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SUPREME COURT
STATE OF COLORADO

2 East 14th Avenue
Denver, CO 80203

On Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 11CA2034

CHERYL ARMSTRONG,

Petitioner,

v.

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

▲ **COURT USE ONLY** ▲

Case No. 13SC945

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ANSWER BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It does not exceed 30 pages.

The brief complies with C.A.R. 28(k).

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

/s/ Patricia R. Van Horn

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Whether a conviction for second degree murder under a complicity theory is a non-homicide offense within the meaning of *Graham v. Florida*, 560 U.S. 48 (2010).

STATEMENT OF THE CASE AND OF THE FACTS

This case involves the murders of TM and RP, who were killed in April 1995, when Cheryl Armstrong was sixteen years old. Armstrong was angry because she learned that TM, whom she had dated on and off, was dating RP and that RP was expecting his child. (R. Tr. 10/12/95, pp. 627-30, pp. 662-66; CD pdf 1846-49, 1881-85). Armstrong enlisted her friends, Greg Romero and Donnell Carter, to kill TM, driving them (and others) to TM's house. (R. Tr. 10/11/95, pp. 423-24, CD pdf 1642-43; Tr. 10/12/95, p. 751-52, CD pdf 1970-71). When they arrived, Armstrong spotted RP's car parked in the driveway and said,

"You better kill her and her baby, too." (R. Tr. 10/12/95, pp. 757-58, CD pdf 1976-77). When the shooters returned to the car, Armstrong said, "You sure they're dead. They better be dead." (*id.*, p. 760, pdf 1979). After receiving details of the shootings, she expressed her gratitude to the shooters. (*id.*).

Armstrong testified at trial. She acknowledged she drove her friends to TM's house and asked them to "go get" TM because she was "sick of all the things [he] put [her] through," but said she did not expect them to kill the couple, although she knew they were armed with handguns. (R. Tr. 10/13/95, pp. 865-67, 881, 931; CD pdf 2084-86, 2100, 2150).

The jury was instructed on complicitor liability. (PR. CF. v. 1, p. 115). The jury acquitted Armstrong of first degree murder and burglary and convicted her of two counts of second degree murder. (R. Tr. 10/17/95, pp. 1110-11, CD pdf 2329-30).

At sentencing, the defense urged the court to impose the minimum sentence because Armstrong was young and could become a productive member of society. (R. Tr. 11/21/95, pp. 1116-38, CD pdf 2335-57). The

trial court noted the presumptive range for second degree murder was sixteen to forty-eight years and found the maximum sentence was warranted because "it's clear to me from the evidence that Cheryl Armstrong caused this to happen, and when it happened, she exulted in it." (*id*., p. 1143, pdf 2362). The court sentenced her to consecutive forty-eight-year sentences in the Department of Corrections. (*id*.). Armstrong's convictions were affirmed on appeal. *People v. Armstrong*, (Colo. App. No. 96CA044, Nov. 14, 1996) (unpublished).

Armstrong filed a Crim. P. 35(b) motion for sentence reconsideration in which she asked the court to reconsider her sentence because of her youth, her potential for rehabilitation, her lack of prior criminal history, her remorse, and her relative culpability. (PR. CF. vol. 1, pp. 206-08). The trial court denied the motion, finding that her sentence remained appropriate. (*id*., p. 209).

In 1998, Armstrong filed a motion requesting postconviction counsel to assist her in pursuing ineffective assistance of counsel claims. (PR. CF. vol. 1, p. 217). Counsel was appointed to represent her, but he withdrew from the case without filing a postconviction

motion. (*id*., p. 349, Minute Order 8/31/00; *see also id*. pp. 278-79 (letter from postconviction counsel attached to Armstrong's 2011 Crim. P. 35(c) motion, explaining that he "can find no error that would be grounds for ineffective assistance of counsel")).

