECR235343
HONORABLE DISTRICT COURT JUDGE JEFFREY D. FARRELL**

FINAL BRIEF

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III. STATEMENT OF THE ISSUES

ISSUE I

FAILURE TO FULLY COMPLY WITH SENTENCING CONSIDERATIONS ESTABLISHED IN *Miller v. Alabama* WHEN SENTENCING JUVENILES CHARGED AS ADULTS WILL RESULT IN AN UNCONSTITUTIONAL AND ILLEGAL SENTENCE WHICH RQUIRES REMAND.

ISSUE II

THE DISTRICT COURT WAS WITHOUT STATUTORY AUTHORITY TO SENTENCE THE DEFENDANT TO A MANDATORY MINIMUM PERIOD OF INCARCERATION.

IV. ROUTING STATEMENT

The issue presented in this appeal is whether or not the trial court correctly applied the principals established in *Miller v. Alabama*, 132 S.Ct.

2455, 183 L.Ed.2d 407 (2012), and cases following, for sentencing of juvenile's to a mandatory minimum period of incarceration, or if the sentence imposed constitutes cruel and unusual punishment under the State of Iowa Const. art. I, §17 and US Const. Amend VIII of Federal Constitution. This issue has been addressed in some manner in *State v. Null*, 836 NW2d 4 (Iowa 2013) as well as *State v. Ragland*, 836 NW2d 107 (Iowa 2013) and *State v. Lyle*, 854 N.W.2d 378 (Iowa 2014), as such, involves existing legal principles. Iowa R. App. P. 6.1101(3)(a).

V. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is an appeal from a re-sentencing order which confirmed an original sentence for a juvenile who was 17 years old when the crimes were committed. He entered a plea to three counts of Robbery 2nd degree, each of which carry a 10 year sentence with a 70% mandatory minimum of 7 years. All counts were run concurrent to each other.

B. COURSE OF PROCEEDINGS

On September 11, 2009, the State filed a Trial Information charging the Defendant, Khasif White, ("Khasif") with Robbery in the second degree in violation of Iowa Code §711.1 and 711.3. (TI FECR230747; App. Pg. 1). On

November 13, 2009 the State filed a second Trial Information charging Khasif, with Robbery in the second degree in violation of Iowa Code §711.1 and 711.3. (TI FECR232323; App. Pg. 4). On March 16, 2010, the State filed a third Trial Information charging Robbery in the first degree in violation of Iowa Code §711.1 and 711.2 and Burglary in the first degree in violation of Iowa Code §713.1 and 713.3. (TI FECR235343: App. Pg. 8). The charges stemmed from three separate incidents and Khasif was 17 years old when the crimes occurred.

Khasif entered an Alford plea on June 7, 2010 pursuant to a plea agreement and was sentenced on July 27, 2010. He was sentenced on three counts of Robbery in the second degree, each a 10 year sentence with a mandatory 7 year minimum, each to run concurrent with the others. (Original Sentencing Order; App. Pg. 19). On, September 22, 2014 Khasif caused to be filed a Motion to Correct Illegal Sentence pursuant to *State v. Lyle*, 854 NW2d 378 (Iowa 2014). (Motion to Correct Illegal Sentence; App. Pg. 22).

In light of the recent Supreme Court decision in *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), and *State v. Lyle*, Khasif made application on September 22, 2014 to correct an illegal sentence alleging his sentence violated Iowa Const. art. I, §17 and U.S. Const. Amend VIII provisions for being cruel and unusual as applied to juveniles convicted of

crimes which result in mandatory minimum sentences. The trial court heard this motion on May 1, 2015 and then entered an order on May 4, 2015 which confirmed the original sentence with the mandatory minimum term of 7 years. (Re-Sentencing Order; App. Pg. 25).

A Notice of Appeal was filed on May 11, 2015. (Notice of Appeal; App. Pg. 29).

VI. STATEMENT OF RELEVANT FACTS

Mr. Khasif White was 17 years old when he was convicted of Second Degree Robbery in violation of Iowa Code §711.2 and 711.3 in 2009. He was then sentenced to the 10 years in prison with a mandatory minimum sentence of seven years before he would be eligible for parole under the Iowa Code §902.12.

