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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES WASHINGTON,

Defendant and Appellant.

C065636

(Super. Ct. No. 08F04720)

In the early morning hours of June 7, 2008, defendant James Washington and an acquaintance, Frank Abella, killed a mentally and physically handicapped man as he sat outside a 7-Eleven store sipping coffee. Tried separately, defendant was convicted of murder (Pen. Code, § 187, subd. (a); further undesignated section references are to the Penal Code), robbery (§ 211), and torture (§ 206). The jury also found defendant used a deadly weapon in connection with the murder and torture (§ 12022, subd. (b)(1)) and the murder occurred during the commission of the robbery (§ 190.2, subd. (a)(17)(A)). Defendant was sentenced for the murder to life without the possibility of parole (LWOP),

while sentence on the other offenses was stayed with the exception of a one-year enhancement.

Defendant appeals contending: (1) his pretrial statements to police were admitted in evidence in violation of *Miranda v. Arizona* (1966) 384 U.S. 436 [16 L.Ed.2d 694] (*Miranda*); (2) there is insufficient evidence to support the robbery conviction or the finding that the killing occurred during the commission of a robbery; (3) the trial court erred in refusing to instruct on lesser included offenses to first degree murder; (4) the LWOP sentence amounts to cruel and unusual punishment; and (5) the abstract of judgment incorrectly reflects the term imposed on the torture conviction.

We agree the abstract of judgment must be corrected to reflect the proper term imposed on the torture charge. In all other respects, we affirm the judgment.

#### FACTS AND PROCEEDINGS

During the early morning hours of June 7, 2008, defendant and Abella were hanging out together at an apartment complex in Rancho Cordova where Abella's mother lived. At the time, defendant was dating Abella's sister, E.G, who was also present.

At approximately 2:40 a.m., defendant and Abella walked to a nearby 7-Eleven store. The events that occurred thereafter were captured in large part on surveillance cameras mounted at the 7-Eleven and at an adjacent check-cashing store.

At approximately 2:50 a.m., defendant and Abella left the 7-Eleven and approached 50-year-old William Deer, who was sitting on a curb outside the check-cashing store drinking coffee he had just purchased at the 7-Eleven. Deer was both mentally and physically handicapped due to a motorcycle accident more than 20 years earlier.

Earlier that evening, Deer's mother had dropped him off at a bus stop in Sacramento so he could visit friends in Rancho Cordova. At the time, Deer wore a fanny pack around his waist in which he carried various personal items, including a cell phone

charger, a toothbrush, cigarettes, and money. He also carried with him a cell phone. Deer was wearing the fanny pack in the 7-Eleven approximately 30 minutes before he was approached by defendant and Abella.

What transpired during the initial encounter with Deer is not altogether clear. However, what is clear is that, at some point, defendant and Abella beat, kicked and stomped on Deer and then ran from the scene.

Approximately 30 minutes later, defendant returned to the area with E.G. By that time, defendant had changed his shirt. The two approached Deer, who was still lying where defendant and Abella had left him following the beating. E.G. could see that Deer was hurt but he was still alive. Defendant and E.G. departed.

Seven minutes later, defendant and Abella returned to where they had left Deer. Less than a minute later, they again ran from the scene.

Defendant and Abella returned a third time approximately 30 minutes later, this time with a BB gun. They shot Deer 19 times in the face and abdomen and then fled the scene.

Police were eventually dispatched to the 7-Eleven and found Deer still alive. They did not find a fanny pack or cell phone in the area; nor did they find any identification for the victim. Deer was taken to the hospital, where he later died. The cause of death was determined to be multiple blunt force head injuries plus multiple BB pellet injuries.

Five days later, defendant and Abella were arrested. They were charged with murder, robbery and torture and were tried separately. Defendant was ultimately convicted and sentenced as previously indicated.

The People request that we augment the record to include copies of exhibits relied upon by the trial court in ruling on defendant's motion to suppress and certain items of evidence presented at trial. We deny the request. The indicated items are unnecessary for our determination of the issues presented in this appeal.