In 2011, Armstrong filed, through counsel, a Crim. P. 35(c) motion. (PR. CF. vol. 1, pp. 221-54). Among other claims, Armstrong asserted that her two consecutive forty-eight-year sentences constituted a "virtual life sentence" that violated *Graham v. Florida*, 560 U.S. 48 (2010). (*id*., pp. 239-53). The postconviction court found Armstrong had alleged facts that if true would constitute justifiable excuse or excusable neglect for her untimely Crim. P. 35(c) motion and considered her claims on their merits. (*id*., p. 288). The trial court ruled Armstrong's sentence was not of the same nature as those prohibited by *Graham* but even if it were she was not entitled to relief because *Graham* did not apply retroactively. (*id*., pp. 290-91).

The court of appeals affirmed Armstrong's sentence. After noting that Armstrong "will be eligible for parole at about age sixty," the court of appeals followed *People v. Lehmkuhl*, 2013 COA 98, which held that a

sentence did not violate *Graham* where the defendant would be eligible for parole at age sixty-seven, and held that Armstrong's total ninety-six-year sentence "is not a de facto life sentence and that it is not cruel and unusual under *Graham*." *People v. Armstrong*, (Colo. App. No. 11CA2034, Oct. 17, 2013) (unpublished).

SUMMARY OF THE ARGUMENT

Although the court of appeals correctly concluded that Armstrong's aggregate ninety-six-year sentence is constitutional, it erred in applying *Graham* to Armstrong's sentence. *Graham* held that the Eighth Amendment prohibits a state from sentencing a juvenile offender to life without parole for a nonhomicide offense. Armstrong was convicted of two homicide offenses, and she was not sentenced to life without parole.

Nothing in *Graham* (or *Miller*) indicates that the Supreme Court views, or would view, second degree murder under a complicity theory as a nonhomicide offense. Although neither case provides a definition for a "homicide offense," they both recognize that a juvenile offender

commits a homicide offense when the offender intends to kill or foresees that life will be taken. A person convicted of murder under a complicity theory commits acts facilitating or promoting the commission or planning of a murder and intends or foresees the victim's life will be taken.

ARGUMENT

I. *Graham* and *Miller* do not apply to Armstrong's sentences.

Armstrong argues her aggregate ninety-six-year sentence is unconstitutional under *Graham* and *Miller*, even though she was not sentenced to life without parole and her crimes resulted in the deaths of two victims, because she received a "de facto life sentence" for two nonhomicide offenses.

Armstrong's sentence does not violate the principles of *Graham* and *Miller* because (1) Armstrong did not receive a life sentence; and (2) she was convicted of homicide offenses.

A. Standard of Review

The People disagree in part with Armstrong's statement of preservation. In the trial court, Armstrong argued her sentence violated *Graham* because (1) homicide under a complicity theory is not a homicide offense, and (2) she received a de facto life sentence. (PR. CF. vol. 1, pp. 239-253). Thus, those arguments are preserved. She did not argue, as she does here, that second degree murder is not a homicide offense within the meaning of *Graham*. As such, this Court should not consider that argument. *See People v. Goldman*, 923 P.2d 374, 375 (Colo. App. 1996) ("Allegations not raised in a Crim. P. 35(c) motion or during the hearing on that motion and thus not ruled on by the trial court are not properly before this court for review.").

The People agree that "review of constitutional challenges to sentencing determinations is de novo," *Lopez v. People*, 113 P.3d 713, 720 (Colo. 2005), including a sentence's constitutional proportionality. *Close v. People*, 48 P.3d 528, 541 (Colo. 2002). In addition, whether an offense is a homicide offense within the meaning of *Graham* is a

question of law that is reviewed de novo. *See People v. Davis*, 2015 CO 36, ¶ 14.

An order denying postconviction relief may be affirmed on any grounds supported by the record. *People v. Eppens*, 979 P.2d 12, 22 (Colo. 1999). The defendant carries the burden of establishing his or her claim by a preponderance of the evidence. *People v. Naranjo*, 840 P.2d 319, 325 (Colo. 1992).

B. Analysis

1. *Graham* and *Miller* do not apply to aggregate term-of-years sentences.

The Eighth Amendment "guarantees individuals the right not to be subjected to excessive sanctions." *Miller v. Alabama*, 132 S.Ct 2455, 2463 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005)). Rather, "punishment for [the] crime should be graduated and proportioned" to both the offender and the offense. *Id*. (internal quotation omitted); *accord People v. Tate*, 2015 CO 42, ¶¶ 25, 28-31.