Testimony at the sentencing hearing revealed that Khasif has experienced significant trauma in his childhood as presented through the testimony of his mother, Diyonda Avant White. Ms. Avant White testified that young Khasif never had the advantage of having a father figure in the home because when Khasif was very young, his father was absent. (App. Pg. 33). When his father returned to the family home when Khasif was high school age, his father was very abusive to his mother. The experience of being

in a home where his mother was physically abused right in front of him, had a profound effect on him. (App. Pg. 36, 37). It was at this time that he fell in with the wrong crowd and started acting out, engaging in shoplifting and other crimes. (App. Pg. 33).

Prior to the time when Khasif's father returned to the home and disrupted the home by physically abusing his mother, Khasif had a positive group of friends, he was a leader at school and had a strong parental figure in his mother. (App. Pg. 33-35). Many of those friends were at the court hearing to support him and continue to encourage him. (App. Pg. 33). Additionally, Ms. Avant White testified as to the changes that she has seen in her son since he has been incarcerated. She stays in contact with his counselor and is aware that he has been selected to present a talk to other juveniles about choices and consequences, he has obtained employment in receiving, he has also learned skills as a plumber which he hopes to use when is released as well as obtain his commercial drivers license. (App. Pg. 35, 38, 41).

Testimony about his progress was in contrast to evidence that life in prison has been a struggle for Khasif and that he did not initially want to be seen as soft so he got into fights. (Prison progress report; App. Pg. 23). Khasif testified on his own behalf about how difficult the transition was and what he

needed to do to keep himself safe. He has goals and plans and wants to move forward. (App. Pg. 40, 42).

VII. ARGUMENT

ISSUE I

FAILURE TO FULLY COMPLY WITH SENTENCING CONSIDERATIONS ESTABLISHED IN *Miller v. Alabama* WHEN SENTENCING JUVENILES CHARGED AS ADULTS WILL RESULT IN AN UNCONSTITUTIONAL AND ILLEGAL SENTENCE WHICH RQUIRES REMAND.

A. Issue Preservation

Notice of Appeal was timely filed. The claim that a sentence is inherently illegal may be brought at any time. *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009).

B. Standard of Review

A sentence is reviewed for an abuse of discretion. See *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). But when, as here, it is alleged the sentence violates constitutional guaranties against cruel and unusual punishment, review is *de novo*.

C. Argument

Based upon a growing body of evidence and information regarding the development of the adolescent brain and its inherent inability to make rational, well thought out judgments, there is new legal authority to support shorter prison sentences for juvenile offenders. This was addressed specifically by the Supreme Court in *Miller v. Alabama*, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012), where the U.S. Supreme Court ruled upon the constitutionality of allowing children to be sentenced to life without parole in homicide cases. The juvenile in this case, Evan Miller, was convicted for the 2003 death of his neighbor in a rural Alabama trailer park. Miller was fourteen at the time and he was sentenced to life in prison without the possibility of parole. The Supreme Court stated that life sentences for juvenile offenders violates the Eighth Amendment to the U.S. Constitution.

In making this ruling, the Court focused on the fact that children lack maturity and cannot be treated the same as adult offenders who have a much more developed sense of responsibility and cited a string of decisions that work in unison to support less harsh penalties for children. “Our decisions rested not only on common sense—on what “any parent knows”—but on science and social science as well. *Id.*, at 569. In *Roper*, we cited studies showing that “[o]nly a relatively small proportion of adolescents” who

engage in illegal activity “develop entrenched patterns of problem behavior.” *Id.*, at 570 (quoting Steinberg & Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 *Am. Psychologist* 1009, 1014 (2003)). *Miller* at _____. See *Graham v. Florida*, 130 S.Ct. 2011, 2033-34, 176 L.Ed.2d 825, 848-50 (2010); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

Prior to *Miller v. Alabama*, the U.S. Supreme Court struck down the death penalty for juvenile in *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). This trend of recognizing the lack of maturity and judgment skills in juveniles is based upon growing volumes of studies regarding brain development in children that now conclusively validates what society has intuitively known for generations - children do not make good decisions. It is a skill that takes time to develop. It is the very reason juvenile courts were established and children were not labeled as criminals, but delinquents. Rehabilitation was the focus of the juvenile court system, not punishment.

