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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

DARNELL JAMES HAMMOND,

Defendant and Appellant.

F088426

(Super. Ct. No. BF165964A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. John D. Oglesby, Judge.

Victor J. Morse, under appointment by the Court of Appeal, for Defendant and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Kimberley A. Donohue, Assistant Attorney General, Eric L. Christoffersen and John Merritt, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Detjen, Acting P. J., Franson, J. and Meehan, J.

## INTRODUCTION

On September 21, 2021, a jury convicted defendant Darnell James Hammond of the premeditated first degree murders of Heriberto Aceves and Juan Aceves (Pen. Code, §§ 187, subd. (a), 189, counts 1 & 2),<sup>1</sup> and found true all enhancements and allegations.<sup>2</sup> Initially, the trial court sentenced Hammond to two indeterminate terms of life without the possibility of parole (LWOP), plus 50 years to life, and a determinate term of 10 years. (*People v. Hammond* (Feb. 1, 2024, F083530 [nonpub. opn.] (*Hammond*, F083530).)

In an unpublished opinion, we vacated Hammond’s original sentence and remanded for resentencing because “Assembly Bill [No.] 333 [Reg. Sess. (2021–2022)] applie[d] retroactively to [his] case and, as to all offenses, [we] reverse[d] the section 186.22, subdivision (b)(1) enhancements, and as to counts 1 and 2, reverse[d] the gang-murder special circumstance allegations pursuant to section 190.2, subdivision (a)(22).” (*Hammond, supra*, F083530.) Additionally, this court stated that at Hammond’s resentencing “[t]he trial court shall also address whether [Hammond] is entitled to make a record that may be helpful at a future youth offender parole hearing pursuant to section 3051.” (*Ibid.*)

Thereafter, at Hammond’s resentencing, the trial court ordered direct restitution to Heriberto’s wife and Juan’s mother in the amounts of \$4,418.80 and \$5,600.90. However, neither the minute order, nor the abstract of judgment reflects whether restitution was ordered jointly and severally with Hammond’s codefendant Jim Thomas Langston. Further, Hammond’s counsel never raised the issue at Hammond’s

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<sup>1</sup> All further references are to the Penal Code.

<sup>2</sup> As we discuss further below, Hammond was also convicted and sentenced to additional offenses and enhancements.

resentencing of whether Hammond is entitled to make a record that may be helpful at a future youth offender parole hearing pursuant to section 3051.

On appeal, Hammond contends “this court should order the trial court to prepare and file an amended abstract of judgment to indicate joint and several liability for victim restitution.” (Capitalization omitted.) Further, Hammond contends “the trial court erred by failing to address whether [he] is entitled to make a record that may be helpful at a future youth offender parole hearing.” (Capitalization omitted.) Specifically, he argues “[i]t was error for the trial court to fail to comply with the terms and conditions of this Court’s remand order.”

As to the issue regarding joint and several liability for victim restitution, the Attorney General concedes “the abstract of judgment should be corrected to reflect [Hammond’s] joint and several liability for victim restitution.” (Capitalization omitted.) We accept the Attorney General’s concession and remand for the trial court to file a corrected abstract of judgment.

As to Hammond’s additional claim regarding trial court error, we conclude the issue is preserved on appeal due to our prior disposition, but nonetheless conclude Hammond was not entitled to make a record for a potential future youth offender parole hearing because his LWOP sentence for special circumstance murder made him statutorily ineligible for youth offender parole. Accordingly, we otherwise affirm the judgment.

### **STATEMENT OF CASE**

In *Hammond*, F083530, we previously summarized the procedural background regarding Hammond’s convictions and sentences as follows:

“On August 9, 2021, the Kern County District Attorney filed a first amended information charging [Hammond] with two counts of premeditated first degree murder (§§ 187, subd. (a), 189, count 1 (Heriberto) & count 2 (Juan)) with the special circumstances he committed multiple murders (§ 190.2, subd. (a)(3)), he was engaged in the commission

or attempted commission of a robbery and burglary (§ 190.2, subd. (a)(17)(A) & (G)), and that he was an active participant in a criminal street gang and the murder was committed in furtherance of the gang (§ 190.2, subd. (a)(22)); two counts of robbery (§ 212.5, subd. (c), counts 3 & 4); active participation in a gang (§ 186.22, subd. (a), count 5); possession of a firearm by a felon (§ 29800, subd. (a)(1), count 6); and unlawfully carrying a loaded firearm, to wit, a handgun in public (§ 25850, subd. (c)(3), count 8). As to counts 1, 2, 3, 4, and 6, the information further alleged both a gang (§ 186.22, subd. (b)(1)) and firearm enhancement (§§ 12022.53, subd. (d), 12022.5, subd. (a)). Finally, as to all offenses, the first amended information alleged a prior strike offense for attempted robbery (§§ 667, subds. (b)–(i), 1170.12, subds. (a)–(d), 211, 664) and a prior serious felony offense (§ 667, subd. (a)).

