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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. DARREN CHARLES WILLIAMS, Defendant and Appellant.	B287899 Los Angeles County Super. Ct. No. A763191

APPEAL from a judgment of the Superior Court of Los Angeles County, William C. Ryan, Judge. Affirmed.

Darren Charles Williams, in pro. per.; and Theresa Osterman Stevenson, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1987, a jury convicted defendant Darren Williams of four counts of first degree murder.[1] After the jury failed to reach a verdict on the special circumstance allegation of multiple murder, the allegation was tried before a second jury, which found it to be true and returned a verdict of death.

On appeal, the California Supreme Court set aside the jury's finding on the special circumstance, reversed the judgment of death, and affirmed the remainder of the judgment. (See *Williams, supra,* 16 Cal.4th at p. 647.) Our Supreme Court concluded the trial court erred on the retrial of the special circumstance allegation by omitting a necessary element of the special circumstance finding for multiple murder: defendant's "intent to kill." (*Id.* at p. 687.) The error was not harmless, the court explained, because "defendant was not the perpetrator of the murders but an aider and abettor; thus, the manner in which the actual perpetrator committed the murders (execution style) did not itself reveal an intent to kill by defendant as an aider and abettor." (*Id.* at pp. 689-690.)

The Supreme Court otherwise affirmed the convictions, rejecting, among other things, defendant's contention that the trial court inadequately instructed the jury on the natural and probable consequences doctrine by failing to identify and describe for the jury the target offense that defendant allegedly aided and abetted. (*Williams, supra,* 16 Cal.4th at pp. 673-675.) Any error in failing to identify the target offense was harmless, the court explained: "Based on the evidence, there were only two possible target crimes—assault with a deadly weapon ([Pen. Code,] § 245)

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[1] The Supreme Court recited the facts established at defendant's trial in *People v. Williams* (1997) 16 Cal.4th 635 (*Williams*) at pages 647 through 651. Defendant attached the opinion as an exhibit to his petition for writ of habeas corpus and incorporated the court's recitation of the facts by reference.

and shooting at an inhabited dwelling ([*id.*,] § 246)—in light of Burns's statement to Moore that defendant and Cox had gone to the house on 59th Street to 'shoot it up,' just to scare people. But as we concluded in *People v. Cox* [(1991)] 53 Cal.3d 618, 669, 'no reasonable jury would have concluded that the homicides were not a natural and probable consequence of such violence.' Therefore, defendant was not prejudiced by the absence of an instruction identifying and describing the target offenses pertinent to the natural and probable consequences doctrine." (*Williams,* at pp. 674-675.)[2]

On remand, the trial court sentenced defendant to four consecutive terms of 25 years to life in state prison. A different panel of this court affirmed the judgment and sentence (*People v. Williams* (Nov. 18, 1999, B120766) [nonpub. opn.]), and the Supreme Court denied defendant's petition for review (*People v. Williams* (Mar. 1, 2000, S084630) [nonpub. opn.]).

On November 7, 2016, defendant filed a petition for a writ of habeas corpus in the superior court, seeking to have his first degree murder convictions set aside based on *People v. Chiu*

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[2] Burns was an accomplice to the murders, who, along with Cox and defendant, had been hired by the owner of the Vermont Club to kill a young woman who had sued the club for injuries sustained in a shooting there. (*Williams, supra,* 16 Cal.4th at pp. 650, 679.) Moore was the getaway driver and Cox was the triggerman who killed the four victims. (*Id.* at pp. 648-649.) Defendant was tried separately from Cox and Burns. In *People v. Cox, supra,* 53 Cal.3d 618, the Supreme Court affirmed Cox's death sentence. The Court of Appeal likewise affirmed Burns's sentence of life imprisonment without parole. (*Williams,* at p. 650, fn. 3.) Compounding the tragedy of the multiple murders, the evidence showed that defendant had mistaken the victims' residence for the residence of the woman for whom the club owner had put out the contract to kill. (*Id.* at p. 678.)

