

In the Supreme Court of the State of California SEP 19 2014

Frank A. McGuire Clerk

Deputy

**THE PEOPLE OF THE STATE OF
CALIFORNIA,**

Plaintiff and Respondent,

v.

VICTORIA COOK,

Defendant and Appellant.

Case No. S215927

Appellate District Division Two, Case No. E054307
Riverside County Superior Court, Case No. SWF10000834
The Honorable Dennis A. McConaghy, Judge

REPLY BRIEF ON THE MERITS

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INTRODUCTION

Pursuant to this Court's July 23, 2014, Order, in its reply brief, respondent addresses the argument raised by appellant in her answering brief, as well as the new argument raised in her supplemental brief. As to this Court's question, whether "any great bodily injury enhancement was proper," the answer is yes. Penal Code¹ section 12022.7, subdivision (a), authorizes an enhancement for injuries suffered by any person other than an accomplice. In addition, as respondent has demonstrated in its opening brief on the merits, section 12022.7 allows imposition of a great bodily injury enhancement on a manslaughter conviction for injuries suffered by a separate manslaughter victim also killed as a result of the defendant's conduct. The plain language of the statute supports this interpretation. Even if the language of the statute could be considered ambiguous, it must be construed to allow enhancements for injuries caused to multiple victims, even when a defendant is convicted of manslaughter, to effectuate the purpose of the statute and to avoid an absurd result.

In her supplemental brief, appellant contends that pursuant to subdivision (g), no great bodily injury enhancement can attach to a murder or manslaughter conviction, regardless of the status of the victim who suffered the injuries. (Supp. ABM 1-5.) In her answer brief on the merits, appellant argues that interpreting section 12022.7 to allow imposition of a great bodily injury enhancement for injuries suffered by a separate deceased victim is contrary to the plain language of subdivision (g); that it renders subdivision (g) surplusage in any case in which there are multiple

¹ Further statutory references are to the Penal Code unless otherwise indicated.

manslaughter victims; and that the rule of lenity requires this Court to interpret the statute in her favor.²

Appellant's interpretation is inconsistent with the plain language of section 12022.7. Further, because section 12022.7, subdivision (g), applies to prohibit application of a great bodily injury enhancement to a murder or manslaughter charge for the injuries suffered by the victim of that count in every case in which a defendant's conduct results in the death of another person, respondent's interpretation does not render that section surplusage. Finally, because the legislative intent of section 12022.7 can be determined by looking at the plain language and the purpose of the statute, it is unnecessary for this Court to resort to the rule of lenity. Accordingly, appellant's arguments fail and the Court of Appeal's decision should be reversed.

ARGUMENT

I. THE COURT PROPERLY IMPOSED A GREAT BODILY INJURY ENHANCEMENT FOR THE INJURIES SUFFERED BY SEPARATE VICTIMS

This Court directed the parties to answer the question of whether any great bodily injury enhancement was proper in this case. (July 23, 2014 Order.) It was. The plain language of section 12022.7 authorizes imposition of a great bodily injury enhancement for the injuries suffered by separate victims as a result of the defendant's conduct. This interpretation of section 12022.7 is consistent with principles of statutory interpretation and the purpose of section 12022.7, which is to punish more severely those

² In her Answer Brief, appellant asserts that respondent has incorrectly set forth the question presented for review. (ABM 1.) However, in accordance with California Rules of Court, rule 8.516, subdivision (b)(2)(B), in its Opening Brief, respondent sets forth the question presented as it was presented in the Petition for Review.

crimes that result in great bodily injury on any person. Moreover, it is consistent with the mandate of section 654, that a defendant be punished under the provision that provides for the longest term of punishment.

Section 12022.7, subdivision (a), provides for a three-year enhancement for “[a]ny person who personally inflicts great bodily injury on any person other than an accomplice in the commission of a felony or attempted felony . . .” Subdivision (g) sets forth a restriction on the enhancement, stating that “this section shall not apply to murder or manslaughter or a violation of section 451 or 452.³] Subdivisions (a), (b), (c), and (d) shall not apply if infliction of great bodily injury is an element of the offense.”

