STATE OF MINNESOTA

IN SUPREME COURT

A21-0453

Hennepin County

Anderson, J.
Dissenting, Chutich, Thissen, JJ.

State of Minnesota,

Respondent,

vs.

Filed: July 13, 2022
Office of Appellate Courts

Omar Nur Hassan,

Appellant.

Keith Ellison, Attorney General, Saint Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant Hennepin County Attorney, Minneapolis, Minnesota, for respondent.

Andrew C. Wilson, Charles S. Clas, Jr., Wilson & Clas, Minneapolis, Minnesota, for appellant.

S Y L L A B U S

1. The State presented sufficient circumstantial evidence to sustain appellant's conviction for first-degree premeditated murder.

2. A mandatory sentence of life without the possibility of release is not unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution when imposed on a 21-year-old defendant who has been convicted of first-degree premeditated murder.

Affirmed.

O P I N I O N

ANDERSON, Justice.

Following a jury trial, 21-year-old appellant Omar Nur Hassan was convicted of first-degree premeditated murder. The district court imposed a mandatory sentence of life without the possibility of release. On appeal, Hassan makes two arguments. First, he argues that the State presented insufficient evidence to support his conviction. Second, he argues that a mandatory sentence of life without the possibility of release imposed on a 21-year-old defendant is unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution. Because the State presented sufficient evidence and the sentence imposed on Hassan is not unconstitutionally cruel, we affirm.

FACTS

On March 1, 2019, Abdilahi Ibrahim and another person fired over 20 bullets into a Toyota Camry parked behind a Minneapolis restaurant, killing one of the four occupants, paralyzing another, and hospitalizing a third. The State alleged that Hassan was the second shooter. A grand jury indicted Hassan with several offenses, including first-degree premeditated murder under Minn. Stat. § 609.185(a)(1) (2020).[1] Authorities tried Hassan and Ibrahim together. On the first day of trial, Ibrahim pleaded guilty to second-degree murder with intent—not premeditated, as a crime committed for the benefit of a gang.[2]

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[1] A person commits first-degree premeditated murder when the person "causes the death of a human being with premeditation and with intent to effect the death of the person or of another." Minn. Stat. § 609.185(a)(1).

[2] A person commits second-degree intentional murder when the person "causes the death of a human being with intent to effect the death of that person or another, but without

Hassan pleaded not guilty to first-degree premeditated murder, demanded a jury trial, and proceeded alone.

During the jury trial, Lieutenant Molly Fischer testified that, on the night of the murder, she drove to Hennepin County Medical Center where one of the surviving victims of the shooting was receiving medical attention. Arriving at approximately 1 a.m., Fischer spoke with members of the gang investigation team. Fischer was informed by the team that, earlier that same evening, a suspected gang member had been shot at a Minneapolis mall and transported to the same hospital as the restaurant shooting victim. The team suspected that the restaurant shooting might be retaliation for the mall shooting earlier that evening.

Fischer testified that, shortly after she arrived at the hospital, she learned that both the restaurant and an adjacent café had video surveillance of the alley where the shooting occurred. The same night as the shooting, Fischer arranged to download the surveillance video from the restaurant and the adjacent café, and these videos clearly depicted the shooting as it occurred, as well as the shooters.

Two days after the murder, Fischer returned to Hennepin County Medical Center to interview the victim of the mall shooting. After interviewing the mall shooting victim, Fischer suspected that the restaurant shooting could have been retaliation for the mall

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premeditation." Minn. Stat. § 609.19, subd. 1(1) (2020). When a person commits second-degree intentional murder "for the benefit of, at the direction of, in association with, or motivated by involvement with a criminal gang, with the intent to promote, further, or assist in criminal conduct by gang members," Minnesota law enhances the available penalty. Minn. Stat. § 609.229, subds. 2–3 (2020).

shooting earlier that same evening. Accordingly, a week after the murder, Fischer obtained video evidence from Hennepin County Medical Center showing the events that transpired after the victim of the mall shooting arrived at the hospital. During a 1-hour time period around 10 p.m., several people entered the emergency room. Two hospital visitors and a shooter depicted in the crime scene surveillance footage were dressed almost identically. Contemporaneous body camera footage from an officer at Hennepin County Medical Center included audio in which one of these similarly dressed individuals gave his name as Omar Nur Hassan and identified himself as the cousin of the mall shooting victim. Fischer later labeled the other similarly dressed visitor, who was never identified, as "individual number five" (Person No. 5).

Fischer testified that she began searching for Hassan, eventually identifying Hassan as the man in the hospital video. Fischer concluded that the other similarly dressed man, Person No. 5, was not the second shooter because he had a "large Adidas symbol on the left-hand side of his pants," which she "believed that we would be able to see . . . to some degree" in the shooting video had Person No. 5 been the second shooter. Because police "were never able to see the Adidas symbol" in the shooting-scene video, she concluded that Person No. 5 was not the second shooter.

After identifying Hassan, Fischer testified that she obtained a warrant for his cell phone records. Hassan's cell phone information revealed that Hassan's phone account had been deactivated 4 days after the restaurant shooting. Fischer later obtained a warrant for Hassan's social media accounts and consequently learned that he was in Kenya. Federal authorities confirmed that Hassan had flown to Kenya 5 days after the murder and was still

there. Following issuance of a criminal complaint against Hassan, Hassan was arrested in Kenya and extradited to the United States.

Fischer also testified that because Hassan's cousin (the victim of the mall shooting) had been shot earlier the same evening in a suspected gang attack, Hassan had a motive to commit the restaurant shootings, which targeted members of the gang believed to have shot his cousin. Fischer walked the jury through video evidence of Hassan arriving at the hospital after the shooting of his cousin. The footage shows Hassan arriving at the hospital with others shortly after Hassan's cousin was admitted. The video depicts many of those who arrived at the hospital together consoling a distraught Hassan as they wait in the emergency room foyer.

Fischer also explained the similarities between Hassan's clothing and the unidentified shooter's clothing on the night of the murder, again walking the jury through side-by-side images of Hassan at the hospital and the second shooter in the crime scene video.

