

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ORIGINAL

DONALD LEE REEVES,
PETITIONER,

v.

THE STATE OF CALIFORNIA,
RESPONDENT.

=====

APPENDICES IN SUPPORT OF PETITION FOR
A WRIT OF CERTIORARI

=====

DONALD LEE REEVES, III
CDCR# BC-1244 (D3-212)
CENTINELA STATE PRISON
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PETITIONER IN PRO PER

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A

DESCRIPTION OF THIS APPENDIX:

THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT DIVISION
ONE STATE OF CALIFORNIA ON AN UNPUBLISHED OPINION ON 03/28/18
AFFIRMED THE JUDGMENT (CASE NO. D0715771)

NUMBER OF PAGES TO THIS APPENDIX: 24 PAGES.

JURISDICTION: UNITED STATES SUPREME COURT

Filed 3/28/18

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

D071577

Plaintiff and Respondent,

v.

(Super. Ct. No. SCD259479)

DONALD LEE REEVES III,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of San Diego County, Joan P. Weber, Judge. Affirmed.

Nancy E. Olsen, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Adrienne S. Denault, Deputy Attorneys General, for Plaintiff and Respondent.

After a court trial, the court found Donald Lee Reeves III guilty of murdering two homeless men, Bobby Johnson and David Hamilton (counts 1 & 3); robbing Johnson, Hamilton, and Roberic Brooks (counts 2, 4, & 5); assaulting Brooks and Hamilton by means likely to produce great bodily injury (counts 6 & 7); and possession of methamphetamine (count 9). As to each murder, the trial court found true special circumstance allegations of multiple murder and robbery-murder. The court also found true special circumstance allegations that during the commission of counts 2, 5, 6, and 7, Reeves personally inflicted great bodily injury on his victims. The trial court sentenced Reeves to two consecutive terms of life in prison without the possibility of parole (LWOP) on counts 1 and 3, plus a concurrent six-year term on count 5 and 180 days on count 9. The trial court stayed the remaining prison terms and enhancements under Penal Code section 654.

On appeal, Reeves challenges the sufficiency of the evidence to support his convictions for robbing Hamilton, the felony murders of Johnson and Hamilton, and both robbery-murder special circumstance findings. Reeves contends the evidence failed to establish he intended to steal before or during his assaults on Johnson and Hamilton and intended to commit the robberies independent of the murders. Reeves also argues his two LWOP sentences constitute cruel and unusual punishment under the California and United States Constitutions. We reject Reeves's arguments and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Brooks

On a night in October 2014, Reeves met Brooks at a bar. Brooks sold Reeves \$20 worth of methamphetamine. Later that night, Reeves said he had lost the drugs and requested his money back from Brooks. The men left the bar together to look for the lost drugs or find more drugs. When they reached a stop light, Reeves hit Brooks in the face, knocking him unconscious.

After Brooks regained consciousness, he noticed everything was out of his pocket and wallet and the items were scattered in nearby plants. Brooks's EBT (Electronic Benefit Transfer) cash and food stamp cards and the \$20 Reeves had given him in exchange for the methamphetamine were missing from his wallet.

Brooks looked toward a church across the street and saw Reeves hitting a man in the head. Brooks lost consciousness again. When he awoke, he flagged down a fire truck and an ambulance took him to the hospital. Brooks later told a detective he had seen several individuals by the church battering an unknown person.

Hamilton

The man Reeves battered near the church was Hamilton. Hamilton had been sleeping on a bench outside the church and awoke to being punched in the face repeatedly. He lost consciousness during the assault and, when he became alert again, his cart was gone. Hamilton approached an officer who had been speaking to Brooks, asked to be taken to the hospital, and stated he had been robbed by a tall, slender, Black male in his thirties.

Officers interviewed Hamilton in the hospital. Hamilton told officers he was assaulted by a tall, dark-skinned Black male with curly hair in his 20's or 30's. Hamilton did not recall seeing any facial hair on the man who attacked him. Hamilton also said the assailant had a Hispanic male companion, but only the Black man assaulted and stole from him.

When an officer showed Hamilton a picture of Brooks, Hamilton said he was not 100 percent sure if Brooks was his assailant, but the picture was close. Brooks was bald and had a mustache. A few days later, Hamilton added details that the man who assaulted him had a beard and a mustache. Reeves is a White male.

While in the hospital, Hamilton reported the assailant stated, "Give me all your money or I'll kill you" as he punched Hamilton in the face. In response, Hamilton removed his wallet from his pocket and said he did not have any money. The assailant checked the wallet for money, saw there was none, threw the wallet in Hamilton's face, and then continued to punch him.

Hamilton had a small black cart with his clothing in it. According to Hamilton, his assailant took the cart along with some clothing, including lavender pants and a light purple shirt with dark stripes.