“On September 21, 2021, a jury convicted [Hammond] on all remaining counts and found true all remaining enhancements and allegations. As to the alleged prior strike and serious felony offense, the trial court in a bifurcated trial found true that [Hammond] suffered a prior conviction for a violation of section 211/664, as alleged in the information. On October 7, 2021, a jury in the penalty phase of the trial sentenced [Hammond] to life without the possibility of parole.

“Subsequently, as to count 1, the trial court sentenced [Hammond] to an indeterminate term of life without the possibility of parole, plus consecutive terms of 25 years to life for the firearm enhancement (§ 2022.53, subd. (d)), and five years for the prior serious felony offense (§ 667, subd. (a)), plus a 10-year term for the gang enhancement (§ 186.22, subd. (b)(1)), but stayed the 10-year term pursuant to section 654. As to count 2, the trial court sentenced [Hammond] to an indeterminate term of life without the possibility of parole, plus consecutive terms of 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)), and five years for the prior serious felony offense (§ 667, subd. (a)), to be served consecutive to count 1, plus a 10-year term for the gang enhancement (§ 186.22, subd. (b)), but stayed this 10-year term pursuant to section 654. As to count 3, the trial court imposed the upper term of five years, doubled to 10 years because of the prior strike, plus 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)) and 10 years for the gang enhancement (§ 186.22, subd. (b)(1)), but stayed this sentence pursuant to section 654. As to count 4, the trial court imposed the upper term of five years, doubled to 10 years because of the prior strike, plus 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)) and 10 years for the gang enhancement (§ 186.22, subd. (b)(1)), but stayed this sentence pursuant to section 654. As to count 6, the trial court sentenced

[Hammond] to the upper term of three years, doubled to six years because of the prior strike, plus four years for the gang enhancement (§ 186.22, subd. (b)(1)), but stayed this sentence pursuant to section 654.” (*Hammond, supra*, F083530, fn. omitted.)

A timely appeal followed. In his initial appeal, Hammond made several contentions, including that “he [was] entitled to the benefit of newly amended section 186.22 and that both the gang enhancements and gang special circumstance allegations must be dismissed.” (*Hammond, supra*, F083530.) In an unpublished opinion, “we conclude[d] [Hammond] [was] entitled to a reversal of both his section 186.22 gang enhancements and the gang-murder special circumstance allegations (§ 190.2, subd. (a)(22))” and therefore his “sentence [was] vacated, and this matter [was] remanded for resentencing consistent with this opinion.” (*Ibid.*)

Thereafter, on July 31, 2024, the trial court resentenced Hammond. Prior to sentencing, the prosecutor dismissed both the section 186.22 gang enhancements and the gang-murder special circumstance allegations. Subsequently, as to count 1, the court sentenced Hammond to an indeterminate term of LWOP, plus consecutive terms of 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)) and five years for the prior serious felony offense (§ 667, subd. (a)). As to count 2, the court sentenced Hammond to an indeterminate term of LWOP, plus consecutive terms of 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)) and five years for the prior serious felony offense (§ 667, subd. (a)), to be served consecutive to count 1. As to count 3, the court sentenced Hammond to the middle term of three years, doubled to six years because of the prior strike, plus a term of 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)), but stayed this sentence pursuant to section 654. As to count 4, the court sentenced Hammond to the middle term of three years, doubled to six years because of the prior strike, plus a term of 25 years to life for the firearm enhancement (§ 12022.53, subd. (d)), but stayed this sentence pursuant to section 654. As to count 6, the court sentenced Hammond to the middle term of two years, doubled to four years

because of the prior strike, but stayed this sentence pursuant to section 654. The court further ordered Hammond to pay \$4,418.40 in restitution to Heriberto's wife and \$5,600.90 to Juan's mother. However, Hammond's abstract of judgment does not specifically require joint and several liability for restitution.<sup>3</sup> The total aggregate sentence imposed were two indeterminate terms of LWOP, plus an indeterminate term of 50 years to life, plus a determinate term of 10 years. A second timely appeal followed.

