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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

JIMMY SIACKASORN,

Defendant and Appellant.

C065399

(Super. Ct. No. 07F11789)

A jury convicted defendant Jimmy Siackasorn of first degree murder of a police officer. (Pen. Code, § 187, subd. (a).)¹ The jury found true allegations that defendant intentionally and knowingly killed the officer while the officer was performing his duties, and that defendant intentionally and personally discharged a firearm causing the death. (§ 190.2, subd. (a)(7), former § 12022.53, subd. (d).) The jury found not true an allegation that the murder was committed for the benefit of a criminal street gang. (§ 186.22, subd. (b)(1).)

¹ Undesignated statutory references are to the Penal Code.

Defendant committed the offense about five weeks shy of his 17th birthday. Sentenced to a prison term of life without the possibility of parole (LWOP), plus a consecutive sentence of 25 years to life for the firearm finding, defendant appeals. He raises evidentiary admissibility and sufficiency issues—and an instructional contention—regarding the first degree murder elements of premeditation and deliberation. He also claims his sentence is unconstitutionally cruel and unusual, and asks that we review the sealed record of his *Pitchess* motion concerning any discoverable information in the slain officer's personnel file.² We shall affirm the judgment.

FACTUAL BACKGROUND

Defendant concedes that he shot and killed Deputy Sheriff Vu Nguyen on the afternoon of December 19, 2007. Aside from the constitutionality of defendant's sentence, the basic issues on appeal involve the evidence of (1) defendant's premeditation and deliberation, and (2) his knowledge that Nguyen was a police officer.

On that December afternoon, Detective Nguyen and his partner in the Sacramento County Sheriff's Gang Suppression Unit, Detective Ed Yee, were ascertaining gang information while traveling in an unmarked, but well-known gang unit car (silver

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. We have reviewed that sealed record and find the trial court did not abuse its discretion in concluding there was nothing discoverable therein. (*People v. Cruz* (2008) 44 Cal.4th 636, 670.)

Nissan Maxima), when they noticed a young Asian male in front of Lucky Chanthalangsy's (Lucky) house, a known hangout for the Tiny Raskal Gang (TRG). The officers decided to contact the person.³

When the officers and the person spotted one another, the person started to walk away from them, and eventually sprinted away after Detective Yee drove into an oncoming traffic lane in pursuit. Detective Nguyen jumped out of the vehicle and chased the person on foot near Lucky's house, while Detective Yee continued the pursuit in the car.

Detective Yee saw Detective Nguyen jump a backyard fence and then lost contact with him. During this pursuit, Yee heard faint sounds, which he later concluded had been gunshots.

After not receiving a response from Detective Nguyen, Detective Yee got out of the car and climbed over some fences and onto a chicken coop, where he found Nguyen lying on his back. Nguyen had been shot three times—in the neck, in the abdomen, and in the lower back. All three injuries were potentially fatal. Nguyen's finger was on the trigger of his gun, but the gun had not been fired.

Lucky's father witnessed the foot chase and the shooting. He had told law enforcement that the victim did not have time to get his gun before being shot, but at trial he stated that it

³ The defense did not dispute that this person was defendant.

looked like the victim was reaching for his gun when a shot sounded and the victim fell down.

Defendant ran up to a couple after the shooting and asked them, without success, if they would give him a ride to the light rail station because he "just shot a cop."

Evidence involving defendant's state of mind and knowledge also included the following. It was commonly known in the area in which defendant was spotted that gang-unit police personnel drove silver or gray Nissan Maximas; this personnel was commonly referred to by gang members as "task force" or simply "task"; and defendant admitted that he was a TRG member. It was clear to Detective Yee that the person he pursued on the afternoon of the shooting had recognized Yee's car as a law enforcement vehicle. Shortly after the shooting, defendant told his cousin (a TRG member) that he had "bust[ed] on task," meaning he had shot a cop; defendant told another TRG member that he had shot a cop. On the day of the shooting, defendant had an outstanding warrant. There was evidence that Detective Nguyen, at the time of the shooting, had his police badge on a chain around his neck.

Additional evidence involving defendant's state of mind and knowledge included (1) incriminating statements that defendant made to a police photographer following a post-shooting police interview; (2) defendant's prior misconduct and accompanying threats to probation officers and to custodial staff while in juvenile custody; and (3) expert and lay opinion testimony on

the TRG mindset concerning police officers. Since defendant claims the trial court erroneously admitted these three items of evidence, we will discuss them in detail when we discuss these issues.