(2014) 59 Cal.4th 155 (*Chiu*). There, our Supreme Court held "an aider and abettor may not be convicted of first degree premeditated murder under the natural and probable consequences doctrine." (*Id.* at pp. 158-159, italics omitted; see also *id.* at p. 165 [holding the natural and probable consequences doctrine's primary rationale is served, in the context of murder, by holding an aider and abetter "culpable for the perpetrator's commission of the nontarget offense of second degree murder"].) Defendant also argued his convictions should be reversed entirely because the jury did not find he acted with malice or intent to kill, and because the merger doctrine, developed in the context of the felony murder rule, should be extended to the natural and probable consequences doctrine.

On December 30, 2016, the trial court ordered the People to show cause why defendant was not entitled to relief under *Chiu*. On May 30, 2017, the People filed a return conceding *Chiu* applied to defendant's first degree murder convictions. The People requested the matter be set to resentence defendant for second degree murder.

On June 27, 2017, defendant's appointed counsel filed a reply to the People's return, reasserting the *Chiu* error and requesting reversal of defendant's convictions.

On September 22, 2017, defendant filed a pro. per. request for a continuance to retain new counsel. Upon receipt of the People's return, defendant had contacted appointed counsel and requested that any reply "reiterate that the proper remedy in this case be a vacation of conviction and sentence, with any further proceeding being barred under the double [jeopardy] clause." According to defendant, "[c]ounsel disagreed with [defendant's] position as 'it did not fall within the court's order to show cause.' "

On September 29, 2017, the trial court denied defendant's request for a continuance, without prejudice, and set the matter for a hearing under *People v. Marsden* (1970) 2 Cal.3d 118.

On October 12, 2017, defendant made a request to file a supplemental habeas petition on the ground that the trial court had not issued a written opinion addressing all the issues raised in his initial petition. For the reasons stated in his initial petition, defendant argued he could not be resentenced for second degree murder.

On November 14, 2017, after substituting in to represent defendant, defendant's new counsel filed a sentencing memorandum and objections requesting a new trial and objecting to resentencing under *Chiu*. The objections were made on the grounds that the prosecution had "introduced no evidence that [defendant] actually killed [or] harbored the requisite intent to kill the victims" and that defendant had not consented to resentencing for second degree murder.

On November 29, 2017, the People filed a reply to defendant's sentencing objections. The People argued the claims of instructional error were barred by the Supreme Court's holding in the prior appeal, and resentencing for second degree murder was the prescribed remedy under *Chiu*.

On November 29, 2017, the trial court denied defendant's motion to file a supplemental habeas petition. The court found the substitution of counsel rendered defendant's objections to his appointed counsel moot, and concluded the other contentions set forth in defendant's request were simply a "recasting" of "arguments made in the initial habeas petition." The court determined that the "only issue" before the court was "resentencing," and clarified that, to the extent defendant maintained resentencing was improper, the court would consider his sentencing memorandum and objections.

On January 9, 2018, the court denied defendant's request for a new trial and granted his petition for a writ of habeas corpus under *Chiu*. The court concluded the proper remedy was to reduce defendant's first degree murder convictions to second degree murder, and resentenced defendant to four consecutive terms of 15 years to life. Defendant was awarded a total of 16,312 days of pre-sentence credits.

On January 22, 2018, defendant filed an appeal from the judgment of conviction and sentence under Penal Code section 1237.

We appointed counsel to represent defendant on appeal. After examining the record, counsel filed an opening brief raising no issues and asking this court independently to review the record. Upon receiving counsel's opening brief, we notified defendant that he had 30 days within which to submit any contentions or issues he wished this court to consider.