The plain language of subdivision (g) only limits the imposition of the enhancement for the injuries suffered by the victim of the underlying murder or manslaughter count. This is because this limitation seeks to prohibit a defendant from being punished twice for infliction of the same injury. While a murder or manslaughter necessarily involves infliction of great bodily injury, infliction of great bodily injury is not an element of these offenses. Without the limitation in subdivision (g), a defendant could be punished twice for infliction of the same injuries. “The statutory exemption for murder and manslaughter is intended to bar imposition of an enhancement for the injuries inflicted on the homicide victim, who obviously has suffered great bodily injury.” (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1168.) Subdivision (g)’s language prohibiting the enhancement when “great bodily injury is an element of the offense” further supports this interpretation.

³ Sections 451 and 452 are arson statutes. Both statutes have specific provisions setting forth additional punishment when the arson results in great bodily injury. (§ 451, subd. (a) [enhancement of five, seven, or nine years]; § 452, subd. (a) [enhancement of two, four, or six years.]

Appellant contends that by its plain language, subdivision (g) prohibits attachment of a great bodily injury enhancement to the crime of manslaughter regardless of how many people the defendant inflicted injury upon in the course of the offense. (Supp. ABM 1.) Appellant is viewing subdivision (g) in isolation. When examining the words of a statute, the reviewing court looks to ‘the entire substance of the statute . . . in order to determine the scope and purpose of the provision [Citation.]’ (*People v. Mendoza* (2000) 23 Cal.4th 896, 907–908.) The words of the statute must be considered in the context of the statutory framework as a whole. (*Ibid.*) Section 12022.7 is plainly a punitive statute, not a limiting one. Subdivision (a) imposes an enhancement when a defendant inflicts injury on any person. Subdivisions (b) through (e) outline specific instances warranting even more severe punishment for injuries inflicted upon specific classes of victims. In reading the statute as a whole, the language should be read through the lens of imposing punishment. There is no language in the statute to suggest that the narrow limitation in subdivision (g) override the five separate punishment provisions in subdivisions (b) through (e). Nor is there language to indicate that subdivision (g) be applied so broadly as to insulate a defendant from an enhancement when he or she kills or injures multiple victims. Thus, the plain language of subdivision (g) limits imposition of the enhancement for injuries inflicted only on the victim of the underlying count.

Even if the statutory language is ambiguous, respondent’s interpretation of section 12022.7 is consistent with the purpose of the statute -- the long recognized principle that additional punishment is proper when a single act of violence injures or kills multiple victims. (See *People v. Oates* (2004) 32 Cal.4th 1048, 1062; *People v. McFarland* (1989) 47 Cal.3d 798, 803; *People v. Ausbie* (2004) 123 Cal.App.4th 855, 865; see also *In re Tameka C.* (2000) 22 Cal.4th 190, 193–196 [multiple § 12022.5

enhancements are proper when defendant uses a gun against multiple victims on a single occasion].) As appellant acknowledges, “under subdivision (a), the number of great bodily injury enhancements that might attach to a charge depends upon how many people the defendant inflicted injury upon in the course of committing the underlying offence.” (ABM 1.) Yet, under appellant’s interpretation of subdivision (g), a person who injures two or more people during the course of a robbery would be subject to multiple great bodily injury enhancements, while a person who injures two or more people during the course of committing manslaughter would be immune from any great bodily injury enhancements at all.

Appellant’s argument is also inconsistent with a fundamental objective of our criminal justice system, namely “that one’s culpability and punishment should be commensurate with the gravity of both the criminal act undertaken and the resulting injuries.” (*People v. Verlinde*, *supra*, 100 Cal.App.4th 1146, 1168-1169; quoting *People v. Hill* (1994) 23 Cal.App.4th 1566, 1574.) Appellant’s interpretation would give defendants who kill at least one victim, and kill or injure others, “free” enhancements. Nothing in the language or meaning of the statute supports this interpretation.

Moreover, appellant’s interpretation ignores the Legislature’s intent that section 12022.7, subdivision (a) be applied broadly. (*People v. Cross* (2008) 45 Cal.4th 58, 66, fn. 3 [“‘plain reading’ ” of the statute “ ‘indicates the Legislature intended it to be applied broadly[.]’ ”].)

Furthermore, even if the plain language supports appellant’s interpretation, as *Verlinde* recognized, a “fundamental principle of statutory construction is that the language of a statute should not be given a literal meaning if doing so would result in absurd consequences which the Legislature did not intend.” (*Ibid.*, citing *Younger v. Superior Court* (1978) 21 Cal.3d 102, 113.)