## DISCUSSION

### I

#### *Admission of Defendant's Pretrial Statements*

Defendant was arrested on June 12, 2008, and participated in a taped interview with Detective Stanley Swisher without the assistance of counsel. During the interview, defendant admitted he and Abella beat the victim and took his fanny pack. However, defendant placed most of the blame on Abella.

Defendant filed a motion to suppress the taped interview, arguing he has limited intelligence and did not understand the *Miranda* warnings read to him at the beginning. The court denied the motion but later ordered portions of the interview redacted. The remaining portions of the interview were thereafter played to the jury.

Defendant contends the trial court erred in denying his suppression motion. He argues the *Miranda* rights read to him “were both confused and confusing.” Defendant further asserts he never acknowledged he understood his right to remain silent and his acknowledgement that he had the right to counsel was more a willingness to agree to the assertions of the detective than an understanding of his rights. Defendant argues “his cognitive abilities were insufficient to permit him to understand and waive his *Miranda* rights.” Defendant presented expert evidence that his mental capacity was in the mildly retarded range and that heavy drug and alcohol use during his adolescence “may have caused a brain impairment.”

The Fifth Amendment to the United States Constitution provides that “[n]o person . . . shall be compelled in any criminal case to be a witness against himself.” This privilege protects an accused from being compelled to testify against himself or to provide evidence of a testimonial or communicative nature. (*Schmerber v. California* (1966) 384 U.S. 757, 761 [16 L.Ed.2d 908, 914].) In recognition of this Fifth Amendment protection, *Miranda* prohibits custodial interrogation unless the suspect

“knowingly and intelligently has waived the right to remain silent, to the presence of an attorney, and to appointed counsel in the event the suspect is indigent.” (*People v. Sims* (1993) 5 Cal.4th 405, 440.)

A *Miranda* waiver must be knowing, intelligent and voluntary. (*Colorado v. Spring* (1987) 479 U.S. 564, 573 [93 L.Ed.2d 954, 965].) There are two distinct dimensions to this requirement: “ ‘[F]irst the relinquishment of the right must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the “totality of the circumstances surrounding the interrogation” reveals both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.’ ” (*Ibid.*, quoting *Moran v. Burbine* (1986) 475 U.S. 412, 421 [89 L.Ed.2d 410, 421].)

The prosecution has the burden of proving, by a preponderance of the evidence, that the statements were voluntary. (*People v. Rundle* (2008) 43 Cal.4th 76, 114, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) “ ‘The question whether an accused waived his right to counsel and his right to remain silent before making a statement to police officers is primarily a question of fact for the trial judge.’ ” (*People v. Duren* (1973) 9 Cal.3d 218, 238.) “We must accept the trial court’s resolution of disputed facts and inferences, and its evaluations of credibility, if they are substantially supported. [Citations.] However, we must independently determine from the undisputed facts, and those properly found by the trial court, whether the challenged statement was illegally obtained. [Citation.]” (*People v. Boyer* (1989) 48 Cal.3d 247, 263, disapproved on other grounds in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

Defendant does not contend his statements to the police were somehow coerced or that Detective Swisher failed to read him his *Miranda* rights. Rather, defendant contends

his waiver of those rights was ineffective, because the reading of them was somewhat confusing and he simply did not have the requisite mental capacity to understand what he was doing.

At the beginning of the interview, Detective Swisher advised defendant of his *Miranda* rights as follows:

“DET. SWISHER: Okay. Um, but I’m--I wanna talk to you about some stuff that we talked about on the way over here already. But I need to read you your rights--have you had your rights read to you before?

“[DEFENDANT]: Why’s that?

“DET. SWISHER: As just a precaution thing for you, so--

“[DEFENDANT]: So are you guys gonna be sending me to court or something?

“DET. SWISHER: Uh, I don’t know.

“[DEFENDANT]: Alright, I’m okay.

“DET. SWISHER: You have the right to remain silent, and do you understand that? Have you--you had these rights read to you before?

“[DEFENDANT]: Yeah, yeah.

“DET. SWISHER: Okay. Anything you may--you say may be used against you in court, do you understand that?

“[DEFENDANT]: Yeah.