As a result of the attack, Hamilton suffered multiple facial fractures and a brain bleed. He died approximately three months after the assault.

Johnson

Shortly after the assault on Hamilton, Reeves walked a few blocks with Hamilton's cart to an area near a senior center. Johnson and Gregory Rivers were sleeping outside

the senior center. Reeves approached Johnson, stopped to hike up his pants, and then started kicking Johnson in the head and upper torso. After kicking Johnson multiple times, Reeves went through Johnson's belongings, selected certain items, and put them in Hamilton's cart. Reeves then kicked Johnson again and spit on him twice. Reeves turned to Rivers and said something to the effect of "you lucky it wasn't you because I don't play." Reeves walked away wheeling Hamilton's cart. The incident was recorded on video by the senior center.

Rivers called 911 and reported the assault. Johnson suffered fractures to the bones around his eye and ribs, facial swelling, and a brain injury. He underwent brain surgery, but never regained consciousness after the assault. Johnson remained in the hospital until his death approximately two weeks later.

Reeves's Arrest

Approximately 15 minutes after the assault on Johnson, an officer responding to the incident saw Reeves, who matched the description of the assailant. The officer saw blood spatter on Reeves's shoes and detained him.

Reeves had a black cart with him. The cart contained a jacket that had Johnson's Bible in the pocket and Hamilton's lavender pants and striped shirt. Reeves also had Brooks's EBT cards.

DNA from blood stains on Reeves's pants and shoes matched Hamilton's DNA. Hamilton's DNA also matched DNA found on Reeves's fists. Brooks's DNA matched DNA recovered from Reeves's shoes.

Defense

Reeves testified he was 22 years old at the time of the assaults on Brooks, Hamilton, and Johnson. On that night, he was upset because his girlfriend had just ended their relationship. He consumed several beers, snorted methamphetamine, and smoked marijuana. Reeves had been taking methamphetamine daily for the month before the assaults and, as a result, had not been sleeping well.

Reeves testified he started seeing "demons, demonic figures" as he was walking home after leaving the bar where he met Brooks. Reeves was scared because he thought the demons wanted to kill him. He responded by throwing punches and kicks to try to get the demons away from him. Reeves did not remember assaulting anyone or taking their property. Reeves testified he had no reason to take the victims' property because he had a job, a place to live, and a closet full of clothing.

Reeves stated he did not have anything against homeless people and did not have a plan to hurt anybody. Additionally, three character witnesses testified Reeves was a good, honest person, was not violent, and never said negative things about homeless people.

A clinical and forensic psychologist testified Reeves's lack of memory of the assaults was consistent with a blackout where a person is conscious but cannot form long term memories. According to the psychologist, Reeves likely experienced delusions as a result of his chronic methamphetamine use and lack of sleep. In the psychologist's opinion, Reeves acted irrationally and did not intend to steal from the victims.

Trial Court's Findings

Concerning the crimes against Hamilton, the trial court found Reeves guilty of assault, robbery, and first degree felony murder. The trial court found true the special circumstances of robbery-murder and multiple murder. It also concluded the murder was not premeditated.

In support of those verdicts, the trial court found Brooks's testimony that he saw Reeves assault Hamilton compelling. The court acknowledged Hamilton identified his assailant as a Black male, but discredited Hamilton's statements because they "were all over the map." The court attributed the variances in Hamilton's descriptions of the assailant to Hamilton being asleep and awoken to being pummeled.

As to the crimes against Johnson, the trial court found Reeves guilty of robbery and felony murder. Similar to Hamilton's murder, the court found the murder was not premeditated because Reeves was under the influence of alcohol and drugs. However, the trial court concluded Reeves "clearly robbed . . . Johnson" and the murder occurred in the course of the robbery. The court noted video evidence showed Reeves intentionally went through Johnson's belongings, selected certain items, and placed them in the cart he had stolen from Hamilton.

The court concluded there was a pattern to Reeves's crimes. Reeves used force and violence against homeless men and then methodically went through the victims' belongings, selecting the items he wanted. The only difference in the crimes against the three victims was that the assault on Brooks was less severe.

DISCUSSION

I. *Sufficiency of the Evidence*

A. Standard of Review

Well settled standards apply to Reeves's sufficiency of the evidence challenges. We determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." [Citations.] We examine the record to determine "whether it shows evidence that is reasonable, credible and of solid value from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt." [Citation.] Further, "the appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." [Citation.] This standard applies whether direct or circumstantial evidence is involved. "Although it is the [trier of fact's] duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the [trier of fact], not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] "If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment."''' (*People v. Virgil* (2011) 51 Cal.4th 1210, 1263 (*Virgil*).) Reversal for insufficient evidence "is unwarranted unless it appears 'that upon no hypothesis whatever

is there sufficient substantial evidence to support" the jury's verdict. (*People v. Bolin* (1998) 18 Cal.4th 297, 331 (*Bolin*)).)

