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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON SCOTT HARPER,

Defendant and Appellant.

E063475

(Super.Ct.No. RIF100702)

OPINION

APPEAL from the Superior Court of Riverside County. Gordon R. Burkhardt, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Michael J. Brennan and Heidi L. Rummel for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Senior Assistant Attorney General, and A. Natasha Cortina and Kristen Kinnaird Chenelia, Deputy Attorneys General, for Plaintiff and Respondent.

In 2001, when defendant Jason Scott Harper was 16, he aided and abetted the robbery of a store and the murder of the store owner. Defendant was not the actual killer.

However, in addition to acting as the lookout and taking loot, he carried a shotgun into the store and he handed it to an accomplice. His accomplice then used the shotgun to kill the victim.

Defendant was found guilty of first degree murder (Pen. Code, §§ 187, subd. (a), 189), with a robbery-murder special circumstance (Pen. Code, § 190.2, subd. (a)(17)(A)), and sentenced to life without parole. In 2014, the trial court granted his habeas petition so that he could be resentenced pursuant to the constitutional standards for the imposition of a life sentence on a juvenile set forth in *Miller v. Alabama* (2012) ___ U.S. ___ [132 S.Ct. 2455]. Once again, however, defendant was sentenced to life without parole.

Defendant appeals. Because the trial court did not abuse its discretion, we will affirm.

I

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Commitment Offense.*

The following account of the crime is taken from our opinion in the previous appeal, which both sides filed in the trial court in connection with the resentencing proceeding.

Defendant and his codefendant Anthony Brown were lovers. They lived at a trailer park in Rubidoux. Brown was 28. Defendant was 16 but told everyone at the trailer park he was 19. Brown was the dominant one in the relationship. Sometimes he beat defendant, leaving him black and blue. At the time of the crime, he was trying to get legal custody of defendant.

Melissa Rogers was also a resident of the trailer park.

Victim Jamaloddi Doroudi owned and operated the 99 Cent Store in Rubidoux. He was known to keep large amounts of cash in his wallet. Defendant and Brown were regular customers of his store. A week or two before the crimes, defendant shoplifted multiple pairs of handcuffs from the store.

On November 28, 2001, Brown drove Rogers and defendant to the 99 Cent Store. Between 9:30 and 10:00 p.m., they pulled up and parked in front of the store. Brown got out and knocked on the door. The victim opened a security gate and let him in. Defendant and Rogers went in behind Brown.

Defendant was carrying Brown's sawed-off 12-gauge shotgun. He handed it to Brown. Brown and Rogers then took the victim into a bathroom, where Brown handcuffed him to the toilet. They asked him where the safe was, but he would not tell them.

Meanwhile, defendant stayed in the front section of the store. He took all of the money from the cash register. Rogers came out and asked him where she could find some knives. He pointed to where they were in the store. Rogers got a knife, then went back.

Rogers used the knife to cut the victim's throat. However, the wound was not deep enough to cause death. She turned to Brown and said, "The son of a bitch won't die." Brown then shot him in the chest with the shotgun. This wound was fatal.

Brown and Rogers took the victim's wallet, which turned out to contain \$20,000. When they got back to the trailer park, defendant joked that they could do their laundry

because he had taken all the quarters from the cash register. That night and over the following days, defendant, Brown, and Rogers were seen flaunting hundreds and thousands of dollars; they gave money to friends and relatives and went on a spending spree.

Defendant and Brown fled to Reno. A little over a week after the shooting, they were arrested there. They were in possession of a DVD player, a VCR, and a stereo taken from the 99 Cent Store.

Defendant gave a statement to the police. He admitted knowing that Brown and Rogers were going to commit a robbery. He claimed that he went along only because he did not want to stay at the trailer park with Brown's brother Chris, not because he intended to participate.

Defendant also admitted seeing Brown and Rogers "checking . . . out" a shotgun before going to commit the robbery. However, when they left the trailer park, he did not see anyone carrying it, so he thought they had left it behind. Rogers borrowed a pair of handcuffs from defendant.