The State also called Ali Murray, a forensic video analyst for the City of Minneapolis who spent over 100 hours analyzing footage from the hospital and crime scene. Murray testified that the hospital footage images of Hassan were consistent with the crime-scene footage of the second shooter. Although Murray conceded that specific components of Hassan's clothing from the hospital footage (a tufted pattern on Hassan's jacket, a small white Nike logo on Hassan's pants, and a possible design on Hassan's shoes) did not appear in the crime scene footage, she testified that the resolution and lighting were such that she would not expect these characteristics to be visible. Murray also noted,

however, that the crime scene footage did not have sufficient resolution to "confirm or eliminate" Hassan as the second shooter.

In addition to the details the State highlighted at trial, the unidentified shooter in the crime scene footage resembles the hospital footage of Hassan in other respects. Specifically, the posture of Hassan and the unidentified shooter do not match the posture of Person No. 5. Moreover, the unidentified shooter in the crime scene footage appears to fumble with his firearm before shooting it, compared with Ibrahim, a known gang member who discharges his weapon without issue. And the unidentified shooter's uncoordinated handling of his gun is consistent with a person who lacks experience in gang-related crime, such as Hassan.[3]

Witnesses for the State also suggested that Hassan might have acquired a gun while at the hospital. Fischer directed the jury to a moment in the hospital footage when Hassan left the hospital, entered a parked car for approximately 15 seconds, and then returned to the hospital lobby. After leaving the car, Fischer testified, Hassan began to cradle the right pocket of his jacket "with some frequency that [she] did not observe prior to . . . him getting into that vehicle." Fischer testified that, "[f]rom [her] experience of being a police officer for 18 years, when people are carrying handguns where they don't have holsters[,] . . . they tend to keep checking that particular area where they have it . . . to make sure that it's there and secure."

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[3] The jury acquitted Hassan of gang-related charges.

The State also introduced testimony analyzing DNA evidence from the crime scene. During the investigation, a bullet found at the scene produced a DNA profile that did not match Hassan or Ibrahim, a fact the defense characterized as supporting Hassan's innocence. To explain this evidence, the State called Amber Folsum, a forensic scientist. Folsum testified that she examined swabs of a fired bullet found in the back seat of the Camry as well as the discharged cartridge casings found on the snow-packed parking lot. She explained that, although the swab of the bullet found in the back seat of the Camry produced "a single source male DNA profile that does not match Abdilahi Ibrahim or Omar Hassan," a bullet passing through a person—for example a shooting victim—would produce a DNA profile that matches that person, rather than the shooter. Folsom also testified that the swabs of the discharged cartridge casings contained insufficient DNA to conduct any scientific testing but clarified that a lack of sufficient DNA is very common when dealing with discharged cartridge casings. On cross-examination, Folsum conceded that she did not personally know whether the bullet that was found in the back seat of the Camry had passed through a person.

The State also introduced testimony regarding Hassan's cell phone records. Specifically, Richard Fennern, a special agent with the FBI Cellular Analysis Survey Team, testified that he and his colleagues were able to use cell towers to "determine where the defendant's phone . . . was during the time frame in question." Fennern testified that at 11:52 p.m. (approximately 2 minutes before the murder), Hassan's cell phone pinged a tower that served an area "that would include" the restaurant where the shooting occurred.

Finally, the State introduced evidence of Hassan's actions after the shooting. The State's witnesses testified that Hassan purchased a round-trip ticket to Kenya the day after the shooting, cancelled his phone plan 4 days after the shooting, and flew to Africa 5 days after the shooting. The State's witnesses also testified that, shortly before Hassan was scheduled to return to the United States on March 31, 2019, he sent an Instagram message saying that he intended to stay in Africa for another month. Hassan never voluntarily returned from Kenya; the State observed that authorities apprehended Hassan in Kenya in July, almost 4 months after his scheduled return. Additionally, the State introduced evidence of an Instagram message from Hassan to Ibrahim on the day that he was originally scheduled to return from Kenya, in which Hassan wrote that "N*GGAS BE THINKING POLICE AIN'T WATCHING" and "they just be waiting, f*ck n*gga."

In its closing argument, the State asserted that the evidence it introduced was consistent with a hypothesis of Hassan's guilt and inconsistent with any other verdict. Finding Hassan not guilty, the State contended, would require finding that the numerous pieces of inculpatory evidence it presented amounted to nothing more than unfortunate coincidence. Consequently, the State urged the jury to return a guilty verdict.

The defense countered by arguing that police were so focused on Hassan in the investigation that they completely failed to probe the possibility that others, such as Person No. 5, might be the second shooter. Specifically, the defense noted that the prosecution interviewed only Hassan and Ibrahim out of the 17 people in the hospital footage and did not contact the families of the restaurant shooting victims to investigate potential leads. The defense also drew the jury's attention to the State's failure to request cell phone data

for anyone other than Hassan and Ibrahim, as well as the State's failure to request a cell phone "dump" of all the phones that pinged near Hennepin County Medical Center and the shooting site.

The defense also argued that the State's cell phone evidence did not conclusively establish that Hassan was the second shooter. The defense instead contended that Hassan's phone pinging near the restaurant at the time of the murder was an "unfortunate coincidence" and pointed out that (1) cell phone pings show only general (not exact) locations, and (2) State experts could not verify that Hassan was actually *with* his cell phone.

The defense attempted to show that the State's video evidence could support an inference that the still-unidentified Person No. 5 was the second shooter. For instance, during cross-examination, Fischer conceded that Person No. 5's clothing was "very similar to Omar Hassan's." Additionally, the defense noted that DNA samples from the crime scene bullet casings were not consistent with either Hassan or Ibrahim. Finally, the defense elicited a concession from the State's clothing expert that a comparison of the shooting footage and hospital footage did not contain "enough information" to "confirm" that Hassan was the killer.

The jury found Hassan guilty of first-degree premeditated murder, under Minn. Stat. § 609.185(a)(1). The district court sentenced Hassan to a mandatory sentence of life without parole.