We review a challenge to the sufficiency of the evidence to support a special-circumstance finding in the same manner as a challenge to the sufficiency of the evidence to support a conviction. (*People v. Cole* (2004) 33 Cal.4th 1158, 1229; see *People v. Burney* (2009) 47 Cal.4th 203, 253 [applying standard to support felony murder predicated on robbery].)

B. Hamilton's Robbery

Reeves argues insufficient evidence supported his conviction for robbing Hamilton because the evidence failed to establish Reeves formed the intent to steal before or during his assault on Hamilton. We reject Reeves's argument.

Robbery is "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (Pen. Code, § 211.) "[T]he act of force or intimidation by which the taking is accomplished in robbery must be motivated by the intent to steal" (*People v. Anderson* (2011) 51 Cal.4th 989, 994.) "If intent to steal arose only after the victim was assaulted, the robbery element of stealing by force or fear is absent. [Citations.]" (*People v. Castaneda* (2011) 51 Cal.4th 1292, 1331; *People v. Ramkeesoon* (1985) 39 Cal.3d 346, 351 [if the defendant did not "harbor[] a larcenous intent before or during the assault, the taking [is] theft rather than robbery"]; see also *People v. Marshall* (1997) 15 Cal.4th 1, 35 [defendant's possession of a valueless letter written to the victim did not

support a finding that the defendant killed the victim for the purpose of obtaining the letter].)

"There is rarely direct evidence of a defendant's intent. Such intent must usually be derived from all the circumstances . . . , including the defendant's actions." (*People v. Chinchilla* (1997) 52 Cal.App.4th 683, 690.) "[T]he specific intent to rob may be inferred from the circumstances connected with the robbery." (*People v. Johnson* (1972) 28 Cal.App.3d 653, 657.)

Here, Reeves argues the evidence proves, at most, he committed a theft offense, not a robbery. In arguing he did not intend to steal from Hamilton before or during the assault, Reeves points to evidence he was distraught and intoxicated after breaking up with his girlfriend and the items he took from Hamilton were not valuable to him. Reeves also contends there was no evidence as to when he joined the assault or took Hamilton's property. To support this contention, he emphasizes evidence that a third person initiated the assault on Hamilton.

Contrary to Reeves's arguments, there was sufficient evidence in the record to establish he intended to steal before or during his use of force on Hamilton. Viewing the evidence in the light most favorable to the prosecution, it established Reeves robbed Brooks and then immediately crossed the street to where Hamilton was sleeping outside a church. Reeves repeatedly punched Hamilton in the face until he awoke. Reeves then threatened to kill Hamilton if Hamilton did not give him money. After Reeves saw there was no money in Hamilton's wallet, he threw the wallet in Hamilton's face, continued to punch him, and proceeded to take Hamilton's cart and items of clothing.

Reeves attempts to discredit Hamilton's statement to an officer that the assailant demanded Hamilton turn over his money or be killed. Reeves contends the threat cannot be attributed to him because Hamilton identified the assailant as a Black man and the evidence showed more than one person was involved in the assault. Reeves's argument ignores the role of the trier of fact and our standard of review.

Whether Reeves possessed the intent to steal before or during his assault on Hamilton was a question to be determined by the trier of fact. (See *People v. Fortman* (1967) 257 Cal.App.2d 45, 52.) In this case, the trial court found Reeves had the requisite intent for robbery. There was substantial evidence to support the court's finding. Although Hamilton stated the assailant was Black, he informed officers only one person assaulted him and that person made a threat and demanded money. Hamilton's statement was consistent with Brooks's testimony that he only saw two people fighting by the church. Further, Hamilton's DNA matched DNA on Reeves's fists and in blood stains on Reeves's pants and shoes. Based on this evidence, the trier of fact could reasonably attribute the threat and demand for money to Reeves. It is well settled that the trier of fact may reject evidence, "though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses." (*Alexander v. Workmen's Compensation Appeals Board* (1968) 262 Cal.App.2d 756, 759.)

Where, as here, the evidence and reasonable inferences therefrom support the trial court's finding, we may not reverse merely because the circumstances might also be reconciled with a contrary finding. (*Virgil, supra*, 51 Cal.4th at p. 1263.) An appellate

court may not reweigh the evidence or reassess a witness's credibility. (*People v.*

Lindberg (2008) 45 Cal.4th 1, 27 (*Lindberg*).) Accordingly, we reject Reeves's arguments.

