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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MONICA HERNANDEZ BENAVIDEZ, Defendant and Appellant.	D074582 (Super. Ct. No. INF1401734)

APPEAL from a judgment of the Superior Court of Riverside County, W. Charles Morgan, Judge. Affirmed.

Randi Covin, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Arlene A. Sevidal and Susan Elizabeth Miller, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Monica Hernandez Benavidez of murder (Pen. Code,[1] §187, subd. (a); count 1); gross vehicular manslaughter while intoxicated (§ 191.5, subd. (a); count 2); driving under the influence of alcohol causing bodily injury (Veh. Code, § 23153, subd. (a); count 3); and driving while having 0.08 percent or more, by weight, of alcohol in her blood causing bodily injury (Veh. Code, § 23153, subd. (b); count 4). As to count 2, the jury found true that Benavidez had a prior conviction for driving under the influence within the meaning of section 191.5, subdivision (d). The jury also found, as to counts 3 and 4, Benavidez intentionally inflicted great bodily injury resulting in permanent paralysis within the meaning of section 12022.7, subdivision (b) and personally inflicted great bodily injury within the meaning of section 1192.7, subdivision (c)(8). In addition, Benavidez pled guilty to driving on a suspended driver's license. (Veh. Code, § 14601.2, subd. (a); count 5.)

The court sentenced Benavidez to prison for 15 years to life plus an additional 10 years.

Benavidez appeals, contending (1) the court erred in denying her pretrial motion to suppress the warrantless blood draw evidence and (2) her sentence is cruel and unusual punishment under the California and United States Constitutions. We conclude Benavidez's arguments are without merit and affirm.

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1 Statutory references are to the Penal Code unless otherwise specified.

FACTUAL BACKGROUND

On June 5, 2014, at about 5:00 a.m., Benavidez was driving northbound on Palm Drive in Desert Hot Springs. A bus equipped with an exterior video recorder also was traveling northbound on Palm Drive at the time. Benavidez's car was swerving within its lane. At one point, it almost side-swiped the bus. At 5:15 a.m., Benavidez's car drifted across the double yellow dividing lines into oncoming traffic and collided head on with a Toyota Corolla driven by Rigoberto Valdez.[2] Valdez's mother-in-law, Maria Caballero, was in the front passenger seat of the Corolla, and Valdez's friend, Javier Fierro Ayon, was in the backseat.

Sergeant Duad Chang was dispatched to the scene of the accident shortly after 5:00 a.m. When he arrived at the scene, Chang noticed two vehicles in the roadway: a Toyota Corolla facing south and a white Toyota Camry facing east. At that time, the Camry was on fire. Both vehicles had major front end damage. Chang also observed the individuals that were injured in the accident as three people (Caballero, Valdez, and Ayon) remained in the Corolla, and Benavidez sat on the sidewalk near the Camry. A witness had pulled Benavidez out of her burning car.

Caballero died on the scene of blunt force trauma because of the collision. Valdez suffered rib fractures, skull fractures, spine injury, respiratory failure, and traumatic brain injury. Ayon suffered multiple fractures of his ribs and legs, which required surgery.

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[2] The bus's video recorder captured Benavidez driving her car erratically as well her eventual collision with the Corolla. The video recording taken from the bus was played for the jury.

Because of the severity of the accident, traffic was temporarily blocked north and southbound.

Firefighters attended to Benavidez and noted a strong odor of alcohol on her. Benavidez was taken to the hospital. Desert Hot Springs Police Sergeant Corrin Lindsey contacted Benavidez in the hospital. At that time, Benavidez was moaning from pain but was cooperative with hospital staff. Lindsey observed Benavidez exhibiting objective symptoms of intoxication, including watery, bloodshot eyes, and slurred and fragmented speech.[3] Lindsey observed a nurse draw Benavidez's blood at 6:38 a.m. The nurse asked Benavidez questions. Benavidez did not respond verbally to the questions but extended her left arm so blood could be drawn. The toxicology results indicated that Benavidez's blood alcohol content was 0.21 percent.

Benavidez had been convicted in 2006 and in 2012 of driving under the influence in violation of Vehicle Code section 23512, subdivision (b). In 2007, Benavidez completed a court ordered class on the dangers of drinking and driving.

I

MOTION TO SUPPRESS

A. Benavidez's Contentions

Benavidez argues the trial court erred in denying her motion to suppress the warrantless blood draw evidence. She claims exigent circumstances did not exist to excuse the warrant requirement. In addition, Benavidez maintains the People forfeited

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[3] Lindsey acknowledged that red, watery eyes and slurred speech could also result from the car collision, even without intoxication.

the argument that she affirmatively consented to the blood draw by not raising that issue below. Finally, she contends there is no evidence that she implicitly consented to the blood draw.[4]

B. Background

Benavidez filed a written motion to suppress evidence resulting from a warrantless blood draw allegedly conducted in violation of her Fourth Amendment rights against unreasonable search and seizure. The prosecution's opposition maintained that Benavidez impliedly consented, exigent circumstances existed, and Lindsey acted in good faith.