ANALYSIS

I.

Hassan argues that the State presented insufficient circumstantial evidence to support his conviction. According to Hassan, the circumstances proved are consistent with the rational hypothesis that Person No. 5 is the second shooter. We disagree.

In reviewing the sufficiency of evidence for a conviction, we painstakingly review the record to determine whether that evidence, viewed in the light most favorable to the verdict, was sufficient to permit the jurors to reach the verdict that they did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). Evaluating the sufficiency of circumstantial evidence involves a two-step process. First, we identify the circumstances proved. *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011). In so doing, "we winnow down the evidence presented at trial" to a "subset of facts," *State v. Noor*, 964 N.W.2d 424, 438 (Minn. 2021) (citation omitted) (internal quotation marks omitted), that are "consistent with the jury's verdict," disregarding evidence that is inconsistent with the verdict, *State v. Allwine*, 963 N.W.2d 178, 186 (Minn. 2021). As the sole judge of credibility, the jury "is free to accept part and reject part" of the testimony of a particular witness. *Coker v. Jesson*, 831 N.W.2d 483, 492 (Minn. 2013).

Next, we identify the reasonable inferences that can be drawn from the circumstances proved when viewed "as a whole and not as discrete and isolated facts." *State v. Cox*, 884 N.W.2d 400, 412 (Minn. 2016). Although we defer to the jury in determining the circumstances proved, we give "no deference to the fact finder's choice between reasonable inferences." *State v. Andersen*, 784 N.W.2d 320, 329–30 (Minn. 2010)

(citation omitted) (internal quotation marks omitted). The State's circumstantial evidence is sufficient when the reasonable inferences are consistent with the hypothesis that the accused is guilty and inconsistent with any rational hypothesis other than guilt. *Cox*, 884 N.W.2d at 411; *see also State v. Hokanson*, 821 N.W.2d 340, 354–55 (Minn. 2012) (explaining that the State's obligation is to exclude all reasonable inferences other than guilt).

Here, the circumstances proved are as follows: (1) Hassan had a motive to kill because his cousin had been shot earlier in the evening,[4] (2) Fisher testified (and the jury presumably believed after reviewing the videos) that the Adidas logo on Person No. 5's leg was so large that it would have been visible in the crime scene video, (3) the Adidas logo is not visible in the crime scene video, (4) Hassan and the shooter have similar posture—a fact not mentioned by the parties or witnesses but nevertheless visible upon reviewing relevant video evidence, (5) unlike Ibrahim who confidently fires his gun into the Camry, the second shooter hesitates and then struggles to retrieve his gun—another fact visible from the footage of the murder, (6) Ibrahim was a known gang member and Hassan was not a gang member—a characteristic consistent with the second shooter's clumsiness in handling the gun, (7) Hassan's apparel is consistent with the apparel of the second shooter, (8) Murray testified that based on the low resolution and lighting conditions, she would *not* expect the tufted pattern of Hassan's jacket, the small white Nike logo, or a possible design feature on the shoes to be visible in the crime scene video, (9) Hassan's

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[4] *See State v. Silvernail*, 831 N.W.2d 594, 600 (Minn. 2013) (reasoning that motive to kill is circumstantial evidence of guilt).

behavior at the hospital suggested that he may have acquired a gun, (10) the unidentified DNA profile from the scene does not prove that someone besides Hassan is the second shooter (and exonerate Hassan) because the profile could belong to one of the shooting victims, (11) Hassan's cell phone communicated with the cell tower closest to the restaurant at the time of the shooting, (12) Hassan cancelled his cell phone account and flew to Kenya, which suggests that he did not intend to return to Minneapolis, (13) on the day Hassan was scheduled to return from Kenya, he sent a message to Ibrahim expressing a belief that the police were watching and waiting, and (14) Hassan never voluntarily returned to the United States.

We must next determine whether the circumstances proved are consistent with guilt and, "on the whole," inconsistent with any reasonable hypothesis of innocence. *Andersen*, 784 N.W.2d at 332. To the extent that Hassan invokes evidentiary inconsistencies, even inconsistencies in the testimony of one witness, we must resolve those inconsistencies in favor of the jury's verdict. *Allwine*, 963 N.W.2d at 186; *Noor*, 964 N.W.2d at 438.

Hassan argues that the circumstances proved are consistent with the rational hypothesis that Person No. 5 is the second shooter, which exonerates Hassan. Because Hassan's argument fails to consider the circumstances proved *as a whole*, it is unavailing. Viewed as a whole, the circumstances proved do not support a *reasonable* inference inconsistent with guilt. To hold otherwise, we would need to conclude that the numerous inculpatory circumstances proved by the State are simply a series of unfortunate coincidences. Because such a conclusion is unreasonable, we conclude that the State

presented sufficient evidence to support Hassan's conviction for first-degree premeditated murder.

II.

Hassan also argues that a mandatory sentence of life without the possibility of release is unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution when imposed on a 21-year-old defendant who has been convicted of first-degree premeditated murder.[5] According to Hassan, such a sentence "is cruel given his youth." We disagree.

Article I, Section 5, of the Minnesota Constitution provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted." By contrast, the Eighth Amendment to the United States Constitution only prohibits punishment that is "cruel *and* unusual." (Emphasis added.) We have previously held that the distinction between Article I, Section 5, and the Eighth Amendment is "not trivial." *State v. Mitchell*, 577 N.W.2d 481, 488 (Minn. 1998). Because the Minnesota Constitution prohibits cruel punishments that are not unusual, it provides more protection than the United States Constitution. *Id.* (citing *Harmelin v. Michigan*, 501 U.S. 957, 994–95 (1991) (explaining that even though severe mandatory penalties may be cruel, they are not unusual)).