In *Roper*, the Supreme Court set forth a categorical rule that the Eighth Amendment forbids the imposition of the death penalty on

offenders who commit murder before the age of eighteen. 543 U.S. at 578. The Court reasoned, "[w]hen a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity." *Id.* at 573-74. *Roper*, prohibiting capital punishment sentences for juveniles, restricted the most severe sentence possible against juveniles.

Graham took *Roper* a step further and scaled back the next most severe sentence for juveniles by prohibiting a life-without-parole sentence for a single, nonhomicide offense. In *Graham*, the juvenile defendant pleaded guilty to one crime—first degree armed burglary with assault or battery—and was sentenced to the maximum penalty of life without parole. 560 U.S. at 53-57.

Graham applied a "categorical" approach to sentencing in which it "first consider[ed] 'objective indicia of society's standards, as expressed in legislative enactments and state practice' to determine whether there is a national consensus against the sentencing practice at issue." *Id.* at 61. Then, the Court exercised its own independent judgment, in light of

"the standards elaborated by controlling precedents and by the Court's own understanding of the Eighth Amendment's text, history, meaning, and purpose." *Id.* (citing *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008)). The Court determined that a juvenile sentence of life without parole for a single, nonhomicide offense violated the Eighth Amendment. In so holding, the Court recognized that juvenile offenders are less culpable and more amenable to rehabilitation than adults. *Id.* at 71-72. But the Court explicitly stated that "while the Eighth Amendment prohibits a State from imposing a life without parole sentence on a juvenile nonhomicide offender, it does not require the State to release that offender during his natural life." *Id.* at 75.

The Supreme Court then decided *Miller*, which held that sentencing schemes mandating life without parole for juvenile offenders are unconstitutional. 132 S.Ct. at 2460, 2469 ("mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments'"); *accord Tate*, ¶¶ 27-35. *Miller* did not, however, categorically ban sentences of life imprisonment for all juvenile

offenders where the sentence included the possibility of parole or where the court considered the offender's individual characteristics. 132 S.Ct. at 2469, 2471, 2474-75.

Divisions of the Colorado Court of Appeals then applied *Graham* to lengthy, aggregate prison sentences imposed on juvenile offenders. *See, e.g.*, *People v. Lehmkuhl*, 2013 COA 98 (holding that aggregate 82-year sentence for two counts of first degree burglary, three counts of menacing, one count of motor vehicle theft, and one count of sexual assault was constitutional under *Graham* because defendant's parole eligibility date was not past his life expectancy); *People v. Lucero*, 2013 COA 53 (holding that aggregate 84-year sentence imposed on conspiracy to commit first degree murder, attempted first degree murder, and two counts of second degree assault was constitutional under *Graham* because defendant's parole eligibility date was well within his natural lifetime); *People v. Rainer*, 2013 COA 51 (holding that aggregate 112-year sentence for two counts of attempted first degree murder, two counts of first degree assault, one count of first degree burglary, and one count of aggravated robbery was

unconstitutional under *Graham* because defendant will not have meaningful opportunity for parole within his natural lifetime). In this case, the division also applied *Graham* and held that Armstrong's aggregate ninety-six-year sentence for two murders "is not a de facto life sentence and that it is not cruel and unusual under *Graham*" because Armstrong will be eligible for parole when she is about age sixty. *Armstrong*, slip op. at 22-23.

Although the division in this case properly concluded that Armstrong's sentence is constitutional, it erred in applying *Graham*'s analysis to her sentence because *Graham*'s holding was limited to "those juvenile offenders sentenced to life without parole solely for a nonhomicide offense." 560 U.S. at 63.