DISCUSSION

I. The Trial Court Properly Admitted Certain Statements That Defendant Made to a Police Photographer

A. Background

On December 20, 2007, at around 2:10 a.m., after being arrested around midnight and left alone shackled to an interview table at the police station for about 50 minutes, defendant was interviewed by Detective Clark⁴ and Detective Stanley Swisher. The interview was recorded and transcribed.

Defendant was read and confirmed he understood his *Miranda*⁵ rights, and expressed his willingness to talk.

Detectives Clark and Swisher continued to interrogate defendant until 3:53 a.m. Toward the end of that phase of the interrogation, defendant stated twice within a short period of time that he did not want to talk any more.

At this point, Detective Swisher said "okay" and the detectives left the interview room, but just two minutes later,

⁴ Detective Clark did not testify at trial and his first name does not appear in the record.

⁵ *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694].

they returned and resumed the questioning. Shortly thereafter, defendant confessed.

Detectives Clark and Swisher concluded the interrogation at about 4:10 a.m., leaving the room after telling defendant that someone would be coming in to take pictures of him.

About three minutes later, a police photographer, Deputy Sam Bates, entered the interview room with Detective John Linke (who had not participated in defendant's questioning, and who was not involved in the photographing or in eliciting any statements from defendant during the photographing).

As the police photographer asked defendant to position himself for a photograph, defendant blurted out, "That cop deserved it though." The photographer responded, "Excuse me?" and defendant repeated his statement. The photographer told defendant that he would be best served to say nothing. Defendant replied, "What are you going to beat my ass or something?" After more positioning and photographs, defendant added, "Lucky I didn't see you on the street. Would have shot your ass, too."

Not long thereafter, as the photographing proceeded, defendant stated, "Oh, that's the same cop that beat up the homie before anyways so he—he deserve what he got." Defendant

also boasted of the violent acts he would commit while incarcerated.⁶

After these statements, Detective Swisher, one of the two detectives who had previously questioned defendant, returned to the interview room and again questioned defendant. The trial court also excluded these questions and answers.

B. Analysis

Defendant contends that his statements to the police photographer that were admitted into evidence were both involuntary and the tainted product of his coerced confession, and thus should have been suppressed. We disagree.

Because defendant's statements to the photographer were admitted for all purposes in the prosecution's case-in-chief, the statements must have been voluntarily made and not obtained in violation of *Miranda*. (See *Harris v. New York* (1971) 401 U.S. 222, 223-225 [28 L.Ed.2d 1, 3-5].)

We determine the legal issue of the voluntariness of a statement or a *Miranda* violation independently of the trial court, based on all the supported surrounding circumstances found by the trial court. (*People v. Davis* (2009) 46 Cal.4th 539, 586; see *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 226 [36 L.Ed.2d 854, 862].) At trial, the prosecution is required

⁶ The photographer also performed a gunshot residue test on defendant, which led defendant to make some more incriminating remarks. These remarks were intertwined with accompanying questions from the photographer, causing the trial court to suppress these remarks from defendant.

to prove voluntariness and compliance with *Miranda* by a preponderance of the evidence. (*People v. Markham* (1989) 49 Cal.3d 63, 67, fn. 3, 71; see *Lego v. Twomey* (1972) 404 U.S. 477, 489 [30 L.Ed.2d 618, 627].) We will start with the alleged *Miranda* violation.

1. Miranda Violation.

The trial court correctly concluded that Detectives Clark and Swisher violated defendant's *Miranda* rights after resuming their questioning of him shortly after his second statement that he did not want to talk anymore; and the court correctly suppressed defendant's statements to the officers after this violation, including his confession.

However, a statement obtained after a *Miranda* violation can be admitted if it can be separated from the circumstances surrounding the *Miranda* violation—i.e., if the *Miranda* taint was sufficiently attenuated when the subsequent statement was made. (*Oregon v. Elstad* (1985) 470 U.S. 298, 318 [84 L.Ed.2d 222, 237-238]; *Clewis v. Texas* (1967) 386 U.S. 707, 710 [18 L.Ed.2d 423, 427].) That is the case here regarding defendant's statements to the police photographer that the trial court admitted into evidence.