Hassan fails to meet the heavy burden necessary to invalidate a legislatively imposed punishment. The Legislature has dictated that "[t]he court shall sentence a person

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[5] Hassan concedes that his sentence is not unusual. In his brief, Hassan specifically asserts that his sentence is "cruel, although not unusual."

to life imprisonment without possibility of release" under certain circumstances, including when "the person is convicted of first-degree murder under section 609.185, paragraph (a), clause (1)," Minn. Stat. § 609.106, subd. 2(1) (2020), as Hassan was here. Statutory punishments are "presumed constitutional," and defendants challenging a punishment under Article I, Section 5, bear a "heavy burden" of showing that "our culture and laws emphatically and well-nigh universally reject" a challenged sentence. *State v. Chambers*, 589 N.W.2d 466, 479 (Minn. 1999) (citation omitted) (internal quotation marks omitted). The Legislature is the best arbiter of Minnesota's "culture" because it is "constituted to respond to the will and consequently the moral values of the people." *Id.* at 480 (citation omitted) (internal quotation marks omitted). Here, rather than embracing judicial discretion in sentencing, the Minnesota Legislature deliberately rejected a scheme of indeterminate sentencing in favor of mandatory sentences. *See* Minn. Stat. § 244.09 (2020) (governing the Minnesota Sentencing Guidelines Commission); *see also* Act of April 5, 1978, ch. 723, § 9, 1978 Minn. Laws 761, 765–67 (promulgating the law creating the Sentencing Guideline's Commission).[6]

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[6] Until the advent of determinate sentencing, the length of a sentence "was left almost entirely to the sentencing judge's discretion, within the maximum terms established by the legislature." *State v. Shattuck*, 704 N.W.2d 131, 144 (Minn. 2005) (citation omitted) (internal quotation marks omitted). Relief was available only through the parole board, which had broad authority to "parole or discharge a defendant sentenced to prison, without regard to the length of the sentence." *Id.* at 145. As part of the move toward determinate sentencing, however, the Legislature eliminated the role of the parole board. Act of June 6, 1983, ch. 274, §§ 1–20, 1983 Minn. Laws 1171–80. Although legislators have repeatedly introduced legislation that would reinstate the parole board, those efforts have not been successful. *See, e.g.*, 1 Journal of the House of Representatives 654 (84th Minn. Leg. Feb. 28, 2005) (detailing a bill to reinstate a "conditional release board"); 1 Journal of the House of Representatives 867 (91st Minn. Leg. Mar. 7, 2019) (detailing a bill establishing an

Moreover, Hassan fails to demonstrate that his punishment is disproportionate to his offense and, consequently, fails to establish that his punishment is cruel. In determining whether a punishment is cruel under Article I, Section 5, of the Minnesota Constitution, we "compare the gravity of the offense to the severity of the sentence."[7] *State v. Vang*, 847 N.W.2d 248, 263 (Minn. 2014) (citation omitted) (internal quotaton marks omitted). We have previously compared the gravity of the offense of first-degree felony murder to a mandatory sentence of life with the possibility of release after 30 years. *See Mitchell*, 577 N.W.2d at 488–89. We concluded that such a punishment was not cruel under the Minnesota Constitution, even though the defendant in *Mitchell* was 15 years old when he committed the offense. *Id.* at 490. Sixteen years later, we reaffirmed that such a sentence is not cruel under the Minnesota Constitution when imposed on a 14-year-old defendant who commits first-degree felony murder. *See Vang*, 847 N.W.2d at 262–64. As part of our analysis in *Vang*, we acknowledged that the United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 567 U.S. 460 (2012), "afford juveniles greater constitutional protection than adults in certain circumstances." 847 N.W.2d at 263. But because these decisions did not involve mandatory sentences of life with the possibility of release *after 30 years*, we

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"indeterminate sentence release board"). Moreover, even under the earlier discretionary scheme, first-degree murder (the crime Hassan committed) still carried a mandatory sentence beyond the discretion of a sentencing judge. *Shattuck*, 704 N.W.2d at 144–45.

[7] Because Hassan concedes that his sentence is not unusual, we need not further consider this issue.

concluded that the defendant in *Vang* failed to present a compelling reason to overrule *Mitchell*. *Id.*

We have also compared the gravity of two offenses of first-degree felony murder to the discretionary imposition against a juvenile of two consecutive sentences of life with the possibility of release after 30 years. *See State v. Ali*, 855 N.W.2d 235, 258 (Minn. 2014). In *Ali*, the juvenile defendant argued that his consecutive sentences were the practical equivalent of a sentence of life without the possibility of release. *Id.* at 257–58. We concluded that the two consecutive sentences were not cruel under the Minnesota Constitution because they were not disproportionate to the gravity of his offenses. *Id.* at 259.

We now compare the gravity of the offense of premeditated murder to a sentence of life without the possibility of release imposed on a 21-year-old defendant. Unlike the offense of first-degree felony murder, the offense of first-degree premeditated murder requires "some appreciable passage of time between a defendant's formation of the intent to kill and the act of killing." *State v. McInnis*, 962 N.W.2d 874, 890 (Minn. 2021) (citation omitted) (internal quotation marks omitted). This additional requirement makes the offense of first-degree premeditated murder graver than the offenses discussed in *Mitchell*, *Vang*, and *Ali*. In addition, the calculated way that Hassan committed this first-degree premeditated murder—walking up behind a car full of unsuspecting individuals and firing a barrage of bullets into the car—makes the offense more serious. Moreover, Hassan was of legal age at the time of the offense, fully entitled to all the benefits and responsibilities of other adults. That makes this case fundamentally different from *Mitchell*, *Vang*, and *Ali*,

which all concerned juvenile defendants. We therefore hold that a mandatory sentence of life without the possibility of release is not unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution when imposed on a 21-year-old defendant who has been convicted of first-degree premeditated murder.[8]

CONCLUSION

For the foregoing reasons, we affirm the decision of the district court.

Affirmed.