The United States Supreme Court cited numerous studies that are now available to support the conclusion that children should not be given a life sentence for a non-homicide crime, and to do so violates the Eight

Amendment of the U.S. constitution as cruel and unusual punishment. *Graham v. Florida*, 130 S.Ct. 2011, 2033-34, 176 L.Ed.2d 825, 848-50 (2010). This conclusion has been ratified by Iowa in Iowa Code §902.1 which allows for parole after 25 years for a juvenile who is convicted of a class A felony when under the age of 18 as well as amendments to the Iowa Code which allow for Class A felony murder convictions for juveniles to be sentenced to an indeterminate life sentence with no mandatory minimum.

In *State v. Ragland*, 836 NW2d 107 (Iowa 2013), the Court determined that each juvenile must have a sentencing hearing that allows the provisions of *Miller* to be applied individually. A blanket commutation order which imposed the same sentence for every juvenile convicted of a Class A felony was determined to be unconstitutional because it did not allow for the court to address the factors outlined in *Miller*, such as age, culpability, and life situations. “To implement its substantive constitutional prohibition against mandatory life-without-parole sentences, *Miller* requires courts to establish a procedure providing for an individualized sentencing tailored to the unique attributes of juveniles when prosecuted as adults for homicide and facing life without parole.” *State v. Ragland*, 836 NW2d 107, 115 (Iowa 2013).

The Iowa Supreme Court even went one step further and found that a mandatory minimum 52 year prison sentence for a juvenile was a *de facto* life

sentence and was thus unconstitutional under prevailing Supreme Court decisions and State and Federal constitutional prohibitions against cruel and unusual punishment. *State v. Null*, 836 NW2d 41 (Iowa 2013). The only sentence for juveniles that can give them the “meaningful opportunity for parole” as mandated by *Graham v. Florida*, 560 US 48, 82, 130 S. Ct. 2011, 20134, 176 L. Ed. 2d. 825, 850 (2010), is to allow the parole board to make these decisions as the juvenile matures rather than the sentencing judge who does not have the ability to predict how a juvenile will develop. We now have empirical evidence regarding how the juvenile brain develops in regard to cognitive and critical thinking skills through adolescence and into the early 20’s. Some young adults will develop those skills at a faster rate than others. We now know that traumatic childhood experiences influence that growth, that a supportive home environment during the adolescent and later years influences that growth, that mental health issues and access to support systems impact that growth. How these factors influence a juvenile defendant is best considered as the juvenile matures, as his brain develops the ability to process information and use information. The parole board is the proper entity to make parole decisions for juveniles because it is impossible for a sentencing judge to be able to effectively evaluate the rate at which a juvenile will

develop the impulse control and other skills that will allow him to avoid criminal behavior in the future.

There are five criteria that must be addressed when providing the now mandated individual sentencing hearing for juveniles convicted as adults:

The factors to be used by the district court to make this determination on resentencing include: (1) the age of the offender and the features of youthful behavior, such as “immaturity, impetuosity, and failure to appreciate risks and consequences”; (2) the particular “family and home environment” that surround the youth; (3) the circumstances of the particular crime and all circumstances relating to youth that may have played a role in the commission of the crime; (4) the challenges for youthful offenders in navigating through the criminal process; and (5) the possibility of rehabilitation and the capacity for change. See *Miller*, 567 U.S. at ____, 132 S. Ct. at 2468, 183 L. Ed. 2d at 424; *Null*, 836 NW2d at 74-75; See also *Pearson*, 836 NW2d at 95-96; *Ragland*, 836 NW2d at 115. *State v. Hajtic* 15-0404 (Iowa App. 2015).