The photographer appeared only after Detectives Clark and Swisher had ended their initial interrogation of defendant. With regard to the statements admitted into evidence, the photographer simply directed defendant how to pose for the photographs; the photographer did not initiate interrogation or

prompt defendant to make the statements. In fact, the photographer admonished defendant to say nothing. There was a detective on the scene—Detective Linke—but Linke had not questioned defendant, and he was not involved in the photographing. In short, photographing defendant was an act independent of interrogating him.

We conclude the trial court did not violate *Miranda* regarding the statements that defendant made to the police photographer, which the trial court admitted into evidence.

2. Voluntariness.

We also conclude, in considering "the totality of the circumstances," that the statements that defendant made to the police photographer that were admitted into evidence were voluntary. (*Arizona v. Fulminante* (1991) 499 U.S. 279, 285-286 [113 L.Ed.2d 302, 315-316].)

As the Attorney General notes, there is nothing in the record to indicate that defendant's admitted statements to the police photographer were anything but voluntary. Without any prompting on the photographer's part, defendant began jabbering at him about the case. In fact, defendant continued to volunteer statements even after the photographer warned him to say nothing. The session with the photographer cannot be considered a continuation of the *Miranda*-violative interrogation by Detectives Clark and Swisher. As explained above, photographing defendant was an act independent of interrogating him.

II. The Trial Court Did Not Abuse Its Discretion in Admitting Evidence of Juvenile Custody Misconduct and Threats

Defendant contends the trial court abused its discretion under Evidence Code sections 1101 and 352 in admitting into evidence six instances of defendant's misconduct and threats to staff while in previous juvenile custody. We disagree.

Evidence Code section 1101 prohibits the introduction of character evidence to prove conduct on a specific occasion, but permits evidence of prior bad acts if relevant to show motive, intent, knowledge, and the like, regarding the present crime. Under Evidence Code section 352, a trial court weighs the probative value of such evidence against its prejudicial effect. We review a trial court's decision to admit such evidence under the abuse of discretion standard. (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314.)

Here, the trial court admitted evidence of six incidents when defendant was in juvenile custody in which he physically lashed out or violated a rule, and when disciplined by custodial officers or probation officers, threatened to shoot or beat them. In some of these incidents, defendant threatened to take action "on the outs," i.e., when he was on the outside. In one incident, defendant had to be pepper sprayed after refusing to stop punching a wall. In another, he told a probation officer who had arrested him that the officer was lucky defendant did not know he was coming—"we would have had to . . . shoot it out."

As the trial court instructed the jury, this evidence could be considered only for the limited purpose of determining defendant's "mental state, motive, opportunity, intent, knowledge, absence of mistake, or state of mind," regarding the present offense.

As noted, the critical issues in this case concerned defendant's mental state and knowledge at the time of the shooting. The challenged evidence was relevant on those issues.

Defendant disagrees. He argues that these threats were directed against juvenile facility custodial officers and probation officers, not police officers, and were never carried out; they showed only his propensity for violence and criminal disposition, evidentiary areas prohibited under Evidence Code sections 1101 and 352.

We find parallels between the present case and *People v. Pertsoni* (1985) 172 Cal.App.3d 369 (*Pertsoni*), in which the trial court properly admitted certain evidence under Evidence Code sections 1101 and 352. In *Pertsoni*, the defendant was charged with murdering a Yugoslavian whom the defendant claimed worked for the Yugoslav secret police. The trial court admitted evidence that four years prior to the murder the defendant had participated in a demonstration against the Yugoslav Consulate in which he fired four shots at a man he believed was the Yugoslav Ambassador. (*Pertsoni*, at p. 372.)

The appellate court in *Pertsoni* noted that the defendant's state of mind was the only issue in the case. (*Pertsoni*, *supra*,

172 Cal.App.3d at p. 375.) The prosecution theory was that the killing was premeditated, whereas the defendant claimed self-defense. (*Id.* at pp. 373-374.) The evidence of the consulate incident, said *Pertsoni*, showed "the lengths to which [the defendant's] passionate hatred of anyone connected with the Yugoslav government would take him"; this evidence "tended logically to show that [the defendant's] motive in killing [the present victim] was to eliminate an agent of the Yugoslav government." (*Id.* at pp. 374, 375.)