Graham examined only the imposition of life without parole on juveniles. It did not address sentences where a juvenile is sentenced to a lengthy term-of-years and is eligible for parole. In determining that there is a "national consensus against" imposing a sentence of life without parole for those juvenile offenders convicted of a nonhomicide offense, *Graham* relied on the Annino study, which examined actual life

sentences and found that only 123 juveniles were serving sentences of life without parole for nonhomicide offense in only eleven states, and Colorado was not one of those states. *Id*. at 62-64 (citing P. Annino, D. Rasmussen, & D. Rice, Juvenile Life without Parole for Non-Homicide Offenses: Florida Compared to Nation 2 (Sept. 14, 2009)). The Court had no evidence before it regarding the number of juveniles serving lengthy term-of-years sentences. *See Bunch v. Smith*, 685 F.3d 546, 552-53 (6th Cir. 2012) (*Graham* "did not analyze sentencing laws or actual sentencing practices regarding consecutive, fixed-term sentences for juvenile nonhomicide offenders. This demonstrates that the Court did not even consider the constitutionality of such sentences, let alone clearly establish that they can violate the Eighth Amendment's prohibition on cruel and unusual punishments"), *cert. denied*, *Bunch v. Bobby*, 2013 U.S. LEXIS 3202 (Apr. 22, 2013); *see also Loggins v. Thomas*, 654 F.3d 1204, 1223 (11th Cir. 2011) (*Graham* is "limited to life without parole sentences"); *United States v. Scott*, 610 F.3d 1009, 1018 (8th Cir. 2010), *cert. denied*, 131 S. Ct. 964 (2011) ("*Graham* was

limited to defendants *sentenced to life* in prison *without* parole") (emphasis added).

Because *Graham* limited its analysis and holding to juveniles who were sentenced to life without parole for nonhomicide offenses, the majority of states and federal circuits to address the issue have concluded that *Graham* does not apply to term-of-years sentences. *See Bunch*, 685 F.3d at 552-53; *Goins v. Smith*, 556 Fed. Appx. 434, 439-40 (6th Cir. 2014) (same); *Adams v. State*; 707 S.E.2d 359, 365 (Ga. 2011) ("Clearly, 'nothing in the [*Graham*] opinion affects the imposition of a sentence to a term of years without the possibility of parole.'" (quoting *Graham*, 560 U.S. at 124 (Alito, J., dissenting)); *Walle v. State*, 99 So.3d 967, 971 (Fla. App. 2d Dist. 2012) (declining to extend the holding in *Graham* to a juvenile who received sentences totaling 65 years for multiple, nonhomicide offenses; "[t]he Supreme Court limited the scope and breadth of its decision in *Graham* by stating that its decision 'concern[ed] only those juvenile offenders sentenced to life without parole solely for a nonhomicide offense'" (quoting *Graham*, 560 U.S. at 63)); *Diamond v. State*, 2012 Tex. App. LEXIS 3253, at *11-14 (Tex. Ct.

App. Apr. 25, 2012) (upholding juvenile's consecutive 99-year and two-year sentences for nonhomicide crimes in two separate cases); *State v. Kasic*, 228 Ariz. 228, 233 (Ariz. Ct. App. 2011) (declining to extend *Graham* to "consecutive term-of-year sentences based on multiple counts and multiple victims"); *People v. Gay*, 960 N.E.2d 1272, 1278 (Ill. Ct. App. 2011) (*Graham* does not apply to consecutive sentences for nonhomicide crimes totaling 97 years); *see also Loggins*, 654 F.3d at 1223; *Scott*, 610 F.3d at 1018.

Therefore—putting aside for now the question of whether Armstrong committed homicide offenses—*Graham* does not apply to her sentence because she was not sentenced to life without parole, but to two consecutive forty-eight-year terms.

But even if *Graham* could be read to encompass term-of-years sentences for multiple offenses, the court of appeals properly determined Armstrong's sentence is constitutional because Armstrong has a meaningful opportunity for parole. *See Graham*, 560 U.S. at 75. ("A State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime. What the State must do,

however, is give defendants … some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."). The court of appeals, relying on information supplied by Armstrong, found that Armstrong did not receive a de facto life sentence because she will be eligible for parole when she is about sixty years old.[1] *Armstrong*, 11CA2035, slip op. at 22-23. Further, her parole eligibility date will likely be sooner based on good behavior and earned time credit. *See* § 17-22.5-403, C.R.S. (2014); § 17-22.5-405, C.R.S. (2014). Armstrong's current parole eligibility date is December 28, 2036, when she will be about fifty-seven years old. *See* http://www.doc.state.co.us/oss/, last visited July 30, 2015.