The district court did provide a cursory consideration of the above noted parameters when resentencing Khasif. However, the district court often considered the noted factors as aggravating rather than mitigating. This is reversible error under *Miller* and *Lyle*. *State v. Pearson*, 836 NW2d 88 (Iowa 2013).

In going through the factors required for meaningful sentencing, the district court did not take into consideration the family and home circumstances, pursuant to factor 2, as a mitigating factor. In fact, the district court barely touched on the difficult circumstances of Khasif’s childhood and

did not indicate that his childhood was considered at all as a mitigating factor by stating:

Your family and home environment is something that we learned a little bit about today from your mother with regard to your father. I think that's something that higher court wants the court, such as a judge such as myself, to consider, because it does have an impact when you see, your know, someone in your case father figure, committing harmful acts, potential criminal acts, and the way youth react to that. We understand it's not always positive and you're getting leadership in the wrong way. So I do appreciate that. So some of those things -- but some of these things are going to apply in lot of cases. The factors I really tend to focus on more than others is one which would refer to the nature of offenses. (App. Pg. 43).

Khasif's mother, Ms. Avant White, testified that Mr. Herbert White, Khasif's father, was absent much of the time and when he did spend time in the family home, Mr. Herbert White was physically abuse to her in the presence of Khasif. It was after witnessing his father physically abuse his mother that Khasif began acting out and started following the wrong crowd. Prior to that, he was a role model at school and had not significant juvenile court involvement. (App. Pg. 34-37).

In regard to factor 3, the district court put significant emphasis on the fact that Khasif committed three separate criminal acts. The sentencing judge finds this to be critical because he states that Khasif should have become more aware of the risks of the behavior the more times it happened because "the

failure to appreciate risk and consequences go down as there are additional offenses. If you commit one and you do it again and then do it again, I think as you repeated offenses, the appreciation of the risk and consequences becomes greater through the additional offenses.” (App. Pg. 44-45). The district court clearly only considered the circumstances of the crime as an aggravating factor, rather than a mitigating factor. Controlling case law requires the district court to consider these factors solely as mitigating factors. *See Pearson*, 836 N.W.2d at 97 (“It is true . . . youthfulness does not lessen the results of [a juvenile’s] actions insofar as the impact they had on the lives of the 7 victims, yet under *Miller* and *Null*, a juvenile’s culpability is lessened because the juvenile is cognitively underdeveloped relative to a fully-developed adult.”); (“While it is true that juveniles lack the maturity to fully understand the consequences of their actions, under *Miller* and *Null* this too is a mitigating factor.”). *State v. Hajtic* 872 N.W.2d 410 (Iowa App 2014) citing *Miller* and *Null*. When the district court does not consider the circumstances of the crime as a mitigating factor in conjunction with the lack of maturity present in an adolescent, this constitutes reversible error.

The district court failed to consider a juvenile’s ability to grow and rehabilitate is far more malleable than that of an adult. “Given the juveniles greater capacity for growth and reform, it is likely a juvenile can rehabilitate

faster given the appropriate opportunity.” *Lyle* at 40. A mandatory minimum sentence is justified upon the assumption that a certain amount of time in confinement is necessary for either rehabilitation, or to impose a certain measure of retribution upon the sentenced individual. As applied to juveniles, neither of these justifications for imposing a mandatory minimum meets the stated objective because the thought process of an adolescent is fundamentally different than that of an adult. A child who is sentenced for a crime when they are 17 years old, has a far greater capacity to change in a short amount of time, just through natural growth and development of the cerebral cortex, than someone who has aged past early adulthood. Marsha Levick, Jessica Feierman, Sharon M. Kelley, & Naomi E. Goldstein, *The Eighth Amendment Evolves: Defining Cruel and Unusual Punishment through the Lens of Childhood and Adolescence*, 15U. Pa. J.L. & Soc. Change 285 (2012).