Similarly, here, defendant's state of mind was the only issue in the case. The prosecution claimed premeditation while defendant countered with self-defense. Although the challenged incidents did not involve police officers per se, the incidents involved probation officers and juvenile facility custodial officers—in other words, law enforcement-related personnel, and reflected defendant's state of mind toward such personnel when they exercised authority over him.

We conclude the trial court did not abuse its discretion in admitting the evidence of the six incidents under Evidence Code sections 1101 and 352.

Also, the trial court did not abuse its discretion in admitting evidence that defendant, about a half-hour before the shooting, showed his firearm to a fellow TRG member and said he was going to go shoot up a house. This evidence exemplified an offensive rather than a defensive state of mind.

III. Opinion Evidence on Typical Gang State of Mind Did Not Violate Due Process

Defendant contends the trial court denied him due process in admitting an expert opinion and a lay opinion involving, respectively, the typical mindset of a gang member who claims membership "for life" and a typical TRG view of the police.

A trial court's decision to admit an expert opinion or a lay opinion is reviewed for abuse of discretion. (*People v. McAlpin* (1991) 53 Cal.3d 1289, 1299; *People v. Medina* (1990) 51 Cal.3d 870, 887.) The admission of relevant evidence will not offend due process unless the evidence is so prejudicial that it renders the defendant's trial fundamentally unfair. (*People v. Partida* (2005) 37 Cal.4th 428, 439.) As will become clear from the following discussion of these expert and lay opinions, this due process line was not crossed here and the trial court did not abuse its discretion in admitting this evidence.

A. Expert Opinion

There was evidence that defendant had stated to a police officer in March 2007 that he was TRG "for life."

A gang expert later testified that a gang member saying he was "for life" was a "very common" gang expression, and meant the gang member had "really [i]mbibed" the lifestyle, cause, and values of the gang. The expert then immediately stated that a gang member could earn "respect" within the gang by fighting an enemy, including killing a cop.

A gang expert is prohibited from opining on a specific gang member-defendant's state of mind, but the expert may testify regarding the culture and habits of gangs from which the jury may infer a state of mind. (*People v. Gonzalez* (2006) 38 Cal.4th 932, 944; *People v. Gonzalez* (2005) 126 Cal.App.4th 1539, 1550-1551.)

Defendant argues that the gang expert here impermissibly opined on the subjective belief system of anyone who uttered the phrase "for life," because such testimony was without foundation. But the expert, as an expert, testified to the ubiquity of this phrasing and his experience with it, a ubiquity that served as the foundation for the expert's opinion. Moreover, the gang expert properly opined on the typical state of mind of gang members who utter this phrase, and not improperly on defendant's own state of mind. (*People v. Olguin* (1994) 31 Cal.App.4th 1355, 1371 [gang expert's "testimony focused on what gangs and gang members typically expect and not on [the gang-member defendant's] subjective expectation in this instance"].)

B. Lay Opinion

A lay witness opined that TRG had a "strong-ass hatred over officers" and that TRG saw this attitude "as part of the gang life."

Defendant contends that no foundation was laid for the admission of this opinion. We disagree.

As relevant, Evidence Code section 800 allows a lay opinion if it is rationally based on the witness's perception. (Evid. Code, § 800, subd. (a).) Here, it was. Although the lay witness was not a gang member, she socialized with TRG members, knew about the gang and those who lived in her neighborhood, and knew their views about police officers.

Defendant also claims this opinion did nothing to help the jurors understand the witness's testimony. (Evid. Code, § 800, subd. (b).) However, defendant provides no argument in his opening brief on this point; consequently, he has forfeited this claim. (*People v. Stanley* (1995) 10 Cal.4th 764, 793.)

IV. Sufficient Evidence of Premeditation and Deliberation

Defendant contends there is insufficient evidence of premeditation and deliberation to support his first degree murder conviction. We disagree.

In reviewing this evidentiary sufficiency issue, we must determine whether, after viewing the evidence in the light most favorable to the judgment, a rational trier of fact could have found premeditation and deliberation beyond a reasonable doubt. (*People v. Johnson* (1980) 26 Cal.3d 557, 577.)