Miller also does not affect the constitutional validity of Armstrong's sentence. As this Court recognized in *Tate*, ¶50, the only sentence *Miller* prohibits is an automatic life-without parole sentence. 132 S.Ct. at 2469. Armstrong did not receive such a sentence.

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[1] In her opening brief in the court of appeals, Armstrong asserted that she will be eligible for parole in 2038, when she will be age sixty. (COA Op. Brf. p. 21). There was no evidence before the court of appeals (or the trial court) regarding her life expectancy.

In addition, although Armstrong contends she is now entitled to a hearing in which the court considers that she was young when she committed the offenses and the differences between juveniles and adults as discussed in *Miller* and *Graham*, such an individualized sentencing procedure is not required any time a juvenile is sentenced. Rather, it is required only when sentencing a juvenile to life-without-parole, which did not happen here. *Miller*, 132 S.Ct. at 2474-75; *accord Tate*, ¶¶25, 28-31.

Moreover, Armstrong received an individualized sentencing determination, and the trial court had the discretion to impose a lower sentence. At the sentencing hearing, defense counsel, Armstrong, and members of her family stressed Armstrong's youth and her ability to become a productive citizen someday, as well as the difficulties she had faced in the years leading up to the murders. (R. Tr. 11/21/95, pp. 1116-38, CD pdf 2335-57). Although the trial court was required to impose the sentences on Armstrong's two convictions consecutively and sentence her to at least the midpoint in the presumptive range, it had the discretion to impose sentences of between sixteen and forty-eight

years on each count. § 18-3-103(3)(4), C.R.S. (1995) (second degree murder is a class two felony and is subject to crime of violence sentencing); § 18-1-105(1)(a)(V)(A), C.R.S. (1995) (the presumptive range for a class two felony is eight to twenty-four years imprisonment); § 16-11-309(1)(a), C.R.S. (1995) ("[a]ny person convicted of a crime of violence … shall be sentenced to … a term of incarceration of at least the midpoint in the presumptive range, but not more than twice the maximum term," and "[a] person convicted of two or more separate crimes of violence arising out of the same incident shall be sentenced for such crimes so that sentences are served consecutively"). After considering the arguments of counsel and the statements by Armstrong and her family, the court chose to impose the maximum sentence on each count based on the evidence presented at trial showing that Armstrong "caused [the two murders] to happen." (*id.*, p. 1141-43; pdf 2361-62).

For all these reasons, Armstrong's sentence does not violate either *Miller* or *Graham*.

C. Second degree murder under a complicity theory is a homicide offense within the meaning of *Graham*.

Armstrong argues that *Graham*'s prohibition of life without parole sentences for a single, nonhomicide offense applies when a juvenile is convicted of two counts of second degree homicide under a complicity theory and sentenced to a lengthy, aggregate sentence.

Graham held that the Eighth Amendment prohibits a juvenile from receiving a sentence of life without parole for a nonhomicide offense. *Graham* did not provide a definition for a "homicide offense," but in reaching its holding the Court relied on its case law that "has recognized that defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers." 560 U.S. at 69. The Court drew a distinction between homicide crimes and other serious offenses, such as "robbery or rape," and recognized "[t]here is a line between homicide and other serious violent offenses against the individual," as "life is over for the victim of the murderer, but for the victim of even a

very serious nonhomicide crime, life … is not over and normally is not beyond repair." *Id.*

There is nothing in the Court's rationale that indicates that it viewed, or would view, homicide under a complicity theory as a nonhomicide offense.

Complicity "is . . . a theory by which a defendant becomes accountable for a criminal offense committed by another." *People v. Thompson*, 655 P.2d 416, 418 (Colo. 1982). "A person is legally accountable as principal for the behavior of another constituting a criminal offense if, with the intent to promote or facilitate the commission of the offense, he or she aids, abets, advises, or encourages the other person in planning or committing the offense." § 18-1-603, C.R.S. (2014).

Contrary to Armstrong's argument, complicity liability is not similar to the felony murder rule.