C. Felony Murder Convictions

Reeves argues due process requires reversal of his convictions for the felony murders of Hamilton and Johnson because they were not supported by substantial evidence.¹ Specifically, he contends the evidence did not establish he formed the intent to steal before or during the assaults and that he assaulted the victims for the purpose of robbing them. As we shall explain, we reject Reeves's arguments.

"Under the felony-murder rule, a murder 'committed in the perpetration of, or attempt to perpetrate' one of several enumerated felonies, including robbery, is first degree murder." (*Lindberg, supra*, 45 Cal.4th at p. 27.) "[T]o be guilty of felony murder in the commission of robbery . . . the defendant must form the intent to steal before or during rather than after the application of force to the victim, and . . . the defendant must apply the force for the purpose of accomplishing the taking." (*People v. Pollock* (2004) 32 Cal.4th 1153, 1176; *People v. Green* (1980) 27 Cal.3d 1, 54, fn. 44 ["the defendant's intent to rob will not support a conviction of felony murder [citation] if it arose after the infliction of the fatal wound"].)

¹ "A state court conviction that is not supported by sufficient evidence violates the due process clause of the Fourteenth Amendment and is invalid for that reason." (*People v. Rowland* (1992) 4 Cal.4th 238, 269.)

1. *Hamilton's Murder*

Reeves argues even if this court finds substantial evidence supported his conviction for robbing Hamilton, his felony murder conviction should be reversed because the evidence showed he formed the intent to take Hamilton's property after infliction of the fatal wounds on Hamilton and he did not assault Hamilton for the purpose of taking his property. We disagree.

Reeves again relies on evidence that a third person was involved in the assault and Hamilton's description of the assailant as a Black man. Reeves's view of the record ignores the well settled principle that we must view the evidence in the light most favorable to the judgment. As we discussed in part I.B, *ante*, there was substantial evidence to support a finding Reeves formed the intent to steal Hamilton's property before or during the assault. Additionally, there was ample evidence Reeves assaulted Hamilton for the purpose of robbing him.

Hamilton informed an officer that as the assailant pummeled Hamilton, the assailant demanded money and threatened to kill him if he did not comply. After Hamilton turned over his wallet and Reeves found no money in it, Reeves took Hamilton's cart and clothing. This evidence was sufficient to establish Reeves used force for the purpose of taking Hamilton's property.

Moreover, Reeves's pattern of conduct against his three victims reveals he assaulted them to take their property. Reeves did not merely grab the victims' property as an afterthought to the assaults. Instead, he carefully selected the items he wanted from each victim before moving on to the next. Reeves took Brooks's EBT cards and money

and then discarded Brooks's wallet and other items in nearby plants. Shortly thereafter, Reeves demanded money from Hamilton and, when he found none, kicked over Hamilton's cart and selected particular items of clothing out of it. Lastly, Reeves assaulted Johnson and then deliberately went through Johnson's belongings to select items to steal.

Based on the totality of the record, substantial evidence supports Reeves's conviction for the felony murder of Hamilton.

2. Johnson's Murder

Reeves argues due process requires reversal of his conviction for the felony murder of Johnson because the evidence showed he took Johnson's property after the fatal attack. Reeves contends it is not reasonable to infer he killed Johnson for the purpose of taking his property because Johnson was asleep at the time, making the assault unnecessary; Reeves took items that had no significant value; the assault was fueled by Reeves's intoxication and distress after his breakup with his girlfriend; and there was no evidence he disliked homeless people or targeted them. We are not persuaded by Reeves's arguments.

Viewing the evidence in the light most favorable to the prosecution, as we must, it showed Reeves approached Johnson who was sleeping outside a senior center. Reeves stopped, pulled up his pants, and then repeatedly kicked Johnson in the head and upper torso. Reeves paused to look through Johnson's belongings and carefully select items to steal. Reeves then continued to kick Johnson and spit on him twice.

Reeves's attack on Johnson followed his attacks on Brooks and Hamilton. During all three incidents, Reeves assaulted the victims and then methodically selected items to steal. Reeves's pattern of conduct demonstrated he attacked the victims to obtain their property.

Based on the totality of the evidence and reasonable inferences therefrom, we conclude there was substantial evidence from which a reasonable trier of fact could find Reeves formed the intent to steal Johnson's property before or during the fatal assault.

D. Robbery-Murder Special Circumstance Findings

Reeves challenges the robbery-murder special circumstance findings on his convictions for murdering Hamilton and Johnson. Specifically, he contends there was insufficient evidence that he intended to rob Hamilton and Johnson independent of killing them. We reject Reeves's arguments.