“DET. SWISHER: Okay. You have the right to a [*sic*] presence of an attorney before and in--and during any questioning. Do you understand that?

“[DEFENDANT]: Uh huh.

“DET. SWISHER: Okay. If you cannot afford an attorney, one will be appointed to you free of charge before questioning if you want. Do you understand that?

“[DEFENDANT]: (Unintelligible).

“DET. SWISHER: Now you’ve had those rights read to you before, and you understand them?

“[DEFENDANT]: Yeah.”

Defendant takes issue with the fact the detective never allowed him to answer whether he understood he had the right to remain silent. However, later Detective Swisher asked defendant if he understood all his *Miranda* rights as recited and defendant answered in the affirmative.

The trial court determined that, while it appears clear from the medical evidence defendant has limited mental abilities, “they are not severe or significant enough to cause him to not understand the severity of the situation he found himself in.” The court further concluded: “[T]here is no doubt whatsoever that the statement is voluntary. It is knowing. And it is appropriately admissible during his trial.”

As partial support for this conclusion, the court explained: “[I]n terms of his ability to understand the significance of the import of what’s going on during the interview, there are a variety of places in this where it becomes clear that [defendant] is only willing to share with law enforcement that portion that he thinks that they are already familiar with. [¶] He minimizes his role at various occasions throughout the transcript, talking about how his partner did most of the things, that he only struck the victim one time, that he didn’t touch anything in the robbery, that it was only his partner that shot the person. He indicated remorse at various times. The remorse portion, however, comes prior to the fact where he admits that he was actually involved in shooting the victim in the face.”

At that point, defense counsel corrected the court that defendant had admitted only that he shot the victim in the chest, and the court accepted the correction.

The court continued: “He indicated when he is talking about his conduct of shooting the victim with the BB gun, that he intentionally only shot him in places which would not scar the victim, that it was his co-defendant or his partner that actually shot the victim in the face.”

Defendant takes issue with the trial court's conclusion that he understood the severity of the situation in which he found himself. He points out that, when questioned by Detective Swisher about the punishment he should receive for his involvement in this matter, defendant suggested he might have to wear an ankle monitor for a couple of years.

Defendant misreads the record. In response to the detective's question, defendant did not indicate the punishment he *should* receive but the punishment he would *prefer*. It does not show a lack of intelligence to want to avoid prison time. At any rate, the trial court's reference to defendant understanding the severity of the situation was not based on defendant's recognition of the potential punishment but his repeated attempts to minimize his involvement in the attack. Defendant repeatedly tried to deflect the blame onto Abella, thus demonstrating he understood he was in serious trouble.

A defendant's subnormal intelligence does not preclude a finding of voluntariness, although it is a factor that may be considered in the totality of the circumstances. (*People v. Lara* (1967) 67 Cal.2d 365, 386.) In *In re Norman H.* (1976) 64 Cal.App.3d 997, the minor, a 15-year-old with the intelligence of a seven or eight year old, was solicited by another to burglarize a residence. While inside the residence, the other intruder stabbed and killed the resident. The minor was thereafter arrested and, after being read his *Miranda* rights, confessed his participation in the burglary and murder. (*Norman H.*, at pp. 1000, 1002.) Based on other evidence presented in the case, including the minor's own testimony, the trial court concluded the minor understood his right to remain silent but chose instead to speak with police in an effort to tell his side of the story and place the blame on his accomplice. (*Id.* at pp. 1001-1002.) The Court of Appeal concluded substantial evidence supported the trial court's determination in this regard. (*Id.* at pp. 1002-1003.)

We have reviewed the interview between Detective Swisher and defendant and agree with the trial court that, despite defendant's limited mental capacity, he understood

the situation he was in and his right not to speak with the detective without the assistance of counsel. However, defendant voluntarily chose instead to participate in the interview in an attempt to minimize his involvement in the crime. The fact that this proved not to be a smart choice does not mean it was not, nevertheless, a choice freely and knowingly made. We conclude the trial court did not err in denying defendant's motion to suppress.