“‘Deliberation’ refers to careful weighing of considerations in forming a course of action; ‘premeditation’ means thought over in advance. [Citations.] ‘The process of premeditation and deliberation does not require any extended period of time. “The true test is not the duration of time as much as it is the extent of the reflection. Thoughts may follow

each other with great rapidity and cold, calculated judgment may be arrived at quickly."'" (*People v. Koontz* (2002) 27 Cal.4th 1041, 1080.) The requirement of premeditation and deliberation excludes homicides that are "the result of mere unconsidered or rash impulse hastily executed." (*People v. Thomas* (1945) 25 Cal.2d 880, 900-901.)

In *People v. Anderson* (1968) 70 Cal.2d 15 (*Anderson*), the court identified three categories of evidence typically found in premeditated and deliberate first degree murder: planning, motive, and manner of killing (*id.* at pp. 26-27). Where there is little or no evidence of planning, as here, evidence of motive together with the manner of killing may suffice. (*Id.* at p. 27.)

Defendant repeatedly claimed "That cop deserved it." He also stated, "That's the same cop that beat up [one of defendant's] homie[s] before." This constitutes evidence of motive. So too does the fact that defendant, who had an outstanding warrant, tried to elude Detective Nguyen and shot the officer when he (defendant) realized there was no other way out. As the Attorney General correctly notes, while defendant was running, he had sufficient time to reflect on and weigh a decision to turn around and shoot Detective Nguyen, who was on his trail. (See *People v. Memro* (1995) 11 Cal.4th 786, 863 [a rational jury could conclude that premeditation and deliberation occurred during the time it took the defendant to run about 60 yards].) Nor is it required that defendant have specifically

targeted Detective Nguyen. Ample evidence was presented that defendant had previously threatened to shoot law enforcement-related personnel who tried to exercise authority over him. (See *Pertsoni, supra*, 172 Cal.App.3d at pp. 373-375 [evidence of hatred of Yugoslav officials in general showed criminal motive in killing one].)

There was also evidence of "a manner of killing from which the jury could reasonably infer that the [shooting was] deliberately calculated to result in death." (*Anderson, supra*, 70 Cal.2d at pp. 33-34.) As the Attorney General observes, there was evidence that defendant turned, and shot Detective Nguyen not once but three times, hitting him in critical areas like the neck, abdomen, and back so rapidly that the detective could not return fire before becoming incapacitated.

Defendant argues that the evidence does not show a cold, calculated killing. The whole unplanned incident happened very quickly. Defendant notes that he was unexpectedly spotted and then chased by a member of law enforcement, while carrying a gun that had been given to him earlier by another TRG member simply to hold. Once spotted, defendant fled, over fences and chicken coops. He impulsively shot only when he had nowhere else to run, and only after the detective was going for his own weapon. This is one way to view the evidence, but, as explained above, not the only way, and is not the view most favorable to the judgment.

We conclude there is sufficient evidence of premeditation and deliberation.

V. Trial Court Properly Responded to Jury's Question on Premeditation and Deliberation

During deliberations, the jury twice asked the trial court to clarify the following sentence in a standard instruction on premeditated and deliberate murder: "The defendant acted with *premeditation* if he decided to kill before committing the act that caused death." (Former CALCRIM No. 521.) Specifically, the jury inquired, "Does this [sentence] mean that the premeditation has to be with regard to considering this particular death?"; in other words, "Does thinking about and/or threatening to kill any member of a particular group constitute premeditation for later killing a member of that group?"

As pertinent, the trial court answered the jury's inquiry as follows: "Evidence that a defendant 'thought about and/or threatened to kill' a member of a particular group can be considered in deciding whether the defendant acted with premeditation and deliberation when he committed the act causing the death of a member of that group. The People must prove that the defendant acted with premeditation and deliberation in connection with the charged crime."

Defendant contends the trial court's answer improperly lowered the prosecution's burden of proving beyond a reasonable doubt the element of premeditation, by allowing conviction

without a finding that defendant premeditated the *charged* killing. We disagree.

The trial court's answer told the jurors they would be deciding whether defendant "*acted with premeditation and deliberation when he committed the act causing the death[.]*" (Italics added.) The trial court then reiterated that the People must prove that "defendant *acted with premeditation and deliberation in connection with the charged crime.*" (Italics added.) Defendant was charged with murder. Pursuant to the trial court's answer, the jury could not reasonably have convicted defendant without finding that he premeditated the *charged* killing.