Brown and Rogers went in the store first; pursuant to Brown's instructions, defendant went in when he saw the lights go off. Brown came out from a back room and said, "I don't know about this." Defendant replied, "[W]hatever you want to do is fine with me . . . just as long as I'm not involved." Defendant admitted acting as a lookout. He also admitted taking DVD players and a stereo. He admitted opening the cash register, but he claimed it was already empty.

Defendant further admitted that, when Rogers asked him where the knives were, he thought, “[A]re they gonna stab him . . . ?” Brown gave him a VCR and told him to wait in the car. About five minutes later, Brown and Rogers came out and all three left. Rogers gave defendant \$6,000.

Defendant denied knowing that the victim was dead until days later. However, he had told others that he heard the shotgun go off while he was at the front door.

B. *Evidence Introduced at Resentencing.*

The following evidence was introduced in connection with the resentencing proceeding.

1. *Defendant’s Testimony.*

At the time of the crime, defendant was 16 (though only 20 days short of his 17th birthday).

Defendant had been born two months prematurely. As a result, he had learning difficulties, including dyslexia and Attention Deficit Hyperactivity Disorder (ADHD).

Defendant’s father was an alcoholic and a drug addict. He was also “a very abusive man.” When defendant was three, his father raped his mother in front of him and his older brother. As a result, his mother left and moved to California, taking defendant and his brother.

When defendant was seven, his mother got cancer. Defendant and his brother went back to live with their father in Mississippi. While they were there, defendant’s father sexually abused defendant once or twice a week. He would beat defendant and his brother with a two-by-four for taking water out of the refrigerator or for using the

bathroom without permission. Defendant managed to get sent back to his mother by stealing his father's cigarettes and setting fire to the living room carpet.

At first, defendant's brother remained with their father. However, after their father shot and stabbed him, he, too, returned to California. Defendant's brother was "in and out of juvenile hall due to drugs." Later, he was imprisoned for child abuse.

When defendant was eight or nine, his mother remarried. His mother and stepfather both worked a lot, so they were "barely there."

At school, defendant was lonely; he did not fit in. People called him "retarded." Defendant hung out with a gang called Youth Gone Wild. On one occasion, rival gang members shot at him. Defendant did have one friend named Skyler, but when Skyler was 13, he was killed in a drive-by shooting.

When defendant was 11, his brother introduced him to drugs. Defendant used heroin, methamphetamine, marijuana, and inhalants. To get money for drugs, he started stealing cars, watches, and CDs. He also sold drugs. After he got caught selling drugs at school, he was sentenced to a drug program, but he did not stop using drugs.

During an argument, defendant swung a chain at his mother, "to scare her." As a result, he was sent to a series of juvenile placements, including juvenile hall. At one of these placements, he was sexually assaulted. At another placement, called Trinity Yucaipa House, he "got along good" The staff was caring and "helped you a lot more." His behavior and his grades improved. After graduating from Trinity, however, defendant started getting in trouble again — using drugs, stealing, fighting, and running away from placements.

Defendant was 15 or 16 years old and living on the streets when he met Brown, who was 28. He moved in with Brown. He told everyone at Brown's trailer park that he was 19.

At first, Brown made defendant feel accepted and wanted. He bought defendant video games, clothing, cigarettes and drugs. Later, he started demanding sex from defendant. At first, defendant refused, but Brown "forced himself on [him] and beat [him]." When Brown needed money, he forced defendant to have sex with other men.

They fought "[c]onstantly." One time, defendant tried to get away from Brown by jumping out of his car. Brown caught up with him, "beat [him] down to the ground," and threatened to kill him and his family if he ever tried to leave again. Another time, when he told Brown he was going home to his mother, Brown phoned his mother and threatened to kill her. Brown wanted to adopt defendant.

Defendant started dating a girl named Teresa. Brown told both defendant and Teresa that he (Brown) had AIDS. Defendant was "devastated." He ended his relationship with Teresa because he did not want to infect her.

Defendant was aware that Brown repeatedly robbed local drug dealers, using a sawed-off shotgun.

Defendant used to shop at the 99 Cent Store and would talk to the victim. Defendant denied participating in planning the robbery. However, he knew that Brown was planning it. Brown told him that the plan was to handcuff the victim to the toilet, where he would be found the next morning.