### **SUMMARY OF FACTS**

This summary of facts is drawn from our prior opinion in Hammond's original direct appeal in *Hammond, supra*, F083530.<sup>4</sup> The summary is as follows:

*"I. The Prosecution Case-in-Chief*

"Heriberto and his two sons Juan and Jesus ran the Quality Gas, gas station and market, on the southwest corner of Main Street and Panama Road in Lamont, southwest of Bakersfield. Rigoberto, a friend of Jesus, also worked at Quality Gas.

*"A. The Robbery/Murders and Subsequent Getaway*

"On Friday morning, October 14, 2016, at approximately 9:30 a.m., codefendant Langston entered the Quality Gas market, and was observed on surveillance footage cashing his payroll check and then leaving. Langston wore a black hat with a white cursive 'W.'

"Shortly after leaving the store, Langston saw a dark colored Saturn Ion with three occupants following him and he eventually stopped. They asked if he would drive them to Quality Gas in exchange for \$200. The

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<sup>3</sup> With that being said, during codefendant Langston's resentencing, which occurred immediately before Hammond's resentencing, Langston was also ordered to pay these restitution amounts to Heriberto's wife and Juan's mother. Langston's counsel requested "the restitution amounts [to be] joint and several" and the trial court responded, "Yes. Thank you for that."

<sup>4</sup> Hammonds' opening brief makes reference to the factual summary in our original opinion in *Hammond, supra*, F083530 as an accurate reflection of material in the trial court record. Therefore, on our motion, we take judicial notice of the summary of facts from *Hammond*, F083530.

three individuals were later identified as defendant Hammond, 'Tiny,' and 'Baby Goo.' Langston later told officers the three individuals threatened him and were armed. He admitted he was asked to '[b]asically' be their getaway driver. He agreed to drive the three to Quality Gas. Langston also told officers he left his Nissan parked on Collision Avenue, about four blocks north of Quality Gas, and drove the three suspects in the Saturn Ion to Quality Gas.

"Surveillance footage then showed the Saturn Ion stop in front of the Quality Gas market front door, facing north towards Panama Street, with three masked men exiting and entering the store. The suspect referred to as 'Tiny' was armed with a Mac-11 assault pistol, wearing a black glove and a white glove, and black and white Nike shoes. Hammond was armed with a black nine-millimeter handgun and wore white gloves, white Nike shoes, and a 'New York Yankees' beanie. Givan, the third suspect, was not armed. Langston remained in the Saturn throughout the extent of the robbery and ensuing homicides.

"Upon entering the market, Hammond and Givan headed to the back of the counter where Juan was located, and Tiny pointed his firearm at Heriberto, who was standing in front of the counter, and demanded money. During this exchange, Heriberto pulled out a handgun, but was shot by Tiny. Heriberto fell to the ground and was also shot by Hammond. Hammond then turned towards Juan, who was on the floor behind the counter, and shot him as well. Rigoberto fell to the ground and stayed there until the men left.

"Tiny then ran out of the store and got into the Saturn, which sped off. Hammond and Givan then left on foot. However, Hammond returned to pick up cash trays from inside the market. Langston eventually picked up Givan and drove him and Tiny to Collision Street to switch cars.

"Moments later, Hammond exited the market and was seen by witnesses running away from Quality Gas, armed with a pistol, and carrying two cash trays. He was left behind.

"During this incident, Jose N. and Modesto N. were stopped at a red light at the corner of Main Street and Panama Road when they heard gunshots coming from the convenience store. Jose told Modesto he 'heard gunshots, and he was like, "I did too." [They] glanced everywhere to see where it was and [they] couldn't see until [they] s[aw] the people coming out of the store.' Two or three people exited the convenience store and Jose observed one individual 'running on Panama.' Jose called 911 and followed the individual who ran 'eastbound on Panama and northbound on Carnation [¶]

... [a]nd then turned left on Lana Street.’ The individual wore a black hoodie sweatshirt and ‘had a gun on his [¶] [l]eft hand’ and a cash register ‘in the other hand.’ Jose then observed the individual take off his black hoodie sweatshirt and ‘thr[o]w it in the yard’ of the house at ‘the corner of Carnation and Lana Street.’