To prove a robbery-murder special circumstance, the prosecution must show the defendant had an independent purpose for the commission of the robbery, i.e., that the robbery was not merely incidental to an intended murder. (*People v. Bolden* (2002) 29 Cal.4th 515, 554.) If the robbery was merely incidental to the murder, the special circumstance does not apply. (*Ibid.*; *People v. Williams* (1994) 30 Cal.App.4th 1758, 1762 (*Williams*).) In contrast, the felony-murder rule requires only that the killing occur during the commission or attempted commission of the underlying felony, which was robbery in this case. (*Williams*, at p. 1762.)

1. Hamilton's Murder

To support his argument there was no substantial evidence he assaulted Hamilton to advance an independent purpose of robbery, Reeves again relies on Brooks's statement to a detective that he saw several individuals battering an unknown person by the church and Hamilton's description of the assailant as a Black man. Reeves contends the statements made by Brooks and Hamilton are "compelling evidence" that he did not initiate the assault and suggest the robbery was merely incidental to the killing. Contrary to Reeves's argument, we conclude substantial evidence supports a finding he had an independent felonious purpose to commit robbery.

Although there was some contradictory evidence, there was sufficient evidence establishing Reeves was the sole perpetrator of the attack on Hamilton. Hamilton stated the assailant had a Hispanic male companion, but only one person assaulted and stole from him. Similarly, at trial, Brooks testified he only saw two people fighting by the church.

Reeves assaulted Hamilton shortly after he attacked Brooks and stole items from Brooks's wallet. During the assault on Hamilton, Reeves threatened him and demanded money. After discovering Hamilton had no money, Reeves stole other items from him. This evidence was sufficient to establish Reeves had an independent felonious purpose of robbing Hamilton.

2. Johnson's Murder

Reeves acknowledges he assaulted Johnson and took a Bible and jacket from him, but contends the evidence does not establish he had an independent purpose to commit

robbery because it revealed he was intoxicated and distraught over the breakup with his girlfriend when he assaulted and stole from Johnson; the items Reeves took from Johnson had no significant value; there was no evidence he had a prior plan to harm anyone or disliked homeless people; and his actions were inconsistent with a "logical intent to steal."

Despite evidence in the record that Reeves was intoxicated and distraught, the items he stole had little value to him, and his expert's opinion that he acted irrationally, we are required to affirm a judgment that is supported by substantial evidence. (*Bolin, supra*, 18 Cal.4th at p. 331.) As we discussed in part I.C.2, *ante*, there was substantial evidence Reeves formed the intent to steal from Johnson before or during the assault. Reeves first assaulted and robbed Brooks and Hamilton and then moved on to his third victim, Johnson. Video evidence clearly showed Reeves repeatedly kicked Johnson and then stopped to carefully select items to take from Johnson's belongings. Reeves then kicked Johnson again and spat on him. This evidence was sufficient to establish Reeves had an independent purpose to commit robbery.

Based on the foregoing, we determine substantial evidence supports the robbery-murder special circumstance finding.

II. *Cruel and/or Unusual Punishment Claim*

The trial court sentenced Reeves to two consecutive LWOP terms based on the robbery-murder and multiple murder special circumstance findings, as required by Penal Code section 190.2, subdivision (a)(3) and (17). Reeves argues his sentence of two LWOP terms must be reversed and the matter remanded for resentencing because:

(1) when applied to a defendant like him, the LWOP sentences violate the ban on cruel and unusual punishment set forth in the Eighth Amendment to the United States Constitution; and (2) the LWOP sentences constitute cruel or unusual punishment under the California Constitution. We reject these contentions.

"Whether a punishment is cruel and/or unusual is a question of law subject to our independent review, but underlying disputed facts must be viewed in the light most favorable to the judgment." (*People v. Palafox* (2014) 231 Cal.App.4th 68, 82.)

A. Eighth Amendment

Relying principally on *Miller v. Alabama* (2012) 567 U.S. 460, 489 (*Miller*), *Graham v. Florida* (2010) 560 U.S. 48 (*Graham*), and *Roper v. Simmons* (2005) 543 U.S. 551 (*Roper*), which address the constitutionality of LWOP or death penalty sentences in juvenile cases, Reeves contends the LWOP sentences mandated by the special circumstance findings in his case violate the Eighth Amendment ban on cruel and unusual punishment when applied to a defendant like him. He asserts the LWOP sentences were cruel and unusual given mitigating circumstances of his youth, immaturity, and intellectual deficits, and the circumstances of his offenses. Reeves's assertions are unavailing.

"The Eighth Amendment, which applies against the States by virtue of the Fourteenth Amendment, [citation], provides: 'Excessive bail shall not be required, nor excessive fines imposed, nor *cruel and unusual punishments inflicted.*'" (*Harmelin v. Michigan* (1991) 501 U.S. 957, 962, italics added.) "[T]he Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. The right

flows from the basic "precept of justice that punishment for crime should be graduated and proportioned to [the] offense." (Roper, *supra*, 543 U.S. at p. 560.)