Defendant filed a supplemental opening brief asserting many of the same arguments raised in his petition to the trial court. Defendant principally argues "any 'resentencing' to second degree murder would be imposed under an unconstitutional sentencing scheme," because "the jury in this case did not find an intent to kill." Citing the United States Supreme Court's decision in *Rosemond v. United States* (2014) 572 U.S. 65 (*Rosemond*), defendant further argues he cannot be held culpable for second degree murder under the natural and probable consequences doctrine because there was no finding that he had "foreknowledge" that Cox intended to commit murder. Defendant also argues due process and equal protection require that the felony murder rule's merger doctrine be extended to murder convictions premised on the natural and probable consequences doctrine where the target offense is an assault. Finally, defendant argues this court should grant him relief under

pending legislation affecting the felony murder rule and the natural and probable consequences doctrine that will not be effective until January 1, 2019.[3]

Defendant's primary contention is contrary to our Supreme Court's decision in *Chiu*, which concluded an aider and abettor can be held culpable for the nontarget offense of second degree murder under the natural and probable consequences doctrine, without finding the aider and abettor had the intent to kill. As the *Chiu* court explained, "[t]he natural and probable consequences doctrine is based on the principle that liability extends to reach 'the actual, rather than the planned or "intended" crime, committed on the policy [that] . . . aiders and abettors should be responsible for the criminal harms they have naturally, probably, and foreseeably put in motion.' " (*Chiu, supra,* 59 Cal.4th at p. 164, italics omitted.) While that rationale "loses its force in the context of a defendant's liability as an aider and abettor of a first degree premeditated murder," which requires a "uniquely subjective and personal" mental state, it is perfectly compatible with second degree murder, which requires only proof of "an intentional act, the natural consequences of which are dangerous to life, performed with knowledge of the danger and with conscious disregard for human life." (*Id.* at pp. 165-166.) Under *Chiu*, defendant was properly resentenced for second degree murder, consistent with the natural and probable consequences doctrine, notwithstanding the absence of a jury finding on his intent to kill.

Chiu likewise refutes defendant's contention that, under *Rosemond*, the jury was required to find he had "foreknowledge" of Cox's intent to kill. In *Rosemond*, the United States Supreme

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[3] We grant defendant's request to take judicial notice of Senate Bill No. 1437 (2017-2018 Reg. Sess.).

Court examined the federal aiding and abetting statute and its application to a prosecution under section 924(c) of title 18 of the United States Code (hereafter § 924(c)), which "prohibits 'us[ing] or carr[ying]' a firearm 'during and in relation to any crime of violence or drug trafficking crime.' " (*Rosemond, supra,* 572 U.S. at p. 67.) The court explained that "an aiding and abetting conviction requires not just an act facilitating one or another element, but also a state of mind extending to the *entire crime*." (*Id.* at pp. 75-76, italics added.) "[U]nder that rule, a defendant may be convicted of abetting a § 924(c) violation only if his intent reaches beyond a simple drug sale, to an armed one." (*Id.* at p. 76.) In the passage of the opinion defendant relies upon, the *Rosemond* court held the "defendant's knowledge of a firearm must be *advance knowledge*," otherwise "he may already have completed his acts of assistance" before realizing a firearm would be used in the drug trafficking offense. (*Id.* at p. 78, italics added.)

In *Chiu*, our Supreme Court included a "cf." cite to *Rosemond*, and used similar language and reasoning in the context of its determination that an aider and abettor cannot be convicted of *first degree premeditated* murder under the natural and probable consequences doctrine. (*Chiu, supra,* 59 Cal.4th at p. 167.) In making clear that aiders and abettors may still be convicted of first degree premeditated murder based on *direct* aiding and abetting principles (*id.* at p. 166), the *Chiu* court, drawing on *Rosemond*, stated: "Because the mental state component—consisting of intent and knowledge—extends to the *entire crime*, it preserves the distinction between assisting the predicate crime of second degree murder and assisting the greater offense of first degree premeditated murder. [Citations.] An aider and abettor who knowingly and intentionally assists a confederate to kill someone could be found to have acted willfully,

deliberately, and with premeditation, having formed his own culpable intent. Such an aider and abettor, then, acts with the mens rea required for first degree murder." (*Id.* at p. 167, italics added.)