“Fidel C. lived at a residence on Panama Road in Lamont. On the morning of the robbery, Fidel observed an African-American man trying to hide in middle of his front yard. The man wore ‘all black ... a black hoodie and a white tank top.’ ‘[H]e was, like, scared or trying to hide, trying to get away.’ ‘He [then] just walked around the yard, and then he got in one of the cars that were parked out front’ — a black Lexus. Fidel’s stepfather then came out and told the man to leave. The man wanted Fidel to hide him, ‘but [he] told him [he] couldn’t.’ Subsequently, the man ‘took of his sweater and he threw it on the ground and he left[,]’ but eventually came back and took the sweater with him. The man then ran eastbound. Fidel later identified Hammond as the individual in his yard in a six-pack lineup.

“B. *Police Investigation*

“Law enforcement personnel arrived on scene shortly after the shootings and found ‘several subjects were pointing eastbound down Panama Road yelling, “He’s going that way.”’ Deputies began searching the area for the suspects and were notified by a resident at a Lana Street address ‘that they had seen or saw a subject running into that yard.’ Deputies arrived at the residence and located a shed next to a detached garage. [Hammond] was found hiding inside the shed ‘squatting on his hands and knees.’ He was arrested. He was unarmed, wore a white tank top with dark colored pants, and was not wearing shoes. However, deputies located a pair of Nike shoes next to [Hammond]. Further, deputies located over a thousand dollars ‘in a rolled up mesh – piece of mesh’ inside the shed. One of the \$100 bills had either ‘a blood stain or a blood drop.’

“Deputies also searched the inside of the market and located both Heriberto and Juan’s bodies. Further, deputies found a payroll check made payable to codefendant Langston for \$137, and two pistols. The first pistol, a nine-millimeter caliber semi-automatic SIG Sauer, was found next to Heriberto’s body. It was believed this nine-millimeter pistol was the firearm use by Heriberto to defend himself. The second pistol, a .25-caliber Beretta handgun, was located in a holster inside an office next to the checkout area. Deputies also located three spent bullets and 17 shell casings from the scene. Behind the store, deputies located a dark blue beanie with a New York Yankees’ logo.

“Deputies also searched the surrounding area and located two white gloves, one of which had a cash tray discarded next to it. The gloves were stained and spotted with blood; the blood contained Juan Aceves’s DNA. Further, both gloves were tested for DNA, and it was highly probable the gloves contained [Hammond]’s DNA.

“C. *[Hammond]’s First Interview*

“Around midnight of [Hammond]’s arrest, Detective Richard Anderson and Detective Tommy Robins interviewed [Hammond] in custody at the sheriff’s department. Detective Anderson read [Hammond] his *Miranda*<sup>5</sup> rights; [Hammond] acknowledged he understood these rights.

“Throughout the interview, [Hammond] denied being involved in the robbery and instead claimed he consumed drugs, and that everything was just a ‘blur’ that day. Although he admitted he was a member of the Country Boy Crips (CBC) gang, he denied being with any of his gang associates the day of the robbery. At the conclusion of the interview, Detective Robins collected [Hammond]’s buccal swab.

“D. *[Hammond]’s Second Interview*

“Approximately 36 hours later, Detective Anderson interviewed [Hammond] a second time at the jail. [Hammond] again indicated he understood his *Miranda* rights. [Hammond] admitted the group’s goal was to steal money from the convenience store, but maintained, ‘I’m no killer.’ He did not plan to shoot anyone ‘[b]ut the two started shooting at [him].’ Defendant then shot back by firing ‘anywhere.’” (*Hammond, supra*, F083530, fns. omitted.)