Appellant argues that her interpretation does not produce an absurd result, and that *Verlinde* was wrongly decided. (Supp. ABM 2.) Appellant's interpretation indeed results in absurd consequences. In this case, for example, under appellant's interpretation, she would escape punishment entirely for the severe injuries she inflicted on the surviving victim, Robert Valentine, just by virtue of killing Zaria W. This result cannot be what the Legislature intended.

Accordingly, for these reasons, and the reasons set forth below, section 12022.7, subdivision (g) should be interpreted to permit imposition of a great bodily injury enhancement for injuries suffered by additional victims as a result of the defendant's conduct.

II. SECTION 12022.7 ALLOWS IMPOSITION OF A GREAT BODILY INJURY ENHANCEMENT FOR INJURIES SUFFERED BY A SEPARATE MANSLAUGHTER VICTIM ALSO KILLED AS A RESULT OF THE DEFENDANT'S CONDUCT

In its opening brief, respondent argued that the plain language of section 12022.7 authorizes imposition of a great bodily injury enhancement on a manslaughter conviction for the injuries suffered by a separate victim who is also the subject of a manslaughter conviction, but precludes imposition of the enhancement for the injuries suffered by the victim who is the subject of the particular count. (OBM 5-11.) This interpretation of section 12022.7 is consistent with the plain language of the statute, principles of statutory interpretation, the purpose of section 12022.7, and the mandate of section 654.

Even if the statutory language were ambiguous, it must be construed to allow enhancements for injuries caused to multiple victims, including victims who die from their injuries, to effectuate the purpose of the statute, to avoid an absurd result, and to ensure a defendant's punishment is commensurate with his or her culpability.

In her answering brief, appellant contends that respondent's interpretation of the statute is contrary to the language of the statute; that it renders subdivision (g) surplusage; and that the rule of lenity requires this Court to accept appellant's interpretation. (ABM 9-27.)

Appellant relies on *People v. Hale* (2014) 225 Cal.App.4th 268 (*Hale*), to support her argument that the plain language in section 12022.7, subdivision (g), prohibits application of the enhancement for a victim's great bodily injury in any case where a defendant has been convicted for the death of that victim. (ABM 11-13.) Yet, as respondent pointed out in its opening brief, reading the plain language of the statute as *Hale* and the court below did, requires this Court to read additional language into the statute. (OBM 16.) This is because both *Hale* and the court below indicated a manslaughter conviction could be enhanced for the injuries of another deceased victim if the defendant were not charged with that other victim's manslaughter. (Slip Opn. at p. 19; see also *Hale, supra*, at fn. 4 [indicating this possibility but not deciding the issue].) This construction of the statute improperly requires this Court to read additional language into subdivision (g), namely, "this section shall not apply to a murder or manslaughter conviction." (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998, citing *People v. Campbell* (1902) 138 Cal. 11, 15.) In addition, this construction improperly infringes on the broad discretion of prosecutors to choose which charges to file, because it requires a prosecutor to decide at the outset what particular crime can be proved by evidence not yet presented. (*People v. Ryan* (2006) 138 Cal.App.4th 360, 368.)

Appellant further argues that because great bodily injury is inherent in murder and manslaughter, subdivision (g)'s language that the enhancement "shall not apply if infliction of great bodily injury is an element of the offense" removes "any conceivable doubt" that this section precludes an

enhancement for the injuries suffered by a separate manslaughter victim. (ABM 21-22.) However, as set forth in respondent's opening brief and above, personal infliction of great bodily injury is not an element of manslaughter. (See *People v. Wilson* (2013) 219 Cal.App.4th 500, 509; *Verlinde, supra*, 100 Cal.App.4th at p. 1168.) The plain language of subdivision (g), is intended to prevent a defendant's manslaughter sentence from being enhanced by the injuries suffered by the same manslaughter victim. But "when a defendant engages in violent conduct that injures several persons, he may be separately punished for injuring each of those persons, notwithstanding section 654." (*Verlinde, supra*, 100 Cal.App.4th at p. 1168.) Respondent's interpretation is consistent with the language and meaning of the statute.