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[8] Hassan cites scientific literature on brain development to contend that, because his brain is not fully developed, there is a risk that no penological rationale justifies a mandatory sentence of life without the possibility of parole, and his punishment is therefore unconstitutionally cruel. We consider the scientific literature, however, to be inconclusive. *See, e.g.*, Larry Cunningham, *A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law*, 10 U.C. Davis J.L. & Pol'y 275, 283 (2006) (citing numerous studies that suggest that by age 15, a child "has amassed an adult-like cognitive ability"); Brief for American Psychological Association as Amicus Curiae at 19–20, *Hodgson v. Minnesota*, 497 U.S. 417 (1990) (No. 88-805) ("[B]y middle adolescence (age 14–15) young people develop abilities similar to adults in reasoning about moral dilemmas, understanding social rules and laws, [and] reasoning about interpersonal relationships and interpersonal problems."). "Legislatures also are better qualified to weigh and evaluate the results of statistical studies." *McCleskey v. Kemp*, 481 U.S. 279, 319 (1987) (citation omitted) (internal quotation marks omitted). We consequently decline to invalidate a law based on conflicting science and leave it to the Legislature to assess the evidence and enact policy accordingly.

DISSENT

CHUTICH, Justice (dissenting).

I agree with the court that the State presented sufficient evidence to sustain the jury's verdict. I write separately because I respectfully disagree with the court's analysis of a critical issue of first impression—whether, as applied to a 21-year-old offender, a *mandatory* sentence of life without the possibility of release is unconstitutionally cruel punishment under Article I, Section 5, of the Minnesota Constitution. A sentence unsupported by penological justification is by its nature disproportionate and, consequently, unconstitutionally cruel under Article I, Section 5, of our Minnesota Constitution. In my view, given recent and compelling advances in brain science, it is not hard to imagine a situation in which sentencing a 21-year-old offender to life in prison without the possibility of release would be without any penological justification because the brain of the offender was not fully developed when the offense occurred. Accordingly, using our inherent judicial power, I would adopt a procedural rule requiring a district court to hold an individualized sentencing hearing to determine whether, based on relevant brain science, the brain of the youthful offender was fully developed when the offense occurred before the court may impose a sentence of life in prison without hope of release.

To be clear, this proposed procedural rule does not prevent a 21-year-old like appellant Omar Nur Hassan from receiving such a sentence *after* a hearing occurs and the district court makes the necessary determination. And, if after a hearing, a district court concludes that a sentence of life without the possibility of release lacks any penological justification based upon the youthful offender's brain development, safeguards exist to

ensure that the offender is not automatically released after 30 years of imprisonment when public safety would then be endangered. Because the court declines to exercise its inherent judicial power to require individualized hearings for youthful offenders before a mandatory sentence of life without release may be imposed, I respectfully dissent.

A.

At the outset, I emphasize that my analysis is based on the distinct language of the Minnesota Constitution and the convincing new developments in neuroscience. I do not contend here that the Eighth Amendment protections articulated in *Miller v. Alabama*, 567 U.S. 460 (2012), and *Montgomery v. Louisiana*, 577 U.S. 190 (2016), should be extended to offenders who are age 18 or older. Nor am I making an ethical, moral, or public-policy argument that 21-year-old offenders should *never* be sentenced to life without the possibility of release. Our court determined in *Nelson v. State* that such an expansion of Eighth Amendment precedent is unwarranted without further guidance from the United States Supreme Court and that the Legislature is in the best position to decide whether 21-year-old offenders should *never* be sentenced to life in prison without the possibility of release. 947 N.W.2d 31, 38, 39 n.9 (Minn. 2020). My analysis focuses instead on an issue that was not addressed in *Nelson*—whether we should exercise our inherent judicial power to adopt a procedural rule that limits the risk of unconstitutionally cruel sentences under our Minnesota Constitution.

On appeal, Hassan argues that the "automatic imposition" of a life sentence without the possibility of release on youthful offenders is *cruel* under Article I, Section 5, of the

Minnesota Constitution.[1] He asks us to remand his case to the district court for an individualized sentencing hearing. The State asks us to affirm, asserting that Hassan's sentence of life imprisonment without the possibility of release is not disproportionate to the gravity of his offense.

Article I, Section 5, of the Minnesota Constitution establishes that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel *or* unusual punishments inflicted." (Emphasis added.) This language differs from the language of the Eighth Amendment to the United States Constitution that prohibits "cruel *and* unusual" punishment. (Emphasis added.) We have explicitly held that the difference between the Eighth Amendment and Article I, Section 5, is "not trivial." *State v. Mitchell*, 577 N.W.2d 481, 488 (Minn. 1998). Specifically, the Minnesota Constitution "provides more protection than the U.S. Constitution" because it prohibits punishments that are merely cruel, even if not unusual. *State v. McDaniel*, 777 N.W.2d 739, 753 (Minn. 2010).

In determining whether a punishment is cruel under Article I, Section 5, we compare the gravity of the offense to the severity of the sentence.[2] *State v. Ali*, 855 N.W.2d 235,

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[1] Hassan concedes that his sentence is not unusual.

[2] In determining whether a particular sentence is cruel or unusual under the Minnesota Constitution, we separately examine whether the sentence is cruel and whether it is unusual. *State v. Vang*, 847 N.W.2d 248, 263 (Minn. 2014). Unlike the analysis for determining whether a sentence is cruel, the analysis for determining whether a sentence is unusual considers whether a consensus exists among the states that the sentence offends evolving standards of decency. *Id.* In *State v. Chambers*, we discussed the analyses that are applied when an offender claims that a sentence is cruel or unusual, explaining that we focus on (1) the proportionality of the crime to the punishment, and (2) whether the punishment comports with the evolving standards of decency that mark the progress of a maturing society. 589 N.W.2d 466, 480 (Minn. 1999). But because we used the general

259 (Minn. 2014). Put differently, we focus "on the proportionality of the crime to the punishment." *Mitchell*, 577 N.W.2d at 489; *see also State v. Chambers*, 589 N.W.2d 466, 480 (Minn. 1999) (same); *State v. Anderson*, 159 N.W.2d 892, 894 (Minn. 1968) (same).