In *Roper*, the United States Supreme Court held the Eighth Amendment prohibits imposition of the death penalty for juvenile offenders under the age of 18. (Roper, *supra*, 543 U.S. at p. 568.) In *Graham*, the Supreme Court categorically held the imposition of a prison sentence of life without the possibility of parole on a juvenile offender for a nonhomicide offense violates the Eighth Amendment's prohibition of cruel and unusual punishment. (Graham, *supra*, 560 U.S. at p. 82.) The court noted there are "fundamental differences between juvenile and adult minds" and juveniles are "more capable of change than are adults." (*Id.* at p. 68.) Later, in *Miller*, the Supreme Court elaborated that in homicide cases involving juvenile offenders, a sentencer is required "to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." (Miller, *supra*, 567 U.S. at p. 2469, fn. omitted.)

Here, Reeves was 22 years old when he killed and robbed Hamilton and Johnson. Reeves recognizes that, based on his age at the time of the offenses, *Roper*, *Graham*, and *Miller* are not directly applicable to him. He contends, however, the trial court should have considered the principles and juvenile sentencing factors embodied in those cases. The Court of Appeal has rejected identical contentions in *People v. Abundio* (2013) 221 Cal.App.4th 1211, 1220-1221 (*Abundio*), and *People v. Argeta* (2012) 210 Cal.App.4th 1478, 1482 (*Argeta*). The *Argeta* court explained:

"These arguments regarding sentencing have been made in the past, and while [d]rawing the line at 18 years of age is subject . . . to the objections always raised against categorical rules . . . [that] is the

point where society draws the line for many purposes between childhood and adulthood.' [Citations.] Making an exception for a defendant who committed a crime just five months past his 18th birthday opens the door for the next defendant who is only six months into adulthood. Such arguments would have no logical end, and so a line must be drawn at some point. We respect the line our society has drawn and which the United States Supreme Court has relied on for sentencing purposes, and conclude [defendant's] sentence is not cruel and/or unusual under *Graham, Miller*, or [*People v. Caballero* [(2012) 55 Cal.4th 262]."] (*Argeta*, at p. 1482; accord, *Abundio*, at pp. 1220-1221.)

We agree with the holdings and analysis in *Argeta* and *Abundio*. Because Reeves was 22 years old when he killed and robbed Hamilton and Johnson, we conclude the trial court properly imposed LWOP sentences as mandated by Penal Code section 190.2, subdivision (a). The LWOP sentences do not violate the Eighth Amendment's prohibition on cruel and unusual punishment when applied to someone like Reeves.

B. California Constitution

Reeves argues his two LWOP sentences violate the California Constitution's ban on cruel or unusual punishment given his particular circumstances and the circumstances of his offenses. We disagree.

Section 17 of article I of the California Constitution sets forth the same prohibition as set forth in the Eighth Amendment. Article I, section 17 provides: "Cruel or unusual punishment may not be inflicted or excessive fines imposed." "To determine whether a sentence is cruel or unusual under the California Constitution as applied to a particular defendant, a reviewing court must examine the circumstances of the offense, including motive, the extent of the defendant's involvement in the crime, the manner in which the crime was committed, and the consequences of the defendant's acts. The court must also

consider the personal characteristics of the defendant, including his or her age, prior criminality, and mental capabilities. [Citation.] If the penalty imposed is 'grossly disproportionate to the defendant's individual culpability' [citation], so that the punishment ' ' 'shocks the conscience and offends fundamental notions of human dignity' " [citation], the court must invalidate the sentence as unconstitutional." [Citation.]" (*Abundio, supra*, 221 Cal.App.4th at p. 1218.).

Here, Reeves compares his case to *People v. Dillon* (1983) 34 Cal.3d 441 (*Dillon*). In *Dillon*, a 17-year-old high school student and his friends attempted to steal marijuana from a farm. (*Id.* at pp. 451-452.) They were armed with shotguns, a baseball bat, sticks, and a knife. (*Id.* at p. 451.) The defendant had a semiautomatic rifle. (*Ibid.*) After one of the boys accidentally discharged his shotgun, the farm owner approached with a shotgun. (*Id.* at p. 452.) The defendant was afraid the farm owner was going to shoot him and shot the farm owner nine times, killing him. (*Id.* at pp. 452, 483.)