Appellant further contends that under *Julian's* logic, in every case with multiple homicide counts, each count could be enhanced with the injuries sustained by the separate deceased victims. (ABM 21.) Appellant is correct. And this outcome is entirely consistent with the purpose of the statute, which is to punish more severely those crimes that result in great bodily injury on any person. Moreover, it is consistent with the mandate of section 654, that a defendant be punished under the provision that provides for the longest term of punishment. Further, it promotes a fundamental objective of the criminal justice system -- to ensure a defendant's punishment is commensurate with his or her culpability.

Thus, contrary to appellant's position, *Julian* and *Verlinde's* view that the injuries suffered by multiple victims named in manslaughter counts could be used to enhance a separate manslaughter conviction was not based on the courts' "own view of the defendant's culpability and its own sense that not applying the great bodily injury enhancement in respect of injuries inflicted on persons other than the manslaughter victim would be an "absurd consequence."" (Supp. ABM 3.) It was based on the law, and the

basic goal of the Legislature in enacting section 654 and its multiple victim exception.

But appellant is incorrect that respondent's interpretation renders section 12022.7, subdivision (g), surplusage in any case in which there are multiple manslaughter victims. (ABM 12-13.) Appellant contends that under respondent's interpretation, and the holding in *Julian*, "subdivision (g)'s exclusions serve no purpose except to preclude a great bodily injury enhancement to attach to a substantive count for that same victim." (ABM 15.) However, appellant's own statement -- that section 12022.7, subdivision (g), will apply "to preclude a great bodily injury enhancement to attach to a substantive count for that same victim," belies her argument. Appellant acknowledges that under respondent's interpretation of the statute, subdivision (g) still has meaning. The fact that subdivision (g) does not apply in every instance, and does not apply to bar a manslaughter victim's injuries from serving as an enhancement for a separate charge of manslaughter, does not render the subdivision meaningless surplusage.

Appellant contends that her argument is made stronger by the fact that *Hale* interpreted the plain language of the subdivision (g) broadly, as did the court below -- and that both courts declined to adopt the narrow interpretation set forth in *People v. Julian* (2011) 198 Cal.App.4th 1524 (*Julian*). Appellant contends that no other court has adopted *Julian's* interpretation. (ABM 18-19.) Yet, at least one court has subsequently employed *Julian's* narrow view of subdivision (g), albeit without citation to *Julian*, by relying exclusively on the plain language of the statute.

In *People v. Martinez* (2014) 226 Cal.App.4th 1169 (*Martinez*),⁴ the defendant was convicted of involuntary manslaughter and three counts of

⁴ *Martinez* was decided on June 9, 2014, subsequent to the filing of respondent's opening brief. The defendant in *Martinez* waived his section
(continued...)

furnishing a controlled substance. A great bodily injury enhancement was attached to one of the furnishing counts for the injuries caused to the manslaughter victim. In the trial court, and on appeal, the defendant argued that subdivision (g) precluded a great bodily injury enhancement for a victim's injuries in a case where the defendant was convicted for the death of that same victim – regardless of what count the enhancement was attached to. (*Id.*, at p. 1180.) The trial court rejected the defendant's argument, and the appellate court agreed. It noted that a "plain reading of Penal Code section 12022.7 indicates the Legislature intended it to be applied broadly." (*Id.*, at p. 1181, see *People v. Cross*, *supra*, 45 Cal.4th at p. 66, fn. 3 ["plain reading" of the statute "indicates the Legislature intended it to be applied broadly[.]"]") The court explained that to hold that the enhancement "cannot apply to a homicide victim where a defendant is convicted of murder or manslaughter, reads subdivision (g) of section 12022.7 too broadly." (*Ibid.*) The court further explained that "if we were to accept [defendant's] argument we would have to read subdivision (g) as saying "this section shall not apply to any case where a defendant is charged with murder or manslaughter," and that "insert[ing]' additional language into a statute 'violate[s] the cardinal rule of statutory construction that courts must not add provisions to statutes. [Citations.]" (*Ibid.*, quoting *People v. Guzman* (2005) 35 Cal.4th 577, 587.)