Although we have not previously considered whether a punishment lacking any penological justification is by its nature disproportionate under Article I, Section 5, other state and federal courts have held that a punishment lacking any penological justification is by its nature disproportionate.[3] For example, in *State v. Santiago*, the Connecticut Supreme Court held that its state constitution did not permit the imposition of a sanction "so totally without penological justification that it results in the gratuitous infliction of suffering." 122 A.3d 1, 56 (Conn. 2015) (quoting *Gregg v. Georgia*, 428 U.S. 153, 183 (1976)). And in *Coker v. Georgia*, the United States Supreme Court explained that a punishment is "excessive" when it "makes no measurable contribution to acceptable goals of punishment" or "is grossly out of proportion to the severity of the crime." 433 U.S. 584, 592 (1977).

The legal principle articulated in *Santiago* and *Coker* is sound. Consequently, I conclude that a punishment lacking any penological justification is by its nature disproportionate, and therefore cruel under Article I, Section 5.

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phrase "cruel or unusual" when discussing each analysis in *Chambers*, our imprecise language created a risk that someone might mix the two distinct analyses. *See id.* at 479–81. We have since clarified that we separately examine whether a sentence is cruel and that the determination of whether a sentence is cruel focuses on the proportionality of the crime to the punishment. *Vang*, 847 N.W.2d at 263; *Ali*, 855 N.W.2d at 259.

[3] Recognized penological justifications include "retribution, deterrence, incapacitation, and rehabilitation." *Graham v. Florida*, 560 U.S. 48, 71 (2010).

B.

Here, Hassan admittedly committed the most severe of crimes—the unjustified taking of another person's life. At first glance, imposing Minnesota's harshest possible sentence, life in prison with no hope of release, for the most severe crime in Minnesota seems appropriate. And that punishment will be constitutional in many, if not most, cases. But when the harshest possible sentence is *automatically* imposed, brain science suggests that we run the risk that in one or more cases, such a sentence will not be supported by any underlying penological justification, and therefore by its nature, the sentence will be unconstitutionally cruel under Article I, Section 5. This conclusion is based on current brain science, the legitimate penological goals of sentencing, and the implications of recent advances in brain science on these penological goals when a 21-year-old offender is sentenced to life in prison with no possibility of release.

First, brain scientists have discovered that "the brain undergoes a 'rewiring' process that is not complete until approximately 25 years of age."[4] Mariam Arain et al., *Maturation*

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[4] Other scientific studies have reached similar conclusions. *See* M. Eve Hanan, *Incapacitating Errors: Sentencing and the Science of Change*, 97 Denv. L. Rev. 151, 175 (2019) (contending that the brain continues maturing into the twenties); Elizabeth S. Scott et al., *Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy*, 85 Fordham L. Rev. 641, 642 (2016) ("[D]evelopmental psychologists and neuroscientists have found that biological and psychological development continues into the early twenties, well beyond the age of majority."); Alexandra O. Cohen et al., *When Does a Juvenile Become an Adult? Implications for Law and Policy*, 88 Temp. L. Rev. 769, 783 (2016) ("[N]oninvasive brain imaging and postmortem studies have shown continued regional development of the prefrontal cortex, implicated in judgment and self-control beyond the teen years and into the twenties."); Kathryn Monahan et al., *Juvenile Justice Policy and Practice: A Developmental Perspective*, 44 Crime & Just. 577, 582 (2015) (identifying components of brain development that continue into the twenties); Laurence Steinberg, *A Dual Systems Model of Adolescent Risk-Taking*, 52 Developmental

of the Adolescent Brain, 9 Neuropsychiatric Disease & Treatment 449, 451 (2013). "The rewiring is accomplished by dendritic pruning and myelination." *Id.* at 452. "Dendritic pruning eradicates unused synapses and is generally considered a beneficial process, whereas myelination increases the speed of impulse conduction across the brain's region-specific neurocircuitry." *Id.* This rewiring is a critical component of brain "plasticity" during adolescence, which notably is defined as ages 10 to 24. *Id.* at 450–51.

"The term 'plasticity' refers to the possible significant neuronal changes that occur in the acquisition of new skills." *Id.* at 451. Although plasticity "increases an individual's vulnerability toward making improper decisions because the brain's region-specific neurocircuitry remains under construction, thus making it difficult to think critically and rationally before making complex decisions," it also permits a person "to learn and adapt." *Id.* When scientists say that "brain development is not complete until near the age of 25," they are referring "specifically to the development of the prefrontal cortex," which "is responsible for cognitive analysis, abstract thought, and moderation of correct behavior in social situations."[5] *Id.* at 453.

Psychobiology 216, 219–20 (2010) (noting elevated levels of impulsivity into a person's late twenties); Jensen Arnett, *Emerging Adulthood: A Theory of Development from the Late Teens Through the Twenties*, 55 Am. Psych. 469, 471 (2000) (characterizing people from age 18 up to age 25 as "emerging adults" based on underdevelopment); Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, 2 Nature Neuroscience 861, 861–63 (1999) (identifying components of brain development that continue into a person's twenties).

[5] Other sources confirm the conclusion that brain development typically continues until a person's twenties. *See* Mary Beckman, *Neuroscience: Crime, Culpability, and the Adolescent Brain*, 305 Science 596, 596 (2004) (asserting that the brain grows in volume and becomes more organized into a person's early twenties); Elizabeth R. Sowell et al.,

In a recent study, scientists determined that negative emotional arousal diminishes the cognitive control of "individuals ages 18 to 21 more than older individuals." Alexandra O. Cohen et al., *When is an Adolescent an Adult? Assessing Cognitive Control in Emotional and Nonemotional Contexts*, 27 Psych. Sci. 549, 560 (2016).[6] On the other hand, cross-disciplinary evidence supports "the idea that positive social, environmental, and emotional stimuli and support can reshape brain circuits that are responsible for socio-emotional competencies that are implicated in morality and prosocial behavior, with beneficial and enduring effects on social functioning." Frederica Coppola, *Valuing Emotions in Punishment: An Argument for Social Rehabilitation with the Aid of Social and Affective Neuroscience*, 14 Neuroethics S251, S256 (2018).[7] In short, when the brain is

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Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Post Adolescent Brain Maturation, 21 J. Neuroscience 8819, 8826 (2001) ("[W]e have mapped the spatial distribution of late brain growth and demonstrate that it does indeed continue in the frontal and posterior temporal lobes during the postadolescent years."); Elizabeth R. Sowell et al., *In Vivo Evidence for Post-Adolescent Brain Maturation in Frontal and Striatal Regions*, 2 Nature Neuroscience 859, 860 (1999) (showing that the prefrontal cortex does not fully mature until the twenties).