## II

### *Sufficiency of Robbery Evidence*

Defendant contends there is insufficient evidence to support the robbery murder special circumstance, which is a prerequisite to the felony murder conviction. He argues there is no evidence from which the jury could have concluded he formed an intent to steal before or at the time of the assault that led to the victim's death, which is a necessary prerequisite for application of felony murder principles.

In reviewing the sufficiency of the evidence supporting a conviction, we view the evidence in the light most favorable to the prosecution and determine if a rational trier of fact could have found the elements of the offense beyond a reasonable doubt. (*People v. Davis* (1995) 10 Cal.4th 463, 509.) “ ‘The test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt.’ ” (*People v. Johnson* (1980) 26 Cal.3d 557, 576, quoting from *People v. Reilly* (1970) 3 Cal.3d 421, 425.) Reversal on the basis of insufficient evidence is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

Defendant contends there is no evidence he and Abella formed an intent to steal the victim's property before or at the time of the assault. “California courts have consistently stated that if the design to take property from the victim is formed after the victim had already been killed or mortally wounded, the felony-murder doctrine does not

apply.” (*People v. Esquivel* (1994) 28 Cal.App.4th 1386, 1396.) On the other hand, it is sufficient for application of the felony-murder doctrine that the felony and the murder were part of one continuous transaction. (*People v. Cavitt* (2004) 33 Cal.4th 187, 207.)

Defendant argues no rational jury could have found, based on the evidence presented, that the intent to steal preceded or was concurrent with the assault or that the theft and the assault were part of one continuous transaction. Defendant asserts it is “undisputed that Deer was assaulted and sustained serious injuries leaving him mortally wounded” during the first encounter. However, it was only during defendant and Abella’s initial return to the scene that they took Deer’s property. This “after-formed intent to steal,” defendant argues, is insufficient to support a felony murder conviction.

Defendant’s arguments are based on false assumptions that the victim received mortal wounds in the initial assault and the theft must have occurred sometime thereafter.

But the evidence presented at trial was that the victim continued to live through the initial assault, as well as the first and second returns to the scene. In this last return, defendant and Abella shot the victim 19 times in the face and abdomen with a BB gun. A reasonable jury could conclude from the foregoing evidence that defendant came back the first time to discover the victim was still alive and came back the last time to finish what he had started. Hence, he was still in the process of murdering the victim when he formed the intent to steal from him, whether that occurred during the first encounter or thereafter.

Furthermore, the prosecution’s medical expert opined that the cause of death was both blunt force trauma from the beating and the BB gun injuries. There was no conflicting evidence presented on this issue. Thus, the jury could reasonably have concluded the victim had not received mortal wounds during the initial assault.

Defendant wrongly assumes the evidence shows that he and Abella stole the victim’s property sometime after the first assault. Rather, the evidence on that issue was unclear, except insofar as it is clear they took Deer’s property at some point during the

three encounters. We conclude there is sufficient evidence from which a reasonable jury could conclude the theft and murder were part of a continuous transaction, thus supporting the felony murder conviction.

### III

#### *Failure to Instruct on Lesser Included Offenses*

The prosecution elected to prove first degree murder on a theory of felony murder alone. Defendant requested instructions on lesser included offenses to first degree murder, but the prosecution argued there are no lesser included offenses to felony murder. The trial court agreed with the prosecution and refused to give the requested instructions. Defendant contends this was error.

In any criminal matter, the jury must be instructed on all crimes necessarily included within the offense charged if there is substantial evidence from which a reasonable jury could conclude the defendant is guilty only of the lesser offense. (*People v. Birks* (1998) 19 Cal.4th 108, 118.) This obligation exists even absent a request and even over the parties' objections. (*Ibid.*) "Where the evidence warrants, the rule ensures that the jury will be exposed to the full range of verdict options which, by operation of law and with full notice to both parties, are presented in the *accusatory pleading itself* and are thus closely and openly connected to the case. In this context, the rule prevents either party, whether by design or inadvertence, from forcing an all-or-nothing choice between conviction of the stated offense on the one hand, or complete acquittal on the other." (*Id.* at p. 119.)