## **DISCUSSION**

### **I. The Trial Court is Ordered to Prepare an Amended Abstract of Judgment to Reflect Joint and Several Liability for the Victims’ Restitution.**

First, Hammond contends “this court should order the trial court to prepare and file an amended abstract of judgment to indicate joint and several liability for victim restitution.” (Capitalization omitted.) As indicated above, the Attorney General concedes this specific argument. Thus, to avoid the possibility of double recovery, we

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<sup>5</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

agree with Hammond his abstract of judgment should be amended to reflect joint and several liability with Langston.<sup>6</sup>

### **A. Applicable Law**

In California, victims of crimes are entitled to “secure restitution from the persons convicted of the crimes causing the losses they suffer.” (Cal. Const., art. I, § 28, subd. (b) par. (13)(A), (B); see also § 1202.4, subd. (a).) This is a right that is liberally construed by the courts. (*People v. Stanley* (2012) 54 Cal.4th 734, 737.) “[I]n every case in which a victim has suffered economic loss as a result of the defendant’s conduct, the court shall require that the defendant make restitution to the victim<sup>7</sup> or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court.” (§ 1202.4, subd. (f).) “To the extent possible, the restitution order ... shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant’s criminal conduct[.]” (§ 1202.4, subd. (f)(3).)

A trial court has broad discretion in ordering joint and several liability for restitution, and its decision “will be disturbed on appeal only when the appellant has shown an abuse of discretion.” (*People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1320.) “[I]f two defendants convicted of the same crime caused a victim to suffer economic loss, a court may impose liability on each defendant to pay the full amount of

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<sup>6</sup> Although Hammond’s counsel did not raise the issue of joint and several liability below and typically these issues, if not raised in the trial court, are forfeited on appeal (see *People v. O’Neal* (2004) 122 Cal.App.4th 817, 820 [waiving challenge to restitution order by not raising it in the trial court]), we nonetheless address this issue because as we discuss in detail below, the record is clear the trial court intended to order Hammond jointly and severally liable for restitution with Langston.

<sup>7</sup> “For purposes of this section, ‘victim’ shall include ... [¶] ... [¶] the parent, grandparent, sibling, spouse, child, or grandchild of the victim.” (§ 1202.4, subd. (k)(3)(A).)

the economic loss, as long as the victim does not obtain double recovery.” (*People v. Leon* (2004) 124 Cal.App.4th 620, 622.) Further, “[a] defendant may be held jointly and severally liable for losses for which a codefendant bears more culpability [citation], but the criminal conduct of which the defendant was convicted must be at least a substantial factor in causing the victim’s loss.” (*People v. Selivanov* (2016) 5 Cal.App.5th 726, 786.)

An abstract of judgment may be modified to reflect that “the victim restitution order is a joint and several obligation.” (*People v. Cornejo* (2016) 3 Cal.App.5th 36, 63; accord, *People v. Neely* (2009) 176 Cal.App.4th 787, 800 [ordering “modification of the judgment to expressly state that the restitution order is joint and several as to” the defendant and codefendant]; *People v. Samaniego* (2009) 172 Cal.App.4th 1148, 1183 [“[T]he abstract of judgment must be corrected to reflect the trial court’s oral pronouncement of judgment that the victim restitution is imposed jointly and severally upon all three appellants”]; *People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1535 [to avoid double recovery, Court of Appeal modified judgment “to provide expressly that the direct victim restitution order is joint and several”].)

## **B. Analysis**

Here, prior to Hammond’s resentencing, Langston’s counsel requested “the restitution amounts [to be] joint and several” with Hammond and the trial court responded, “Yes. Thank you for that.” Although the court’s oral pronouncement of judgment and minute order during Hammond’s resentencing does not specify the restitution is joint and several, it is clear through the court’s order during Langston’s resentencing the restitution amounts owed to both Heriberto’s wife (\$4,418.40) and Juan’s mother (\$5,600.90) were to be joint and several. As the Attorney General correctly states, “while the trial court’s oral pronouncement is perhaps ambiguous, the abstract of judgment should be corrected to reflect that both codefendants are jointly and severally liable for direct victim restitution [because t]he record suggests the trial court intended to do so [and] leaving [Hammond’s] abstract of judgment unmodified runs the

risk of providing a double recovery to the victims.” In light of the Attorney General’s concession, we order the abstract of judgment modified to reflect that Hammond is jointly and severally liable with Langston for the restitution amounts of \$4,418.40 to Heriberto’s wife and \$5,600.90 to Juan’s mother.