Under the felony murder rule, there is no requirement that the defendant intend the death of the victim. *Auman v. People*, 109 P.3d 647, 655 (Colo. 2005). Instead, "[l]iability arises from the defendant's

participation in, and intent to commit, one of the specifically named, or predicate, felonies" and "the intent to kill is imputed from the participant's intent to commit the predicate felony." *Id*.

In contrast, to be convicted of murder under a complicity theory, the principal must have committed a murder and the complicitor must "with the intent to promote or facilitate the commission" of the murder, aid, abet, advise, or encourage the other person in its planning or commission. *See* § 18-1-603, C.R.S. (1995); *People v. Wheeler*, 772 P.2d 101, 103 (Colo. 1989). As a complicitor, Armstrong acted with the goal of committing the murders, and her actions directly contributed to the victims' deaths.

Applying *Graham*'s rationale for treating homicide offenses differently from nonhomicide offenses, murder under a complicity theory is a homicide offense because complicitors at a minimum, "foresee that life will be taken" and, of course, "life is over" for their victims. *See Graham*, 560 U.S. at 69; *see also Jensen v. Zavaras*, 2010 U.S. Dist. LEXIS 83916, *3 (D. Colo. July 16, 2010) ("There is nothing in the majority opinions [in *Graham*] that suggests that the justices

agreeing to it would make the distinction between the actions ultimately causing death and the accomplice's contribution to the crime"); *Cox v. State*, 2011 Ark. 96 (Ark. 2011) (juvenile sentenced to life imprisonment as an accomplice to capital murder consistent with *Graham*).

There is also nothing in *Miller* suggesting that the Supreme Court views, or would view, second degree murder under a complicity theory as a nonhomicide offense.

In *Miller*, defendant Jackson was convicted of felony murder and the Court treated his conviction as a homicide offense even though Jackson did not fire the gun or kill the victim. 132 S.Ct. at 2461-62. Justices Breyer and Sotomayor, in concurrence, wrote that Jackson could not be sentenced to life without parole absent a finding that he "killed or intended to kill," but they recognized that, although he did not kill anyone, he could be sentenced to life without parole if there were facts showing he intended that the victim be killed. *Miller*, 132 S.Ct. at 2475-77.

Unlike Jackson, Armstrong was not sentenced to life without parole, and there *is* evidence to support a finding that she intended that the victims be killed. Armstrong came up with the plan to kill TM. She drove her two armed friends (and others) to his house. (R. Tr. 10/11/95, pp. 423-24, CD pdf 1642-43; Tr. 10/12/95, p. 751-52, CD pdf 1970-71). When they arrived, Armstrong spotted RP's car parked in the driveway and said, "You better kill her and her baby, too." (R. Tr. 10/12/95, pp. 757-58, CD pdf 1976-77). When the shooters returned to the car, Armstrong said, "You sure they're dead. They better be dead." (*id*., p. 760, pdf 1979). And, after receiving the details of the shootings, she expressed her gratitude to the shooters. (*id*.). It was this evidence that led the trial court to find that "Cheryl Armstrong caused this to happen" and to impose the maximum available sentence. (R. Tr. 11/21/95, pp. 1141-43; pdf 2361-62).

Finally, Armstrong argues that second degree homicide is not a homicide offense under *Graham* because it does not require a specific intent to kill. This Court should not address the issue because Armstrong did not raise it in her postconviction motion. *See Goldman*,

923 P.2d at 375. Nevertheless, *Graham* does not discuss different forms of homicides, but instead draws a distinction between "homicide crimes" and other serious crimes—specifically, "robbery or rape." *Id*. at 842. It also recognizes that homicide offenses include those offenses where the victim dies and the offender merely "foresee[s] that life will be taken." *Id*. Thus, it encompasses homicides, like second degree murder, where an offender "knowingly causes the death of a person." § 18-3-103(1), C.R.S. (1995).

Accordingly, Armstrong committed homicide offenses within the meaning of *Graham*.

CONCLUSION

Based on the foregoing reasons and authorities, the trial court's order should be affirmed.

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CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **ANSWER BRIEF** upon **NICOLE MOONEY**, via Integrated Colorado Courts E-filing System (ICCES) on July 31, 2015.

/s/ Tiffiny Kallina