6 *See also* Scott et al., *supra*, at 642 ("Recently, researchers have found that eighteen- to twenty-one-year-old adults are more like younger adolescents than older adults in their impulsivity under conditions of emotional arousal.").

7 *See also* Hanan, *supra*, at 174 ("[A]reas of neuroplasticity are relevant to sentencing because they demonstrate the potential for significant personal change in response to environment, presumably even among adults who have committed violent crimes."); Vincent Schiraldi et al., *Community-Based Responses to Justice-Involved Young Adults*, New Thinking Cmty. Corr. Bull., Sept. 2015, at 1, 2 ("Young adults are malleable, and systematic changes that positively affect their lives can have long-lasting, perhaps permanent impacts on them and, subsequently, on their communities.").

undergoing rewiring, young adults can react as impulsively as teenagers in highly charged situations, but that active rewiring also allows positive personal and moral growth.

Second, criminal sentences are based on legitimate penological goals. "A sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation." *Ewing v. California*, 538 U.S. 11, 25 (2003) (citing 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 1.5 (1986)). We acknowledged the justifications of rehabilitation, deterrence, and retribution as part of our analysis in *State v. Fearon*, 166 N.W.2d 720, 725 (Minn. 1969) (interpreting a statute to avoid criminalizing the disease of alcoholism). The justifications of incapacitation, rehabilitation, and deterrence have also been recognized by the Minnesota Legislature. *See* Minn. Stat. § 609.01 (2020) (explaining that the purpose of the criminal code is "to protect the public safety and welfare by preventing the commission of crime through the deterring effect of the sentences authorized, the rehabilitation of those convicted, and their confinement when the public safety and interest requires").

The incapacitation justification reflects the principle that "society may protect itself from persons deemed dangerous because of past criminal conduct by isolating [them] from society." 1 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 1.5 (1986). The rehabilitation justification "rests upon the belief that human behavior is the product of antecedent causes, that these causes can be identified, and that on this basis therapeutic measures can be employed to effect changes in the behavior of the person treated." *Id.* Under the deterrence justification, "punishment aims to deter the criminal . . . from committing further crimes, by giving [the criminal] an unpleasant

experience [they] will not want to endure again." *Id.* Historically, the retribution justification reflected a desire for "revenge." *Id.* But now it reflects the rubric of "just deserts," meaning offenders are "subjected to certain deprivations because [they] deserve it." *Id.*

To determine whether automatically imposing a sentence of life without the possibility of release runs too great a risk of being disproportionate for a youthful offender, we must consider the implications of current advances in brain science on the legitimate penological goals of sentencing. The scientific studies documenting the heightened plasticity of a 21-year-old's brain—which allows beneficial and enduring effects on social and moral functioning in response to positive social, environmental, and emotional stimuli—affect all of the penological justifications.

For example, concerning incapacitation and rehabilitation, the scientific studies support a reasonable inference that the brains of *some* of the 21-year-old offenders serving sentences of life in prison without release will develop beneficial and enduring social and moral functioning that make the offenders no longer a danger to society. Imprisoning such an offender until death is not warranted under the penological justification of incapacitation because isolation is no longer required to protect society from the offender after the necessary positive behavioral changes have occurred. And once those positive changes have taken place, the important societal goal of rehabilitation has been satisfied.

Similarly, the scientific studies documenting a 21-year-old's underdeveloped prefrontal cortex, which controls cognitive analysis, abstract thought, and moderation of correct behavior in social situations, undercut the penological justifications of deterrence

and retribution. The scientific studies support a reasonable inference that the underdeveloped prefrontal cortex of *some* of the 21-year-old offenders affected their cognitive analysis, abstract thought, and moderation of correct behavior in social situations. Imprisoning such an offender until death is not warranted under the penological justifications of deterrence and retribution; an offender with an underdeveloped prefrontal cortex is (1) less likely to even consider possible punishment, no matter how harsh, when making decisions, and (2) is less culpable for their ultimate actions. In sum, convincing evidence from the science of brain development shows that for *some* 21-year-old offenders, sentencing them to die in prison lacks any penological justification and therefore is unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution.

C.

Here, we do not know whether Hassan's sentence lacks any penological justification because the sentence was imposed "automatically" without any consideration of his brain development. Without an individualized sentencing hearing, a risk exists that Hassan's sentence of life without the possibility of release lacks any penological justification. I would respond to this risk by adopting the following procedural rule: Before a district court may impose a sentence of life in prison without the hope of release on a youthful offender, it must hold an individualized sentencing hearing to determine whether, based on relevant brain science, the brain of the youthful offender was fully developed when the offense occurred.

Our court has the inherent judicial power to adopt a procedural rule that limits the risk of unconstitutionally cruel sentences: "The authority to regulate the procedures

governing judicial proceedings is an inherent judicial power."[8] *In re Welfare of Child of B.J.-M. & H.W.*, 744 N.W.2d 669, 673 (Minn. 2008). This inherent judicial power has been used in a variety of contexts, including sentencing.[9] In *State v. Chauvin*, 723 N.W.2d 20, 25–27 (Minn. 2006), we held that to ensure that the offender's sentence was not unconstitutional under *Blakely v. Washington*, 542 U.S. 296, 303 (2004), the district court had the inherent judicial power to impanel a sentencing jury. Because limiting the risk of unconstitutionally cruel sentences is equally important, we have the inherent judicial power to adopt a procedural rule requiring a district court to hold an individualized sentencing hearing to determine whether, based on relevant brain science, the brain of the youthful offender was fully developed at the time of the offense before the court may impose a sentence of a lifetime in prison without the possibility of release.