## **II. The Youth Offender Parole Hearing Pursuant to Section 3051**

Second, Hammond contends “the trial court erred by failing to address whether [he] is entitled to make a record that may be helpful at a future youth offender parole hearing.” (Capitalization omitted.) Specifically, he argues “the statutory LWOP exclusion from youthful offender parole hearings violates his constitutional right to equal protection as applied to his individual circumstances and the circumstances of the crimes” and that this LWOP exclusion constituted “cruel or unusual punishment [under] the California Constitution.” Although Hammond’s counsel never raised these arguments during Hammond’s resentencing, and typically under these circumstances this would forfeit these arguments on appeal (see *In re Sheena K.* (2007) 40 Cal.4th 875, 885; *People v. Speight* (2014) 227 Cal.App.4th 1229, 1247), as Hammond correctly points out, this court in *Hammond, supra*, F083530 ordered the trial court on remand to “also address whether [he] is entitled to make a record that may be helpful at a future youth offender parole hearing pursuant to section 3051.” (*Hammond*, F083530.) Because this court *ordered* the trial court to address on remand Hammond’s eligibility to make such a record pursuant to section 3051, we conclude this issue is not forfeited on appeal and thus, we address the merits of his claim.

### **A. Equal Protection Claim**

First, Hammond argues “the statutory LWOP exclusion from youthful offender parole hearings violates his constitutional right to equal protection as applied to his individual circumstances and the circumstances of the crimes.” We disagree.

## 1. Applicable Law

Section 3051<sup>8</sup> requires the Board of Parole Hearings to conduct hearings for persons who were younger than 25 years old when they committed their controlling offense and they were sentenced to a determinate term or a life term with the possibility of parole. (§ 3051, subd. (b)(1)–(3).) Persons sentenced to an LWOP term are entitled to a hearing *if* they were younger than 18 years old when they committed the controlling offense. (§ 3051, subd. (b)(4).) However, persons are ineligible for a youth offender parole hearing if they were “sentenced to life in prison without the possibility of parole for a controlling offense that was committed *after* the person had attained 18 years of age.” (§ 3051, subd. (h), italics added.) Further, persons who are eligible for a youth offender parole hearing must have a sufficient opportunity to make a record of information relevant to that eventual hearing. (*Franklin, supra*, 63 Cal.4th at p. 284.)

Recently, our Supreme Court in *People v. Hardin* (2024) 15 Cal.5th 834 (*Hardin*), considered whether section 3051 violates equal protection. First, *Hardin* held that when “plaintiffs challenge laws drawing distinctions between identifiable groups or classes of persons, on the basis that the distinctions drawn are inconsistent with equal protection, courts no longer need to ask at the threshold whether the two groups are similarly situated for purposes of the law in question. The only pertinent inquiry is whether the challenged difference in treatment is adequately justified under the applicable standard of review,” which for purposes of section 3051 is rational basis review. (*Id.* at p. 850.) Under rational basis review, courts “consider whether the challenged classification ultimately bears a rational relationship to a legitimate state purpose.” (*People v. Chatman* (2018) 4 Cal.5th 277, 289.)

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<sup>8</sup> Our Legislature enacted section 3051 in light of the judicial recognition of juveniles’ lessened culpability and greater prospects for reform. (See *People v. Franklin* (2016) 63 Cal.4th 261, 277 (*Franklin*).)

Second, *Hardin* considered the issue of whether a rational basis existed to distinguish between youthful offenders sentenced to life without parole for special circumstance murder and youthful offenders sentenced either to functionally equivalent life without parole sentences or to indeterminate life terms for first degree murder. (*Hardin, supra*, 15 Cal.5th at p. 858.) The *Hardin* court observed that “legions of decisions” hold that “special circumstance murder is sufficiently serious and morally culpable as to justify imposing the most severe sanctions available under the law, up to and including death.” (*Id.* at p. 859.) While the court did not “foreclose the possibility of other challenges to the distinctions drawn by the special circumstances statute based on a more robust record or a more focused as-applied inquiry, [the defendant] has not carried his burden to demonstrate that legislative reliance on the special circumstance murder statute in section 3051, subdivision (h) is categorically irrational.” (*Id.* at p. 862.) Therefore, the *Hardin* court concluded the defendant failed to establish the “Legislature’s decision to expand youth offender parole hearings to most young adult offenders, while excluding [the defendant] and others similarly situated, violates equal protection under a rational basis standard.” (*Id.* at p. 866.)