On the night of the robbery, defendant got into a fight with Brown's brother Chris. He decided to go along with Brown because he "didn't want to be there with Chris."

Defendant, Brown and Rogers were all high on methamphetamine. At Brown's direction, defendant put the sawed-off shotgun in Brown's car. Brown said he wanted it to scare the victim. Brown, defendant, and Rogers then drove to the 99 Cent Store.

Previously, Brown had talked the victim into buying new security cameras from him. Brown got out of the car with a duffel bag, supposedly containing the cameras, and knocked on the door. When the victim let Brown in, defendant grabbed the shotgun; he handed it to Rogers as they followed Brown in. They found Brown pointing a toy gun at the victim; the victim had his hands up. Brown then took the shotgun from Rogers, and they made the victim go in the back.

Brown and Rogers told defendant to stay in front, turn off the lights, and act as lookout. Defendant took all the change out of the cash register; he also took some cigarettes. Rogers came out and asked where the knives were. Defendant told her. He testified that he was not "concerned" at this point. She went and got a knife, then returned to the back.

When Brown came out again, he told defendant to take a VCR. Defendant got both a VCR and a radio and took them out to the car. While outside, he heard the shotgun go off.

Brown told defendant that he had a plan — at his trial, he was going to get off on an unspecified "technicality"; then, at defendant's trial, he was going to testify and take responsibility. "He said he could not be convicted because of the double jeopardy rule."

When defendant was arrested, he did not think he could be sentenced to more than one or two years. He did not realize that he faced more serious consequences until after he was found guilty.

2. *Expert Testimony.*

Dr. Nancy Kaser-Boyd was a clinical and forensic psychologist. She had conducted a psychological evaluation of defendant. Her testimony was structured around the five factors identified in *People v. Gutierrez* (2014) 58 Cal.4th 1354 as relevant to the imposition of a sentence of life without parole on a juvenile in a homicide case. (See part II.A.4, *post.*)

a. *Hallmark features of youth.*

At the time of the crime, defendant was “substantially less mature than the average sixteen-year-old” His ADHD “rendered him inherently immature and more like younger children.” Children with ADHD are very impulsive and get in a lot of trouble. In addition, due to abuse, defendant suffered from post-traumatic stress disorder; it had “arrested his development into an adult.”

When defendant was 15, a psychological evaluation placed his IQ at the 21st percentile, indicating that “he was far behind his peers in problem-solving and in anticipating and evaluating the consequences of his actions.”

Finally, continuous drug abuse interferes with a child’s cognitive development, resulting in immaturity.

b. *Environmental vulnerabilities.*

Defendant's home environment was "brutal" and "dysfunctional." "In comparison to other families where there is abuse, . . . it was very much at the extreme end" His father provided "a role model for violence."

c. *The circumstances of the homicide offense.*

Brown "dominated" defendant. Defendant "was especially vulnerable to psychological manipulation from Brown" Because defendant had been bullied and teased, neglected by his mother, and abused by his father, he "tended to look for kind, older adults" He saw Brown as a substitute parent figure, who would help him and be nice to him.

Defendant's relationship to Brown was that of child victim to perpetrator. Being molested by his father put defendant at risk of "continued abuse by a male figure" such as Brown. Brown had subjected him to "intimate partner violence." Brown had also forced him to engage in sex acts with third persons, which "tends to override a person's will and cause a deterioration in their ability to express their will." Thus, at the time of the crime, defendant was "very much like a battered woman."

In addition, at the time of the crime, defendant was using methamphetamine, which would impair his judgment and increase his impulsivity.

d. *The possibility of being convicted of a lesser offense but for youth-associated incompetencies.*

Defendant was "incredibly naive." He relied on Brown and believed "he would be out in a couple of years."

e. *The possibility of rehabilitation.*

In Dr. Kaser-Boyd's opinion, defendant had "a significant possibility of rehabilitation[.]" He had been capable of rehabilitation before the crime, as shown by the fact that he seemed to improve in certain juvenile facilities. "[Y]oung people with his constellation of problems . . . do better in safe environments when there is somebody that takes an interest in them" His experiences would not necessarily prevent him from maturing in the future.