Defendant does not contest that there are no lesser included offenses to felony murder. (See *People v. Cavitt, supra*, 33 Cal.4th at p. 197; *People v. Balderas* (1985) 41 Cal.3d 144, 198.) Rather, he argues the information also charged him with first degree malice murder, and the information was never amended thereafter to reflect the prosecution's election to rely instead on felony murder alone. Thus, he argues, the issue

of first degree malice murder was still before the jury, thereby warranting the lesser included offense instructions.

In *People v. Anderson* (2006) 141 Cal.App.4th 430 (*Anderson*), the defendant's conviction for first degree murder was reversed for failure to instruct on lesser included offenses. (*Id.* at p. 435.) In that case, the defendant was charged with first degree malice murder but, after the close of evidence, the prosecution amended the information to charge felony murder. However, it could not be determined from the record if this felony murder charge supplanted or was in addition to the malice murder charge. (*Id.* at p. 445.) The Court of Appeal concluded the defendant was entitled to instructions on second degree murder and voluntary manslaughter either way. The court explained: "If the original charge of murder remained, the sua sponte duty to instruct as to lesser offenses did as well. Even if felony murder had been intended to replace the existing charge, an amendment made at the close of evidence does not satisfy the notice function that underpins the duty of sua sponte instruction. [Citation.] Having established the expectation that instruction on lesser included offenses of murder would be given, if supported by the evidence, the prosecution could not defeat that expectation by amendment after the close of evidence." (*Id.* at pp. 445-446.)

Assuming *Anderson* was correctly decided, the present matter is readily distinguishable in that, even before any evidence was presented, defendant was on notice that the prosecution would not be attempting to prove malice murder but was pursuing a theory of felony murder alone. Hence, defendant could have had no expectation that instructions on lesser included offenses to malice murder would be given.

"[A] trial court must instruct the jury sua sponte on an uncharged offense that is lesser than, and included in, a greater offense with which the defendant is charged only if there is substantial evidence that, if accepted, would absolve the defendant from guilt of the greater offense but not the lesser." (*People v. Waidla* (2000) 22 Cal.4th 690, 737.)

When “ ‘there is no evidence that the offense was less than that charged’ ” there is no duty to so instruct. (*People v. Barton* (1995) 12 Cal.4th 186, 196, fn. 5.)

Defendant contends there was evidence from which a reasonable jury could have concluded he formed an intent to steal after the assault that caused the victim’s death. Hence, he argues, the jury could have concluded he was not guilty of felony murder but some lesser offense like second degree murder or manslaughter. We disagree.

Defendant argues: “The jury almost certainly found that the acts resulting in death were committed prior to the taking.” However, if the jury had so found, it would have done so based on speculation. There was no evidence presented that the initial assault alone caused the victim’s death. On the contrary, the *only* expert to testify on the issue was Dr. Kathleen Enstice, who indicated the cause of death was the combination of the beating and the BB gun shots into the victim’s face. The BB gun shots came after or contemporaneous with the robbery. Thus, it is not reasonably possible the jury could have concluded the murder preceded the robbery. Hence, the jury had no choice but to find either that the killing occurred during the course of a robbery, in which case defendant was guilty of felony murder, or it did not, in which case defendant was not guilty of felony murder. There was no situation in which the jury could have found defendant guilty of a lesser offense instead. The trial court was therefore under no obligation to give lesser included offense instructions.

#### IV

##### *Cruel and Unusual Punishment*

Defendant contends the LWOP sentence imposed for murder violates the state and federal prohibitions against cruel and unusual punishment. He argues that, notwithstanding the heinous nature of the crime, an LWOP sentence is disproportionate to his individual culpability, both because of his limited participation in the killing and because of his youth, family background and reduced mental capacity.

The Eighth Amendment to the United States Constitution “ ‘forbids only extreme sentences that are “grossly disproportionate” to the crime.’ ” (*People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1135.) A punishment also may violate the California Constitution if “it is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.” (*In re Lynch* (1972) 8 Cal.3d 410, 424, fn. omitted (*Lynch*)). In *Lynch*, the California Supreme Court suggested three areas of focus: (1) the nature of the offense and the offender; (2) a comparison with the punishment imposed for more serious crimes in the same jurisdiction; and (3) a comparison with the punishment imposed for the same offense in different jurisdictions. (*Id.* at pp. 425-427.) Disproportionality need not be established in all three areas. (*People v. Dillon* (1983) 34 Cal.3d 441, 487, fn. 38.)

