

Case Summary:

The defendant in this case is appealing his death penalty conviction and sentence. Unlike most appeals, death penalty appeals go directly to the Supreme Court, bypassing the Court of Appeal.

Defendant Ronald Mendoza was on parole from a California Youth Authority institution when he shot an on-duty police officer in the face and killed him. The evidence included the testimony of defendant's girlfriend, who witnessed the shooting, a pager found at the crime scene, testimonial and physical evidence linking defendant to the purchase of the murder weapon and ammunition, and court-approved tape-recorded telephone conversations between defendant and his mother. The jury found defendant guilty of first degree murder and also found true the three "special circumstance" allegations that defendant intentionally killed a police officer, that he committed murder for the purpose of avoiding a lawful arrest, and that he intentionally killed the victim by means of lying in wait. (Special circumstance allegations, if found true by a jury, are what qualifies a murder defendant for the death penalty.) The trial court "dismissed" the lying-in-wait special circumstance, but nonetheless entered a death judgment consistent with the jury's penalty verdict.

Based on the briefs, defense counsel is expected to argue that the first degree murder conviction and death judgment should be reversed because there was insufficient evidence that the murder was deliberate and premeditated, or that it was committed by means of lying in wait.

A verdict of deliberate and premeditated first degree murder requires more than a showing of intent to kill. "Deliberation" refers to careful weighing of considerations in forming a course of action, and "premeditation" means "thought over in advance." The question here is whether there is substantial evidence in the record showing that defendant acted with deliberation and premeditation when he shot and killed the police officer, or whether the killing resulted from an unconsidered or rash impulse.

Alternatively, lying-in-wait murder (and a lying-in-wait "special circumstance") will both be upheld on a showing of an intentional murder, committed under circumstances that include (1) concealment of purpose, (2) a substantial period of watching and waiting for an opportune time to act, and (3) immediately thereafter, a surprise attack on an unsuspecting victim from a position of advantage. Defendant contends, among other things, that the evidence was deficient because it did not show a substantial period of watching and waiting for an opportune time to act. Specifically, he

argues that his encounter with the officer was very brief, and that only seconds passed before the shooting occurred.

Another issue presented in this case concerns whether the trial court had authority under the Penal Code to dismiss or “strike” the jury’s finding on the lying-in-wait special circumstance, and whether the People are entitled to seek review of that issue.

* **Note:** Each order assigning a justice of the Court of Appeal to serve as a justice pro tempore at the September 2011 oral argument calendar specifies that the pro tempore assignment is provisional, and will be vacated if, prior to the date set for oral argument, the Commission on Judicial Appointments has confirmed the proposed appointment of a new Associate Justice of the California Supreme Court.