To be clear, I am not suggesting that a district court has the power to ignore a mandatory sentence simply because the court disagrees with the sentencing statute. As we

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[8] The Minnesota Legislature expressly acknowledged this power in Minnesota Statutes section 480.059, subdivision 1 (2020), which provides: "The supreme court shall have the power to regulate the pleadings, practice, procedure, and the forms thereof in criminal actions in all courts of this state, by rules promulgated by it from time to time." Although "[s]uch rules shall not abridge, enlarge, or modify the substantive rights of any person," *id.*, the proposed procedural rule does not create a substantive right, *see Schriro v. Summerlin*, 542 U.S. 348, 353 (2004) (distinguishing between substantive and procedural rules and holding that rules that regulate only the manner of determining the defendant's culpability are procedural and typically do not apply retroactively).

[9] In other contexts, we have used our inherent judicial power over the administration of justice "to ensure the fairness of judicial proceedings." *Fagin v. State*, 933 N.W.2d 774, 780 (Minn. 2019). In *Fagin*, we adopted "a heightened pleading requirement for *Birchfield/Johnson* postconviction proceedings" to ensure the fairness of judicial proceedings. *Id.* And in *State v. Scales*, 518 N.W.2d 587, 592 (Minn. 1994), we adopted a recording rule for custodial interrogations to ensure the fairness of judicial proceedings.

made clear in *Mitchell*, district courts generally do not have the authority to depart from a mandatory sentencing statute. 577 N.W.2d at 493. But equally clear is the principle that the Legislature cannot authorize, much less mandate, an unconstitutional sentence.[10] *State v. Shattuck*, 704 N.W.2d 131, 142 (Minn. 2005) (striking down a statute that mandated a 30-year minimum sentence that was unconstitutional under *Blakely*); *see also Harmelin v. Michigan*, 501 U.S. 957, 994–95 (1991) (acknowledging that "severe, mandatory penalties may be cruel," even if "they are not unusual").

The proposed procedural rule simply requires a district court to hold an individualized sentencing hearing to determine whether, based on relevant brain science, the brain of the youthful offender was fully developed at the time of the offense. If not, a sentence of life without the possibility of release would be without any penological justification. Because a sentence without any penological justification is by its nature disproportionate, imposition of such a sentence would be unconstitutionally cruel under Article I, Section 5. In those circumstances, the district court should impose a sentence of life with the possibility of release after 30 years because we have previously held that such a sentence is not unconstitutionally cruel under Article I, Section 5. *See, e.g.*, *State v. Vang*,

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[10] In other contexts, we have not hesitated to invalidate laws that contravene the Minnesota Constitution. *See, e.g.*, *Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 628 (Minn. 2017) (Minn. Stat. § 554.02 (2016)); *State v. Garcia*, 683 N.W.2d 294, 296 (Minn. 2004) (Minn. Stat. § 260B.130, subd. 5 (2002)); *Friedman v. Comm'r of Pub. Safety*, 473 N.W.2d 828, 829 (Minn. 1991) (Minn. Stat. § 169.123, subd. 2(b)(4) (1990)); *State v. Russell*, 477 N.W.2d 886, 887 (Minn. 1991) (Minn. Stat. § 152.023 (1990)); *State v. Hershberger*, 462 N.W.2d 393, 395 (Minn. 1990) (Minn. Stat. § 169.522 (1990)); *Thompson v. Est. of Petroff*, 319 N.W.2d 400, 401 (Minn. 1982) (Minn. Stat. § 573.01 (1980)).

847 N.W.2d 248, 263 (Minn. 2014); *Mitchell*, 577 N.W.2d at 490. On the other hand, if the district court determines that, based on relevant brain science, the brain of the youthful offender was fully developed at the time of the offense, such a sentence would have a penological justification, in which case the court must impose the statutorily mandated sentence of life without the possibility of release.

Here, Hassan had only recently turned 21 when he committed this murder. Given his young age, he squarely falls within the age range that scientific studies have identified as a period in which the brain has a high level of plasticity, especially in the prefrontal cortex.[11] Consequently, under the proposed procedural rule, a remand is required to allow the district court to conduct an individualized sentencing hearing to determine whether a sentence of life without the hope of release is without any penological justification, given the status of Hassan's brain.

I note that even if an offender like Hassan is sentenced to life with the possibility of release, he would not necessarily experience life outside of prison walls again. Release is not automatic because "public safety and the interests of the victims' families will be carefully considered before any eventual release could be approved." *State v. Ali*, 895 N.W.2d 237, 253 (Minn. 2017) (Chutich, J., dissenting); *see also Jackson v. State*, 883 N.W.2d 272, 281 n.8 (Minn. 2016) (detailing statutory steps that must occur before supervised release of an offender is authorized).

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[11] Current brain studies show that the brain is fully mature by age 25. Consistent with that science, it is reasonable to limit the procedural rule that I propose to offenders who are younger than 25 years old. But here, I do not need to define the upper limit of the rule because Hassan is clearly in the range of those who may still have developing brains.

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In sum, a sentence of life without the possibility of release that serves no penological purpose is by its nature disproportionate and therefore unconstitutionally cruel under Article I, Section 5, of the Minnesota Constitution. Given recent and compelling advances in brain science, we can anticipate a situation in which sentencing a 21-year-old offender to life without the possibility of release would be without penological justification. Although the severity of criminal sanctions is a legislative concern, we have the inherent judicial power and duty to adopt a procedural rule that limits the risk of unconstitutionally cruel sentences. In response to this risk, I would adopt a procedural rule that requires a district court to hold an individualized sentencing hearing to determine whether, based on relevant brain science, the brain of the youthful offender was fully developed at the time of the offense before the court may sentence the offender to life in prison without the hope of release.

Applying the proposed rule here, I would remand this case to the district court to hold an individualized sentencing hearing to determine whether, based on relevant brain science, Hassan's brain was fully developed when he committed the offense. Because I disagree with the court's response to the risk of unconstitutionally cruel sentences for youthful offenders under our state constitution, I respectfully dissent.

THISSEN, Justice (dissenting).

I join in the dissent of Justice Chutich.