The United States Supreme Court has identified two classes of cases that violate proportionality. “The first involves challenges to the length of term-of-years sentences given all the circumstances in a particular case. The second comprises cases in which the Court implements the proportionality standard by certain categorical restrictions . . . .” (*Graham v. Florida* (2010) \_\_\_ U.S. \_\_\_ [176 L.Ed.2d 825, 836] (*Graham*)). This second classification, in turn, “consists of two subsets, one considering the nature of the offense, the other considering the characteristics of the offender.” (*Id.* at p. \_\_\_ [176 L.Ed.2d at p. 836].) Under the first subset, the high court has barred capital punishment for nonhomicide offenses. (*Kennedy v. Louisiana* (2008) 554 U.S. 407, 412 [171 L.Ed.2d 525, 534].) Under the second, the court has barred capital punishment for minors, even if they commit murder. (*Roper v. Simmons* (2005) 543 U.S. 551, 578-579 [161 L.Ed.2d 1, 28].)

In *Graham*, the high court identified a hybrid category of juvenile offenders who commit nonhomicide offenses and concluded such offenders cannot be sentenced to life without the possibility of parole. (*Graham, supra*, \_\_\_ U.S. at p. \_\_\_ [176 L.Ed.2d at p. 845].) More recently, in *Miller v. Alabama* (2012) \_\_\_ U.S. \_\_\_ [183 L.Ed.2d 407]

(*Miller*), the high court concluded a *mandatory* LWOP sentence for a minor who commits even murder violates the Eighth Amendment. The sentencing court must instead have discretion to impose a lesser sentence.

In this matter, the jury found true the special circumstance that the murder of Deer occurred during the commission of a robbery (§ 190.2, subd. (a)(17)(A)), making it first degree felony murder. Because defendant's 18th birthday was nine days before the offenses in this matter, he was subject to a mandatory sentence of death or LWOP. (§ 190.2.)

Defendant contends an LWOP sentence in this case is disproportionate in light of the first *Lynch* factor--the nature of the offense and the offender (*Lynch, supra*, 8 Cal.3d at p. 425). Regarding the offense, defendant downplays his role in the murder by placing most of the blame on Abella. As for the nature of the offender, defendant points to his age, dysfunctional family background, limited mental capacity, and heavy alcohol use from an early age.

The trial court was not required to accept defendant's self-serving claims putting most of the blame on his accomplice. Defendant may have a low I.Q., but it is not so low that he could not recognize the value in coloring his statements to police so as to deflect as much blame as possible. Defendant demonstrated street smarts while sparring with the police during his interview. And defendant may have had a tough childhood, but that does not excuse the type of depraved conduct exhibited in this matter.

Regarding the offense, it was defendant, with his girlfriend, who first discovered that the victim was still alive and lying where he and Abella had left him 30 minutes earlier. Defendant then went back to the apartment, got his accomplice, and came back to finish the job. Under the circumstances of this case, there is nothing cruel or unusual in imposing an LWOP sentence for the heinous murder committed by defendant on a relatively helpless victim. We therefore conclude the sentence does not violate either the state or federal prohibition against cruel and unusual punishment.

V

*Abstract of Judgment*

On count three, the torture charge, the trial court sentenced defendant to “state prison for the term of life with an additional one year for the [section] 12022[, subdivision] (b)(1) allegation,” with the term stayed pursuant to section 654. However, the abstract of judgment reflects a term of life without the possibility of parole on count three. Defendant contends this must be corrected, and the People concede error. We accept the People’s concession and shall order that the abstract be corrected.

DISPOSITION

The judgment is affirmed. The trial court is directed to correct the abstract of judgment to reflect a term of life on count three and to forward a copy to the Department of Corrections and Rehabilitation.

\_\_\_\_\_ HULL \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ RAYE \_\_\_\_\_, P. J.

\_\_\_\_\_ DUARTE \_\_\_\_\_, J.