Finally, in regard to factor 5, the possibility of rehabilitation and the capacity for change, was of fairly significant concern for the district court at the resentencing hearing. After detailing the difficulties Khasif had once he entered the prison system, the court stated that, “I’m not saying you don’t have capacity to change. I wouldn’t say that, because I want to believe that you do, especially someone with your support and your talent and your abilities, because I want you to be a good member of the community because I think

you may have some things to offer. But I have to base it on all the evidence that I have before me, and that I can't do." (App. Pg. 46-47). As detailed above, the district court failed to fully evaluate all the information before it and most notably failed to take into consideration those factors that mitigate in favor of a more lenient sentence.

Mandatory minimums become far more punitive in application to the juvenile than to the adult, and the result is cruel and unusual punishment as applied to the juvenile in violation of State and Federal mandates. The United States Supreme Court addressed this very concept in *Graham* by stating: "Even if the State's judgment that Graham was incorrigible were later corroborated by prison misbehavior or failure to mature, the sentence was still disproportionate because that judgment was made at the outset. A life without parole sentence improperly denies the juvenile offender a chance to demonstrate growth and maturity. Incapacitation cannot override all other considerations, lest the Eighth Amendment's rule against disproportionate sentences be a nullity." *Graham v. Florida*, 560 US 48, 130 S. Ct. 2011, 176 L. Ed. 2d. 825 (2010). Although *Graham* was considering the far more onerous sentence of life in prison without the possibility of parole, the analysis is still applicable to Khasif as serving a mandatory prison term of 7 years. The sentence was still established at the outset of Khasif's period of incarceration.

It gives him no opportunity or incentive to demonstrate his ability to grow and mature. In fact it produces the opposite result because he is more susceptible to the influences around him, namely, adult convicts. To sentence Khasif, at 17 years old, as though he possessed the same culpability as an adult offender, is to disregard all the empirical evidence that conclusively demonstrates that the thought process of the 17 year old is in no way as developed as it will be by the time he is 21 years old. At 17, knowing he will not be released for at least 7 years, the immature adolescent is far more likely to become less compliant rather than more compliant because there would certainly be a feeling of, what's the point? Anything I do will not make a difference. Khasif stated this at his resentencing hearing. He asked the judge to drop the mandatory so he "could get everything completed and be able to go to the world and just to live my life." (App. Pg. 42). Due to the mandatory minimum being imposed, Khasif isn't even eligible to participate in much of the programming, which, obviously, does not help him demonstrate change and growth. The mandatory minimum then serves as a further penalty by preventing him from being able to participate in the very programming that will help him mature. (App. Pg. 39).

Further, we must take into consideration the crimes that were committed. As the prosecutor stated at the sentencing, the law has changed

since Khasif was convicted and if Khasif were to be charged with these crimes today, he would be facing misdemeanors for two of the robberies, rather than class C felonies. On the remaining felony, the victim did not receive any serious injuries. (App. Pg. 31). But that is exactly what the research reveals as the problem with the youth and immaturity. The sentencing judge was effectively describing how an adult views their options and acts accordingly based on a mature ability to evaluate the risk inherent in a behavior versus the potential consequence. In other words, an adult exercises sound judgment in determining whether or not to act in a certain way. A juvenile does not appreciate risk, and does not appreciate consequences, so they do not model their behavior on the ability to effectively evaluate those criteria. A juvenile is focused on the immediate situation, which peers are there influencing them, what they can gain and not what they have to lose:

Adolescents differ from adults and children in three important ways that lead to differences in behavior. First, adolescents have less capacity for self-regulation in emotionally charged contexts, relative to adults. Second, adolescents have a heightened sensitivity to proximal external influences, such as peer pressure and immediate incentives, relative to children and adults. Third, adolescents show less ability than adults to make judgments and decisions that require future orientation. The combination of these three cognitive patterns accounts for the tendency of adolescents to prefer and engage in risky behaviors that have a high probability of immediate reward but can have harmful consequences.

National Research Council. (2013). *Reforming Juvenile Justice: A Developmental Approach*. Committee on Assessing Juvenile Justice Reform, Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers, and Julie A. Schuck, Eds. Committee on Law and Justice, Division of Behavioral and Social Sciences and Education. Washington, DC: The National Academies Press.