C. *The Trial Court's Ruling.*

After taking evidence and hearing argument, the trial court once again sentenced defendant to life without the possibility of parole.

It began by stating: "[T]he ultimate question . . . is whether the crime reflected transient immaturity . . . , which . . . should require some consideration of leniency, or an irreparable corruption which could justify LWOP."

It made detailed findings with regard to each of the five *Gutierrez* factors. It concluded: "I have considered circumstances in mitigation. Frankly, I don't find any. . . . [T]he Court finds he is a rare juvenile offender which reflects irreparable corruption to the point he should never be allowed to dwell among free men."

II

THE TRIAL COURT REASONABLY FOUND THAT DEFENDANT WAS IRREPARABLY CORRUPT AND HENCE DESERVING OF A SENTENCE OF LIFE WITHOUT PAROLE

A. *General Legal Background.*

1. *Roper v. Simmons.*

In 2004, the United States Supreme Court held that the Eighth Amendment “forbid[s] imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed.” (*Roper v. Simmons* (2005) 543 U.S. 551, 578.)

It explained: “Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, . . . ‘[a] lack of maturity and an underdeveloped sense of responsibility . . . often result in impetuous and ill-considered actions and decisions.’ [Citations.]” (*Roper v. Simmons, supra*, 543 U.S. at p. 569.) “[S]econd[,] . . . juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. [Citation.]” (*Ibid.*) “[T]hird[,] . . . the character of a juvenile is not as well formed as that of an adult.” (*Id.* at p. 570.)

It observed: “it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” (*Roper v. Simmons, supra*, 543 U.S. at p. 570.) “It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects

unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. [Citation.]” (*Id.* at p. 573.)

2. *Graham v. Florida.*

In 2010, the high court further held that the Eighth Amendment “prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide.” (*Graham v. Florida* (2010) 560 U.S. 48, 82.)

After recapitulating the differences between adults and juveniles that it had listed in *Roper* (*Graham v. Florida, supra*, 560 U.S. at p. 68), it continued: “Life without parole is an especially harsh punishment for a juvenile. Under this sentence a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only. [Citations.]” (*Id.* at pp. 70-71.) It concluded that “[w]ith respect to life without parole for juvenile nonhomicide offenders, none of the goals of penal sanctions that have been recognized as legitimate — retribution, deterrence, incapacitation, and rehabilitation, [citation] — provides an adequate justification.” (*Id.* at p. 71; see also *id.* at pp. 71-74.)

3. *Miller v. Alabama.*

Finally, in 2012, the Supreme Court held that “the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” (*Miller v. Alabama, supra*, 132 S.Ct. at p. 2469.) It noted that, in *Roper* and *Graham*, “we insisted . . . that a sentencer have the ability to consider the ‘mitigating qualities of youth.’ [Citation.]” (*Id.* at p. 2467.)

It added: “[G]iven all we have said . . . about children’s diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great difficulty . . . of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.’ [Citations.] Although we do not foreclose a sentencer’s ability to make that judgment in homicide cases, we require it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” (*Miller v. Alabama, supra*, 132 S.Ct. at p. 2469.)

4. *People v. Gutierrez.*

In *People v. Gutierrez, supra*, 58 Cal.4th 1354, the California Supreme Court construed *Miller* as requiring a court to consider five factors in deciding whether to sentence a juvenile to life without parole for homicide:

a. “[A] juvenile offender’s ‘chronological age and its hallmark features — among them, immaturity, impetuosity, and failure to appreciate risks and consequences.’ [Citations.]” (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1388.)

b. “[T]he family and home environment that surrounds [the juvenile]” [Citation.] Relevant ‘environmental vulnerabilities’ include evidence of childhood abuse or neglect, familial drug or alcohol abuse, lack of adequate parenting or education, prior exposure to violence, and susceptibility to psychological damage or emotional disturbance. [Citation.]” (*People v. Gutierrez, supra*, 58 Cal.4th at pp. 1388-1389.)

c. “[T]he circumstances of the homicide offense, including the extent of [the juvenile defendant’s] participation in the conduct and the way familial and peer pressures may have affected him.’ [Citations.] Also relevant is whether substance abuse played a role in the juvenile offender’s commission of the crime. [Citation.]” (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1389.)

d. “[W]hether the offender ‘might have been charged and convicted of a lesser offense if not for incompetencies associated with youth — for example, his inability to deal with police officers or prosecutors . . . or his incapacity to assist his own attorneys. [Citations.]’ [Citation.]” (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1389.)

e. “[T]he possibility of rehabilitation.’ [Citations.] The extent or absence of ‘past criminal history’ is relevant here. [Citation.]” (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1389.)