Martinez also rejected appellant's reading of *Verlinde*. As *Martinez* explained, "the *Verlinde* court did not announce a broad sweeping rule that

(...continued)

654 rights as to sentencing on the manslaughter count and section 12022.7 enhancements in exchange for dismissal of a murder charge. He did not waive the argument that imposition of a section 12022.7 enhancement is improper when a defendant has been convicted for that same victim's death. (*Martinez, supra*, 226 Cal.App.4th at p. 1179.)

in any case where a defendant is convicted of murder or manslaughter a GBI enhancement cannot be applied. . .” (*Martinez, supra*, 226 Cal.App.4th at p. 1182; ABM 16.)

Appellant’s argument that the holding in *Julian* is not supported by the cases that follow it, *Verlinde* and *Weaver*, is also without merit. (AOB 17-18.) The same appellate court issued the opinions in *Julian*, *Verlinde*, and *Weaver*. In holding that a deceased victim could be named as the injured victim for an enhancement allegation attached to a manslaughter charge for a different victim, *Julian* expressly noted that its holdings and reasoning in *Verlinde* and *Weaver* required it to reject the defendant’s argument that the fact that the victim died from her injuries prevents those injuries from being used as an enhancement to a manslaughter conviction.

Finally, appellant contends that any ambiguity in the statute should be resolved in her favor pursuant to the rule of lenity and that the sentencing disparity that results from her proposed construction is not absurd. (ABM 23-27.) “The rule [of lenity] applies only if the court can do no more than guess what the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule.” (*People v. Avery* (2002) 27 Cal.4th 49, 58, citing 1 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Introduction to Crimes, § 24, p. 53.) This rule “is inapplicable unless two reasonable interpretations of the same provision stand in relative equipoise, i.e., that resolution of the statute’s ambiguities in a convincing manner is impracticable.” (*People v. Avery, supra*, 27 Cal.4th at p. 58, citing *People v. Jones* (1988) 46 Cal.3d 585, 599.) The rule of lenity is “a tie-breaking principle” that has no application where “a court can fairly discern a contrary legislative intent.” (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1102, fn. 30, internal citations omitted.) For the reasons explained in respondent’s opening brief and here, whether subdivision (g) prohibits a great bodily injury enhancement to a

manslaughter charge for injuries suffered by a separate manslaughter victim does not present an interpretive problem so close that this Court must resort to the rule.

Appellant also disagrees that her interpretation leads to absurd results. She characterizes the sentencing disparity resulting from a scenario where a defendant kills multiple victims, as opposed to killing one victim and injuring others as “incremental.” (ABM 26.) However, as illustrated in respondent’s opening brief, a defendant who kills multiple victims is eligible for a maximum sentence of six years, while a defendant who kills one victim and injures others is eligible for a sentence of 11 years. In addition, in the latter scenario, the conviction would qualify as a serious or violent felony, making it a “strike” offense, impacting the sentence for any future crimes. (OBM 12-13.) This is hardly an incremental difference. Even the court in *Hale*, upon which appellant heavily relies, characterized this disparity as “glaring and unjust.” (*Hale, supra*, 225 Cal.App.4th at p. 276.) This glaring and unjust outcome cannot be disposed of with the rule of lenity. It requires this Court to interpret the statute to avoid such an absurd result.

CONCLUSION

For these reasons, and the reasons explained in respondent's opening brief, respondent respectfully requests the judgment of the Court of Appeal be reversed.

Dated: September 18, 2014 Respectfully submitted,

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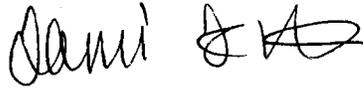
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CERTIFICATE OF COMPLIANCE

I certify that the attached **REPLY BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 3,386 words.

Dated: September 18, 2014

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink, appearing to read "Tami" followed by a stylized monogram or initials.

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DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Cook**

No.: **S215927**

I declare: I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 18, 2014, I served the attached **REPLY BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

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and, furthermore I declare, in compliance with California Rules of Court, rules 2.25(i)(1)(A)-(D) and 8.71 (f)(1)(A)-(D), I electronically served a copy of the above document from Office of the Attorney General's electronic service address ADIEService@doj.ca.gov on September 18, 2014, to Appellate Defenders, Inc.'s electronic service address eservice-criminal@adi-sandiego.com by 5:00 p.m. on the close of business day.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 18, 2014, at San Diego, California.

O. de la Cruz
Declarant


Signature