Khasif was granted the opportunity for an individualized resentencing hearing as required under *Graham, Lyle* and all other cases following. What Khasif did not receive was a hearing where the mandated requirements directing consideration of all five factors as mitigating factors was applied to his situation. As such, this matter must be remanded for a full and fair resentencing under the guidelines mandated by state and federal precedent.

ISSUE II

THE DISTRICT COURT WAS WITHOUT STATUTORY AUTHORITY TO SENTENCE THE DEFENDANT TO A MANDATORY MINIMUM PERIOD OF INCARCERATION.

A. Issue Preservation

Notice of Appeal was timely filed. The claim that a sentence is inherently illegal may be brought at any time. *State v. Bruegger*, 773 N.W.2d 862, 872 (Iowa 2009).

B. Standard of Review

A sentence is reviewed for an abuse of discretion. See *State v. Laffey*, 600 N.W.2d 57, 62 (Iowa 1999). But when, as here, it is alleged the sentence violates constitutional guaranties against cruel and unusual punishment, review is *de novo*.

C. Argument

Khasif was sentenced on July 27, 2010, pursuant to Iowa Code §711.1 and 711.3 for three counts of Robbery in the Second Degree. Robbery in the Second Degree is a Class C forcible felony which requires an indeterminate prison sentence of 10 years be imposed. In addition, when sentenced to prison, the defendant must serve 70% of the sentence (7 years) before being eligible for parole pursuant to Iowa Code §902.12. At the time Khasif was first sentenced, in 2010, there was no distinction made between adults sentenced under this Code Section, or juveniles who had been waived to adult court and sentenced under this Code Section. However, since the time of the original sentencing, there have been changes to the sentencing options that are available to the district court when sentencing juveniles to mandatory prison time. In *State v. Lyle*, 854 NW2d 378 (Iowa 2014), the Court ruled that statutory minimums imposed on juveniles are unconstitutional. In *State v.*

Louisell, 865 N.W.2d 590 (Iowa 2015), the Court ruled that the court was without statutory authority to sentence a juvenile convicted of a Class A felony to a determinate term of years absent specific statutory authority to do so. The statutory authority available at the time of the sentencing required that any person convicted of a Class A felony for homicide, be sentenced to life in prison without the possibility of parole. In *State v. Querrey*, 871 N.W.2d 126 (Iowa 2015), the Court held that a juvenile who had been convicted of First Degree Murder and sentenced to life without the possibility of parole, and then re-sentenced to serve life with the possibility of parole after serving 35 years, was illegal because there was no statutory authority to sentence an individual to a term of years when convicted of a Class A felony for committing a homicide.¹ When Khasif was originally sentenced he was required to serve 70% of his 10 year sentence pursuant to Iowa Code §902.12. That sentence is now illegal and unconstitutional pursuant to *Lyle*. Additionally, there is no statutory provision to sentence Khasif to a mandatory minimum prison term, absent Iowa Code §902.12, so it falls back to the an indeterminate term of up to ten years under Iowa Code §902.3 and 902.9. The district court was without statutory authority at the re-sentencing hearing held

¹ The Iowa Code has since been amended to allow the district court three sentencing options when sentencing a juvenile for a Class A felony homicide. See Iowa Code §902.1(2).

on May 4, 2015 to impose any mandatory minimum sentence and as such, it is an illegal sentence.

VIII. CONCLUSION

Based upon all of the arguments and authority cited herein, this matter should be remanded for resentencing which allows for Mr. Khasif White to be immediately eligible for parole without serving a mandatory minimum term of imprisonment.

IX. REQUEST FOR ORAL ARGUMENT

Appellant, Khasif White, respectfully requests to be heard in oral argument.

Respectfully submitted,

/s/ Jane White

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X. COST CERTIFICATE

I hereby certify that the cost of printing this document was the sum of \$2.60.

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I certify that on 5/3/2016,

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/s/ *Jane White*
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XII. CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
[x] Based on a word count from Microsoft Word 2007 this brief contains approximately 5189 words *including* the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:
[x] this brief uses a proportionally spaced, 14-point Times New Roman font.

/s/ Jane White
Jane M. White