The *Dillon* court found under the circumstances of that case, the defendant's sentence of life in prison violated California's ban on cruel or unusual punishment. (*Dillon, supra*, 34 Cal.3d at p. 489.) In reaching its conclusion, the court noted the shooting "was a response to a suddenly developing situation that defendant perceived as putting his life in immediate danger." (*Id.* at p. 488.) Further, "there [was] ample evidence that because of his immaturity he neither foresaw the risk he was creating nor was able to extricate himself without panicking when the risk seemed to eventuate." (*Ibid.*)

The case before us is easily distinguishable from *Dillon*. Reeves did not panic in response to a suddenly developing situation in which he felt his life was at risk nor did his youth and immaturity make him less culpable for his crimes. Reeves was 22 years old at the time of the offenses. Despite his intoxication, there was ample evidence he deliberately attacked two defenseless homeless men who had been sleeping outdoors. He punched or kicked the victims so aggressively that they suffered serious injuries and eventually died as a result of the assaults. In connection with the assaults, Reeves stole the victims' belongings.

Based on the nature of Reeves's offenses and his particular circumstances, we conclude the imposition of two LWOP sentences for the murders of Hamilton and Johnson with special circumstances is not unconstitutionally disproportionate to his culpability and thus does not violate the California Constitution's prohibition on cruel or unusual punishment.

DISPOSITION

The judgment is affirmed.

McCONNELL, P. J.

WE CONCUR:

IRION, J.

GUERRERO, J.

KEVIN J. LANE, Clerk of the Court of Appeal, Fourth Appellate District, State of California, does hereby Certify that the preceding is a true and correct copy of the Original of this document/order/opinion filed in this Court, as shown by the records of my office.

WITNESS, my hand and the Seal of this Court.

03/28/2018

KEVIN J. LANE, CLERK
By _____
Deputy Clerk



PROOF OF SERVICE BY MAIL

Re: Donald Reeves, Court Of Appeal Case: D071577, Superior Court Case: SCD259479

I the undersigned, declare that I am employed in the County of Sonoma, California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is 4968 Snark Ave, Santa Rosa CA. On May 2, 2018, I served a copy of the attached Petition for Review (CA Supreme Court) on each of the parties in said cause by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in United States mail at Sonoma, California, addressed as follows:

Centinela State Prison
Donald Reeves, #BC1244
Housing D3 - 212
P.O. Box 931
Imperial, CA 92251

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 2nd day of May, 2018.

Phil Lane

(Name of Declarant)



(Signature of Declarant)

PROOF OF SERVICE BY ELECTRONIC SERVICE

Re: Donald Reeves, Court Of Appeal Case: D071577, Superior Court Case: SCD259479

I the undersigned, am over the age of eighteen years and not a party to the within entitled cause. My business address is 4968 Snark Ave, Santa Rosa CA. On May 2, 2018 a PDF version of the Petition for Review (CA Supreme Court) described herein was transmitted to each of the following using the email address indicated and/or direct upload. The email address from which the intended recipients were notified is Service@GreenPathSoftware.com.

Office of the Attorney General
San Diego
San Diego, CA 92186-5266
ADIEService@doj.ca.gov

Office of the District Attorney
San Diego County
San Diego, CA 92101-3826
(Robert Stein, DDA)
DA.Appellate@sdcda.org

Appellate Defenders Inc - Criminal
Lynelle Hee
San Diego, CA 92101
eservice-court@adi-sandiego.com

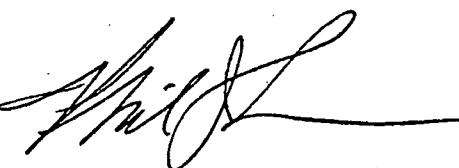
San Diego County Superior Court
Clerk of the Court
San Diego, CA 92101
(Hon. Joan P. Weber, Judge)
Appeals.Central@SDCourt.ca.gov

Office of the Public Defender
San Diego County
San Diego, CA 92101
(Michael Begovich, PD)
ppd.eshare@sdcounty.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 2nd day of May, 2018 at 08:50 Pacific Time hour.

Phil Lane

(Name of Declarant)



(Signature of Declarant)

APPENDIX COVER PAGE

B

DESCRIPTION OF THIS APPENDIX:

THE SUPREME COURT OF CALIFORNIA ON JUNE 27, 2018
DENIED PETITION FOR REVIEW (CASE NO. S248560)

NUMBER OF PAGES TO THIS APPENDIX: 1 PAGES.

JURISDICTION: UNITED STATES SUPREME COURT

SUPREME COURT
FILED

Court of Appeal, Fourth Appellate District, Division One - No. D071577 JUN 27 2018

S248560

Jorge Navarrete Clerk

THE SUPREME COURT OF CALIFORNIA

Deputy

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

DONALD LEE REEVES III, Defendant and Appellant.

petition for review is denied.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD LEE REEVES, III, — PETITIONER
(Your Name)

VS.