However, contrary to defendant's argument, the *Chiu* court made clear that foreseeability of the perpetrator's intention to kill was not required to hold an aider and abettor culpable for the nontarget offense of second degree murder under the natural and probable consequences doctrine. The court explained: "We have never held that the application of the natural and probable consequences doctrine depends on the foreseeability of *every element* of the nontarget offense. Rather, in the context of murder under the natural and probable consequences doctrine, cases have focused on the reasonable foreseeability of *the actual resulting harm* or *the criminal act that caused that harm*." (*Chiu, supra,* 59 Cal.4th at p. 165, fn. omitted, italics added.) As the Supreme Court stated in defendant's direct appeal, " 'no reasonable jury would have concluded that the homicides were not a natural and probable consequence of [the] violence' " defendant aided and abetted in this case. (*Williams, supra,* 16 Cal.4th at pp. 674-675.)

Defendant's contention regarding the felony murder rule's merger doctrine is likewise inconsistent with controlling Supreme Court authority. In *People v. Chun* (2009) 45 Cal.4th 1172 (*Chun*), our Supreme Court reconsidered the constitutionality of the merger doctrine, and reaffirmed that if the underlying felony is assaultive in nature then it merges with the homicide and cannot be the basis of a felony murder instruction. (*Id.* at p. 1200; see *People v. Ireland* (1969) 70 Cal.2d 522, 539 [a second degree felony-murder instruction is improper if it is based on a felony that is an integral part of the homicide and included within the charged offense].) *Chun* involved a drive-by shooting

perpetrated by the appellant and at least two others in his car. They used three guns to fire at least six shots at a neighboring car that had three occupants, killing one of the passengers. The appellant confessed to being one of the shooters, but claimed he only intended to scare the other passengers. Among other charges, the trial court instructed the jury on second degree felony murder with shooting at an occupied motor vehicle as the underlying felony. (*Chun*, at pp. 1178-1179.) Critically, although the Supreme Court held the trial court erred by instructing the jury on second degree felony murder, given that the underlying felony was assaultive in nature, it concluded the error was harmless because "[n]o juror could have found that defendant participated in this shooting, either as a shooter or as an *aider and abettor*, without also finding that defendant committed an act that is *dangerous to life* and did so *knowing of the danger* and with conscious disregard for life—which is a valid theory of malice." (*Id.* at p. 1205, italics added.) Thus, our Supreme Court recognized in *Chun* that the appellant was culpable for murder, either as a direct perpetrator or as an aider and abettor under the natural and probable consequences doctrine, notwithstanding the felony murder rule's merger doctrine.

As *Chun* makes clear, defendant's convictions do not implicate the merger doctrine, because the natural and probable consequences doctrine operates independently of the second degree felony murder rule. Unlike the felony murder rule, the natural and probable consequences doctrine is a theory of culpability that applies when the assault has *the foreseeable result of death*. Under the doctrine, criminal culpability stems from the intention to further another's acts that are dangerous to life—not the felony murder rule.

Defendant's final contention likewise fails to present an arguable basis for relief. Although Senate Bill No. 1437 (2017-2018 Reg. Sess.) was approved by the Governor on September 30, 2018, the legislation will not be effective until January 1, 2019. (See Sen. Bill No. 1437 (2017-2018 Reg. Sess.) § 4.) The legislation adds a new section to the Penal Code setting forth a procedure for persons convicted of felony murder or murder under the natural and probable consequences doctrine to file a petition with the superior court to have the murder conviction vacated and to be resentenced under certain conditions. (*Ibid.*) The new section also establishes a procedure for the court to review the petition and determine whether the petitioner is eligible for relief. (*Ibid.*) To the extent defendant maintains he is eligible for relief, he must first petition the superior court under the procedures set forth in the legislation once it becomes effective.

We have examined the entire record and the issues presented in defendant's supplemental opening brief. Defendant has not demonstrated, and cannot demonstrate from the record, that the judgment or sentence should be reversed. We are satisfied that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109-110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment and sentence are affirmed.

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EGERTON, J.

We concur:

LAVIN, Acting P. J.

DHANIDINA, J.