VI. The LWOP Sentence Is Not Categorically Prohibited Under the Eighth Amendment

Defendant claims that an LWOP sentence for a 16-year-old (about five weeks shy of 17) is categorically prohibited as an unconstitutional cruel and unusual punishment under the federal Eighth Amendment. We disagree.

Section 190.5, subdivision (b) establishes a presumption that 16- or 17-year-olds who are tried as adults and convicted of a first degree special circumstance murder under section 190.2 (like defendant here, § 190.2, subd. (a)(7)—an intentional and knowing killing of a police officer engaged in his duties) be given an LWOP sentence, unless the trial court, in its discretion, determines that a sentence of 25 years to life should be imposed; again, though, the LWOP sentence is the

presumptive choice. (*People v. Guinn* (1994) 28 Cal.App.4th 1130, 1145, 1147.)⁷

Two recent decisions, one from the First Appellate District, *People v. Blackwell* (2011) 202 Cal.App.4th 144 (*Blackwell*), and the other from the Second Appellate District, *People v. Murray* (2012) 203 Cal.App.4th 277, have concluded that the Eighth Amendment does not categorically bar LWOP sentences for 16- or 17-year-old first degree special circumstance murderers tried as adults. (*Blackwell, supra*, 202 Cal.App.4th at pp. 147, 155-158; *Murray, supra*, 203 Cal.App.4th at pp. 280, 283-284.) *Blackwell* involved a 17-year-old who was convicted of first degree murder during an attempted robbery inside the victim's home. *Murray* concerned a 17-year-old multiple murderer. We agree with these two decisions.

The United States Supreme Court, in *Graham v. Florida* (2010) 560 U.S. ____ [176 L.Ed.2d 825] (*Graham*), held that the Eighth Amendment prohibits an LWOP sentence for juvenile offenders who have *not* committed a homicide. (*Id.* at p. ____ [176 L.Ed.2d at p. 845].)

⁷ Defendant does not raise any issue concerning the trial court's discretion under section 190.5, subdivision (b) to impose a 25-year-to-life sentence. The trial court's stated reasons, in rejecting defendant's argument at sentencing that an LWOP sentence is unconstitutional, also implicitly rejected the nonpresumptive sentence of 25 years to life under section 190.5, subdivision (b).

As *Blackwell* noted, the high court in *Graham* applied a two-step approach appropriate for determining categorical challenges to punishment as cruel and unusual. (*Blackwell, supra*, 202 Cal.App.4th at p. 157.)

In the first step, a court considers whether there is a national consensus against the sentencing practice at issue. (*Blackwell, supra*, 202 Cal.App.4th at p. 157.) Defendant concedes that 40 states and the federal system actively sentence juveniles to LWOP terms. If anything, the national consensus is counter to defendant's position.

In the second step, a court, guided by judicial interpretation of the Eighth Amendment's text, history, meaning and purpose, independently determines whether the LWOP sentence violates the Constitution. (*Blackwell, supra*, 202 Cal.App.4th at p. 157.) Defendant has not cited any Eighth Amendment jurisprudence, other than *Graham, supra*, 560 U.S. ____ [176 L.Ed.2d 825] and *Roper v. Simmons* (2005) 543 U.S. 551 [161 L.Ed.2d 1] (juvenile offenders cannot be sentenced to death), supporting his claim of an LWOP categorical bar here. In *Blackwell*, the court concluded, "The reasoning of *Graham* [which distinguished juveniles from adults in terms of brain development, capacity for change, and moral culpability, and noted the severity and irrevocability of murder, in prohibiting LWOP sentences for juvenile nonhomicide offenders] cannot be stretched to categorically bar LWOP sentences for juveniles who [as in *Blackwell*] aid and abet a homicide, particularly when

that homicide is a first degree special circumstance murder."
(*Blackwell, supra*, 202 Cal.App.4th at p. 158.)

Even more so, *Graham* cannot be stretched to categorically bar LWOP sentences for a 16-year-old juvenile (about five weeks shy of 17) who intentionally and knowingly kills a police officer engaged in his duties (a special circumstance—§ 190.2, subd. (a)(7)), and does so with first degree murder culpability.

DISPOSITION

The judgment is affirmed.⁸

BUTZ, Acting P. J.

We concur:

DUARTE, J.

HOCH, J.

⁸ Pursuant to section 2933.2, defendant is not eligible to accrue custody credits because he was convicted of murder.