“The question is whether [the defendant] can be deemed, at the time of sentencing, to be irreparably corrupt, beyond redemption, and thus unfit ever to reenter society, notwithstanding the ‘diminished culpability and greater prospects for reform’ that ordinarily distinguish juveniles from adults.” (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1391; accord, *People v. Lewis* (2013) 222 Cal.App.4th 108, 118, 123.)

5. *The standard of review.*

In California, when a defendant who was 16 or 17 at the time of the crime is found guilty of first degree murder with a special circumstance, the only authorized sentences are either (1) 25 years to life, or (2) life without parole. (Pen. Code, § 190.5, subd. (b).) In choosing between them, the trial court must exercise its “discretion under *Miller* to

decide on an individualized basis whether a 16- or 17-year-old offender is a “rare juvenile offender whose crime reflects irreparable corruption.” [Citations.]” (*People v. Gutierrez, supra*, 58 Cal.4th at p. 1380.) This necessarily means that we evaluate an Eighth Amendment challenge to the trial court’s decision to sentence a juvenile to life without parole for homicide under the abuse of discretion standard of review. This standard of review also follows from the inherently discretionary nature of the process of weighing and balancing the relevant factors.

B. *The Trial Court’s Findings on the Five Gutierrez Factors.*

As mentioned in part I.C, *ante*, the trial court made findings with respect to each of the five *Gutierrez* factors. We now review those findings and defendant’s challenges to them.

1. *Hallmark features of youth.*

The trial court noted that defendant was only a few days short of his 17th birthday and thus “essentially he is a 17-year-old.” It added that he “held himself out as being a 19-year-old and was accepted as a 19-year-old, so he is not that immature. He certainly had an appreciation for the risks and consequences of what goes on in a criminal behavior, because one of his very best friends was killed at age 14 in a drive-by shooting, and he said he missed his friend greatly.”

Defendant argues that just because he “told people at the trailer park . . . that he was 19 years[]old” does not mean that he “was cognitively and emotionally an adult.” The point, however, is not just he told people this, but that they believed him. In other words, he was able to pass for 19.

Defendant also points to Dr. Kaser-Boyd's testimony that he was "substantially less mature than the average sixteen-year-old" The trial court, however, did not have to believe Dr. Kaser-Boyd. "[S]o long as it does not do so arbitrarily, a [trier of fact] may entirely reject the testimony of a[n] . . . expert, even where the [opposing party] does not call any opposing expert and the expert testimony is not contradicted.' [Citation.]" (*Wells Fargo Bank, N.A. v. 6354 Figarden General Partnership* (2015) 238 Cal.App.4th 370, 392.)

2. *Environmental vulnerabilities.*

The trial court found: "[H]e had a rough youth, but this, in my opinion, has very little weight. Simply knowing the person is dangerous doesn't make it any better for society if he is ever released." It also stated: "[W]e understand now why this person is dangerous, but . . . does that make him less dangerous? I don't think so."

Defendant argues that the trial court erred by failing to treat his "rough youth" as mitigating. However, while a trial court must consider a juvenile defendant's environment, it is not at all clear that it must automatically treat a damaging environment as mitigating. As defendant himself argues, the "ultimate issue" is whether he is capable of rehabilitation. "[T]he enumerated factors are not ends in themselves but rather are, when considered together in a reasoned manner, the useful and necessary means by which a sentencing court must determine whether transient immaturity requires some degree of leniency or irreparable corruption must be punished as severely as possible. [Citations.]" (*People v. Chavez* (2014) 228 Cal.App.4th 18, 33.) Thus, evidence that the

defendant is a victim of child abuse may be mitigating if it suggests that he or she can be rehabilitated, but aggravating if it suggests that he or she is scarred for life.