## 2. Analysis

Hammond argues the *Hardin* court “expressly did not foreclose ‘other as[-]applied challenges’ to the statute ‘based on particular special circumstances or the factual circumstances of individual cases.’ ” Therefore, Hammond should have been able to present certain “mitigating factors concerning the crimes or concerning [himself], such as those set forth in rule 4.423 of the California Rules of Court or in section 1170, subdivision (b)(6), or a showing that while he has been in custody he has behaved well, and has taken advantage of educational, behavioral, psychological and employment resources, or psychological testing showing that [he] is not likely to pose a danger to others.” Although Hammond is correct in stating that *Hardin* did not foreclose as-applied challenges to section 3051, the facts of this case mirror the facts of *Hardin* where the

court found “the Legislature’s decision to expand youth offender parole hearings to most young adult offenders, while excluding [the defendant] and others similarly situated” does not violate equal protection under a rational basis standard. (*Hardin, supra*, 15 Cal.5th at p. 866.)

In *Hardin*, the defendant “robbed and killed an elderly neighbor” when he was 25 years old. (*Hardin, supra*, 15 Cal.5th at p. 840.) The jury convicted the defendant of first degree murder and “also found true a special circumstance allegation that [the defendant] murdered the victim during the commission of a robbery” pursuant to section 190.2, subdivision (a)(17)(A)). (*Hardin*, at p. 840.) Similarly here, as discussed in Hammond’s original appeal, Hammond shot and killed both Heriberto and Juan during the course of a convenience store robbery. (*Hammond, supra*, F083530.) Subsequently, the jury convicted Hammond of first degree murder and found true the special circumstances he was engaged in the commission or attempted commission of a robbery and burglary (§ 190.2, subd. (a)(17)(A) & (G)). As *Hardin* points out, “robbery murder [is] more culpable than simple murder.” (*Hardin*, at p. 860.) This is due to the fact “[t]he law treats as particularly egregious a murder ‘in cold blood in order to advance an independent felonious purpose, e.g., who carried out an execution-style slaying of the victim of or witness to a holdup, a kidnapping, or a rape’ [and] ‘[t]he purpose of this special circumstance is to make eligible for the most severe punishment those defendants who escalate a serious felony into a murder, thereby attempting to deter such escalation.’ ” (*Ibid.*) Therefore, as discussed *ante* in *Hammond*, F083530 Hammond’s act of shooting both Heriberto and Juan in cold blood during the violent act of robbery places him into a class of criminals where this type of conduct is inherently “more culpable than simple murder.” (*Hardin*, at p. 860.) Because of the similarity in conduct and circumstances surrounding both Hammond and the defendant in *Hardin*, we conclude Hammond would be unable to establish a successful equal protection claim.

### 3. *People v. Briscoe* is Distinguishable

Although not addressed by either party, we briefly address the First District, Division Four’s recent decision in *People v. Briscoe* (2024) 105 Cal.App.5th 479 (*Briscoe*). In *Briscoe*, the defendant was convicted of first degree murder, robbery, and burglary with a true finding on a special circumstance allegation under section 190.2, subdivision (d), and was subsequently sentenced to LWOP. (*Briscoe*, at p. 485.) The defendant was 21 years old when he committed the crimes, and thus was ineligible for a section 3051 youth offender parole hearing based on his age and sentence. (*Ibid.*)

On appeal, the defendant claimed that section 3051 violates equal protection “by excluding youth offenders sentenced for special circumstance murder under section 190.2, subdivision (d)<sup>[9]</sup>—which applies to nonkiller participants in specified felony offenses during which a murder occurred—while including those convicted of nonspecial circumstance first degree felony murder for the same specified felony offenses per the exact same standard under section 189, subdivision (e)(3).” (*Briscoe, supra*, 105 Cal.App.5th at p. 485.) The *Briscoe* court then observed that *Hardin* had found the culpability associated with LWOP offenses provides a rational basis to exclude youth offenders sentenced to LWOP from section 3051 relief. (*Briscoe*, at p. 492.) However, the court found “this logic falls apart when applied to the particular special circumstance and the facts at issue here. Section 190.2, subdivision (d) describes the exact same

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<sup>9</sup> Section 190.2, subdivision (d) provides:

“Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under Section 190.4.”

circumstances and conduct that is now necessary to support a conviction for first degree felony murder under section 189, subdivision (e)(3). The disparate treatment of offenders who committed murder per these identical provisions during the same underlying felonies cannot reflect any difference in culpability.” (*Ibid.*) Therefore, the *Briscoe* court found that no rational basis existed “for section 3051 to exclude section 190.2, subdivision (d) offenders from a parole opportunity provided to section 189, subdivision (e)(3) offenders convicted under the exact same standard.” (*Id.* at p. 495.)