THE STATE OF CALIFORNIA, — RESPONDENT(S)

PROOF OF SERVICE

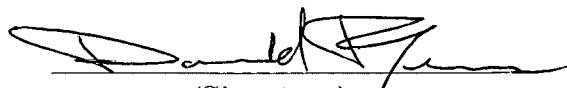
I, DONALD LEE REEVES, III, do swear or declare that on this date, AUGUST 28, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

<u>THE OFFICE OF THE CLERK,</u> SUPREME COURT OF THE U.S. WASHINGTON, D.C. 20543	<u>OFFICE OF THE ATTORNEY GENERAL</u> P.O. BOX 944255 SACRAMENTO, CA 94244-2550	<u>XAVIER BECERRA</u> OFFICE OF THE A.G. 1300 "I" STREET SACRAMENTO, CA 95814-2919
--	---	---

I declare under penalty of perjury that the foregoing is true and correct.

Executed on AUGUST 28, 2018


(Signature)

DONALD LEE REEVES, III, # BC-1244

PETITIONER IN PRO PER

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DONALD LEE REEVES, III — PETITIONER
(Your Name)

VS.

THE STATE OF CALIFORNIA, RESPONDENT(S)

PROOF OF SERVICE

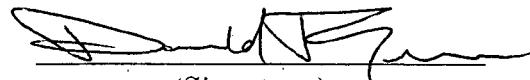
I, DONALD LEE REEVES, III, do swear or declare that on this date,
AUGUST 28, 2018, as required by Supreme Court Rule 29 I have
served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*
and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding
or that party's counsel, and on every other person required to be served, by depositing
an envelope containing the above documents in the United States mail properly addressed
to each of them and with first-class postage prepaid, or by delivery to a third-party
commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

THE OFFICE OF THE CLERK	OFFICE OF THE ATTORNEY GENERAL	XAVIER BECERRA
SUPREME COURT OF THE U.S.	P.O. BOX 944255	OFFICE OF THE A.G.
WASHINGTON, D.C. 20543	SACRAMENTO, CA 94244-2550	1300 "I" STREET
		SACRAMENTO, CA 95814-2919

I declare under penalty of perjury that the foregoing is true and correct.

Executed on AUGUST 28, 2018



(Signature)

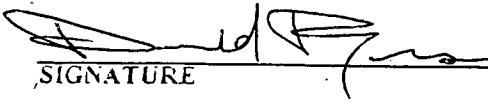
PETITIONER IN PRO PER

VERIFICATION
(C.C.P. § 446 & 2015.5 U.S.C. § 1746)

STATE OF CALIFORNIA
COUNTY OF IMPERIAL

I, DONALD LEE REEVES, III DECLARE UNDER PENALTY OF PERJURY THAT I AM THE
PETITIONER IN THE ABOVE ENTITLED ACTION. I HAVE READ THE FOREGOING
DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS TRUE OF MY OWN
KNOWLEDGE EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION AND BELIEF,
AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 28TH DAY OF AUGUST, 2018 AT CENTINELA STATE PRISON, IMPERIAL
CALIFORNIA 92251.


SIGNATURE

(DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. § 1013(a) & 2015.5 U.S.C. § 1746)

I, DONALD LEE REEVES, III, AM A RESIDENT OF CENTINELA STATE PRISON, IN THE COUNTY OF
IMPERIAL, STATE OF CALIFORNIA. I AM OVER EIGHTEEN (18) YEARS OF AGE, AND AM NOT A
PARTY OF THE ABOVE ENTITLED ACTION. MY STATE PRISON ADDRESS IS 2302 BROWN ROAD,
IMPERIAL, CALIFORNIA 92251.

ON, AUGUST 28, 2018, I SERVED THE FOREGOING: PETITION FOR A WRIT OF CERTIORARI
AND ATTACHED APPENDICES (A-S)
IN SUPPORT OF PETITION

SET FORTH EXACT TITLE OF DOCUMENT(S) SERVED)

ON THE PARTY(S) HEREIN BY PLACING A TRUE COPY THEREOF, ENCLOSED IN A SEALED
ENVELOPE(S) WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT
BOX SO PROVIDED AT THE CENTINELA STATE PRISON, IMPERIAL, CALIFORNIA 92251.

THE OFFICE OF THE CLERK,
SUPREME COURT OF THE
UNITED STATES
WASHINGTON, D.C. 20543

OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 944255
SACRAMENTO, CA 94244-2550

XAVIER BECERRA
OFFICE OF THE A.G.
1300 "I" STREET
SACRAMENTO, CA 95814-2919

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED AND THERE
IS REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE SO
ADDRESSED. I DECLARE UNDER PENALTY OF PERJURY THE FOREGOING IS TRUE AND CORRECT.

DATE AUGUST 28, 2018


(DECLARANT/PRISONER)