Defendant argues that in *Miller* itself, the Supreme Court treated the defendant's abusive childhood as mitigating. However, it did so in part because, despite suffering abuse, his "past criminal history was limited — two instances of truancy and one of 'second-degree criminal mischief.'" (*Miller v. Alabama, supra*, 132 S.Ct. at p. 2469.)

The same cannot be said of defendant. Moreover, *Miller* did not hold that such a background would *necessarily* militate against a sentence of life without parole. It simply concluded that "a sentencer needed to examine all these circumstances before concluding that life without any possibility of parole was the appropriate penalty."

(*Ibid.*) That is what the trial court did here.¹

The abuse and neglect in defendant's past were not trivial. However, the affirmative abuse, by his father, went on only until he was three, and then again when he was seven, until he managed to extricate himself by being sent back to his mother. Many of the bad things that happened to him during his childhood could be viewed as the result of his own inclinations. He was shot at because he chose to hang out with a gang. He was in a series of juvenile placements because he used drugs, sold drugs, and stole.

¹ More generally, defendant argues that the trial court's statement that it did not find "any" mitigating circumstances was arbitrary and unreasonable. Later, however, it implicitly recognized that defendant's "rough youth" was mitigating, although it gave this factor "very little weight." Thus, we do not believe it meant that there were *literally* no mitigating circumstances. Rather, as defendant himself puts it, it found "that there were no mitigating factors *that warranted a parole-eligible sentence . . .*" (Italics added; italics omitted.)

Repeatedly running away from those placements was hardly a way to find stability.

Dr. Kaser-Boyd did not claim that parental abuse was responsible for any of these behaviors.

Thus, we cannot say that the trial court abused its discretion by according little weight to defendant's abusive background.

3. The circumstances of the homicide offense.

The trial court stated: “[I]t’s very clear that he knew what was going to take place. He was aware of the gun. He was aware of the knives. . . . [H]e showed Miss Rogers where the knives were, . . . he actually gave her the gun.”

It also stated: “In my opinion, he did have an intent to kill, not only by these acts, but by the fact that the victim knew each of these three persons. It was clear there was an intent to rob and thus presumably an intent not to get caught, thus the intent to kill is inherent in such an act, and it is hard for me to conceive that he entered that store without the understanding that . . . Mr. Doroudi would be killed.”

It added: “At one point . . . Brown came out of the back room and seemed to be a little bit hesitant as to what he should do. . . . And Mr. Harper said, ‘Just go do what you have to do and let’s get out of here.’ Again, with no humanity involved in simply wanting to get this crime . . . over and done with.

“ . . . Later he bragged about the items he stole. . . . He bragged about the fact that, ‘No we can do our laundry. I have a fistful of quarters.’ And then he flashed bundles of hundreds or 50s or 20s, whatever it was. And he seemed to be indifferent to the fact that a life had been taken.”

Defendant challenges the trial court's finding that he acted with intent to kill, noting that the People did not take this position at the original trial. Nevertheless, this finding is not merely supported by substantial evidence — it is compelling. Defendant and Brown were regular customers of the 99 Cent Store; defendant used to talk to the victim. When they committed the robbery, they made no attempt to disguise themselves. And surely defendant did not want to get caught. As the trial court quite reasonably concluded from these facts, defendant must have intended that the victim would be killed.

Defendant argues that, because of his youth, “he likely did not appreciate the risk that one of his co-defendants would kill the victim during the course of the robbery to avoid being identified.” However, under the applicable standard of review, we must draw every reasonable inference in favor of the trial court's ruling. (See *Hale v. Superior Court* (2014) 225 Cal.App.4th 268, 271.) Certainly defendant did appreciate the risk of being identified. When interviewed by a parole officer after his conviction, he said he felt “scared” during the robbery because “[t]hey were not wearing masks.” From the fact that Brown had a shotgun — as well as from defendant's knowledge of Brown's violent tendencies — defendant did not need great insight or experience to conclude that the victim would be killed.

Defendant also argues that “he never brandished or intended to use any weapons during the robbery, and he was not present at the time his co-defendants stabbed and shot the victim.” The trial court, however, discounted these points. We cannot say that this was an abuse of discretion. As it noted, defendant brought the shotgun and gave it to Brown; he also enabled Rogers to obtain a knife. While he was not in the bathroom

where the victim was killed, he was present at the scene, and he facilitated the killing by acting as a lookout.