However, *Briscoe* is distinguishable. *Briscoe* concerned a special circumstance allegation pursuant to section 190.2, subdivision (d). In this case, Hammond’s jury found true two special circumstance allegations under section 190.2, subdivision (a)(17). Subdivision (a)(17) provides for a penalty of death or LWOP if “[t]he murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit” specified felonies, including robbery and burglary. Therefore, while section 190.2, subdivision (d), expressly applies only to *nonkillers*, that is not necessarily so with section 190.2, subdivision (a)(17). Subdivision (a)(17) applies to both actual killers and nonkillers who commit murder while intending to commit a felony such as robbery or burglary.<sup>10</sup>

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<sup>10</sup> It is important to note the evidence established that Hammond was an “actual killer.” Surveillance footage established Hammond shot both Heriberto and Juan; Hammond was seen exiting the convenience store armed with a pistol and carrying two cash trays; Hammond was later found hiding in a shed next to a pair of Nikes, which matched the Nikes worn by the armed suspect in the surveillance footage, and a rolled up stack of \$100 bills stained with Juan’s blood; and Hammond later admitted to law enforcement he started shooting his firearm at Heriberto and Juan while inside the convenience store. (*Hammond, supra*, F083530.)

## **B. Cruel and Unusual Punishment Claim**

Second, Hammond argues the LWOP exclusion from youth offender parole eligibility constituted “cruel or unusual punishment in the California Constitution.” We again disagree.

Over the past two decades, courts have recognized that juveniles (persons under the age of 18) are constitutionally different from adults for sentencing purposes because of juveniles’ diminished culpability and greater prospects for reform. (See generally *Miller v. Alabama* (2012) 567 U.S. 460, 471.) Accordingly, the Eighth Amendment prohibits imposing the death penalty on juveniles (*Roper v. Simmons* (2005) 543 U.S. 551), life without parole sentences on juveniles who commit nonhomicidal offenses (*Graham v. Florida* (2010) 560 U.S. 48), mandatory life without parole sentences on juveniles (*Miller*, at p. 489), de facto life without parole sentences on juvenile nonhomicidal offenders (*People v. Caballero* (2012) 55 Cal.4th 262), and a sentence of 50 years to life for juvenile nonhomicidal offenders (*People v. Contreras* (2018) 4 Cal.5th 349, 356).

As noted above, section 3051 has its origins in cases concerning juveniles. Our Supreme Court and numerous Courts of Appeal have refused to extend *Miller*, as well as *Graham* and *Roper*, to young adults 18 years of age or older. (See, e.g., *People v. Flores* (2020) 9 Cal.5th 371, 429–430 [declining to extend *Roper* to 18- to 21-year olds]; *People v. Powell* (2018) 6 Cal.5th 136, 191 [death penalty for 18 year old with “intellectual shortcomings” does not violate federal and state Constitutions]; *People v. Gamache* (2010) 48 Cal.4th 347, 407 [“lengthy confinement under a sentence of death does not constitute cruel and unusual punishment and violates neither the state and federal Constitutions nor international law”]; *In re Williams* (2020) 57 Cal.App.5th 427, 437–439 [life without parole for 21-year-old offender was not grossly disproportionate to his culpability]; see *People v. Argeta* (2012) 210 Cal.App.4th 1478, 1482 [“ ‘[D]rawing the line at 18 years of age is subject ... to the objections always raised against categorical

rules ... [it] is the point where society draws the line for many purposes between childhood and adulthood.’ ”].) As *Argeta* observed, society has drawn a line between what age it is cruel or unusual punishment to impose a life without parole sentence. That line currently stands at 17 years of age (i.e., those persons who are 17 years and younger are considered juveniles). Hammond was 22 years old when he committed the murders and thus was not a juvenile. Accordingly, Hammond’s sentence of two LWOP terms does not constitute cruel and unusual punishment.

### **DISPOSITION**

We order the trial court to prepare and file an amended abstract of judgment and transmit copies thereof to the appropriate authorities to reflect the restitution amounts of \$4,418.40 owed to Heriberto’s wife, and \$5,600.90 owed to Juan’s mother be ordered jointly and severally liable between Hammond and Langston. In all other respects, the judgment is affirmed.