In Dr. Kaser-Boyd's view, the only relevant circumstance of the homicide offense was that defendant was dominated — and was exceptionally vulnerable to being dominated — by Brown. However, there was no evidence that Brown induced defendant to commit the crime. Quite the contrary, Brown planned to rob the 99 Cent Store without involving defendant. Defendant decided to go along on his own initiative, simply because he did not want to stay at the trailer park with Brown's brother. The trial court noted that before defendant even met Brown, he was already involved with a gang; he sold drugs, stole cars, and assaulted his mother with a chain. It concluded that “[f]or him to go into the 99 Cent Store armed with a firearm . . . , intending to steal . . . , in the company of others is in perfect harmony with the life he led up to that point.”

4. *The possibility of being convicted of a lesser offense but for youth-associated incompetencies.*

The trial court stated: “[W]hether the offender might have been charged with or convicted of a lesser offense. . . . I don't see that as a factor applicable here at all.”

Defendant does not take issue with this finding. Dr. Kaser-Boyd noted that defendant naïvely relied on Brown's claim that he had a scheme to get both defendant and himself acquitted. However, there is no reason to suppose that, if defendant had been less naïve, the outcome would have been any different. He would still have been arrested, prosecuted, and found guilty of first degree felony-murder.

5. *The possibility of rehabilitation.*

The trial court observed: “By [defendant’s] own description, the only productive noncriminal period of his life . . . since age nine, was when he was incarcerated at the Trinity Yuca[ip]a Boy’s Home” “He thrives only in two circumstances that I have seen in his life, that was both while incarcerated. Why would we take him out of a circumstance [in] which he thrives?”

“The doctor seems to think there is a possibility of rehabilitation. But when he was in the process of being rehabilitated and doing extremely well, as soon as he gets out of that controlled environment, he goes right back to his criminal antisocial behavior again.

“I don’t think he is rehabilitat[a]ble. I disagree with the doctor on this one.”

The trial court could reasonably disbelieve Dr. Kaser-Boyd’s opinion that defendant had “a significant possibility of rehabilitation[.]” She merely explained that “[t]here are other people that I have seen and are part of the juvenile justice system that get the appropriate services and they do go on to live an ordinary, normal life.”

However, she did not testify that those people had backgrounds that were similar to defendant’s. Neither did she testify that their commitment offenses were similar to defendant’s. And neither did she testify that defendant would be able to obtain the “appropriate services” in prison.

Defendant cites *People v. Palafox* (2014) 231 Cal.App.4th 68,² which upheld the imposition of a sentence of life without parole on a juvenile for first degree murder. (*Id.* at pp. 91-92.) He argues that, in light of the *Gutierrez* factors, he is less deserving of a sentence of life without parole than was the defendant in *Palafox*. However, the mere fact that defendant is arguably less deserving does not mean that he was not deserving at all or that the trial court erred.

Finally, defendant argues that a sentence of 25 years to life was appropriate to his situation, because it would not necessarily mean that he would ever be released; it would simply preserve release as an option that could be exercised at some time, years later, if and only if he can demonstrate that he is rehabilitated. By contrast, a sentence of life without parole is inappropriate, because it assumes that the trial court can predict today, with unerring accuracy, that he will be never be rehabilitated. The end result of this reasoning, however, would be that a juvenile could *never* be sentenced to life without parole, even for homicide, and even if he or she is that rare juvenile offender whose crime and background reflect irreparable corruption. And that is clearly not the law.

It is not our role to second-guess the trial court. Thus, we are not called upon to say whether, if the decision were up to us in the first instance, we would or would not conclude that defendant is irreparably corrupt. Rather, we simply hold that the trial court

² Defendant also cites *People v. Jordan* (2015) 235 Cal.App.4th 198, but the Supreme Court has granted review in that case (S225848, review granted July 8, 2015).

did not abuse its discretion by concluding that he is and by sentencing him to life without the possibility of parole.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

McKINSTER

J.

MILLER

J.