After Benavidez took her motion off calendar, she renewed her motion to suppress in superior court. At a hearing on the motion, in support of the opposition to the motion to suppress, the prosecutor called Lindsey as a witness. Lindsey testified that she had been contacted by another officer, Chang, who instructed her to contact Benavidez, Valdez, and Ayon at the hospital.[5] Chang informed Lindsey that there had been a fatal car accident with major injuries and a nurse was on the way to the hospital to draw blood from the drivers. Lindsey did not know whether Chang had obtained or was in the process of obtaining a warrant for the blood draw from Valdez or Benavidez.

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[4] Benavidez correctly notes that the question whether implied consent and/or prior express consent on a driver's license application validates a warrantless blood draw from an unconscious suspect is pending before our high court in *People v. Arredondo*, S233582. We do not weigh in on this issue here.

[5] In June 2014, typically two officers and a sergeant were on duty in Desert Hot Springs from 6:00 a.m. to 6:00 p.m.

Lindsey arrived at the hospital around 5:45 a.m. and contacted Benavidez, who was at the hospital. Benavidez exhibited signs of intoxication, including bloodshot, watery eyes and fragmented and slurred speech. Lindsey was informed that Benavidez was going to have a CAT scan. Lindsey tried to talk to Benavidez about getting a blood sample, but Benavidez just cried and moaned. She did not answer any of Lindsey's questions. After trying to talk with Benavidez for about 50 minutes, Lindsey called in the blood draw nurse and asked her to draw Benavidez's blood. The nurse asked to see Benavidez's arm, and Benavidez lifted her left arm off the gurney. The nurse then drew Benavidez's blood. It was 6:38 a.m. when the blood was drawn.

Lindsey did not get a warrant before authorizing Benavidez' s blood draw. She explained that she did not want to wait to have the blood drawn because she was concerned that Benavidez's blood sample would be compromised due to hospital staff giving her an analgesic or Benavidez needing to have surgery. However, Lindsey admitted that she was not told by any medical personnel that Benavidez was to be given medication or taken to surgery. Yet, Lindsey did not feel she had sufficient time to wait for a warrant before the nurse drew Benavidez's blood. Therefore, she did not attempt to get a warrant.

On cross-examination, Lindsey admitted that she generally can contact a judge or district attorney in emergency situations to get a warrant. However, the court commented that, at that time, there was not a process in place to secure telephonic warrants for blood draws. Instead, to obtain a warrant for a blood draw, a written application was required. An attorney from the district attorney's office would review the written warrant

application and the written application would "somehow or another" get in front of a judge.

Valdez's blood was drawn after Benavidez's, around 7:00 a.m. Valdez was not in the emergency room near Benavidez when Lindsey arrived at the hospital.

As he had in his written opposition, the prosecutor argued that the warrantless blood draw was supported by implied consent and exigent circumstances. He also asserted that Lindsey acted in good faith. Defense counsel countered that the warrantless blood draw was an unreasonable search and seizure, the implied consent law was insufficient to justify the warrantless blood draw, the totality of the circumstances was not exigent, and Lindsey had not acted in good faith.

In an exchange with defense counsel, the court noted the difficulties of obtaining a search warrant for a blood draw on an emergency basis in 2014:

> "Especially in 2014, the time frame of getting a written warrant approved by the district attorney's office and getting it to the on-call judge would have taken even longer than it takes now. [¶] But the fact that we have to do it, most of the blood draw warrants that we do on call at night are usually two hours or more after the arrest. And in actual—if they were done properly, as soon as the arrest is made, you should be calling [the] on-call judge. It should be as close in proximity to the arrest as it can be, not two hours later or three hours later. [¶] I got one one night that was over four hours late from the time of arrest to the time they were asking for a warrant. So it is not a process that is done rapidly. [¶] But in this instance, you have a major accident on a major street in Desert Hot Springs where you have three individuals that are severely injured and one deceased at the scene. Because of the severity of the injuries to the other individuals, especially the two drivers of the car and the fact you have a fatality, there's exigent circumstance to get blood draws to preserve that evidence as quickly as possible, for the possibility of making prosecution."

After further discussion, the court denied the motion to suppress. The court explained:

> "And there was exigent circumstances. You couldn't wait until after they had been treated or after they had surgery or after—it would have been a couple hours later to get a blood warrant. There was exigent circumstances to get the blood from both drivers as fast as possible. [¶] It's not a usual accident because you have a fatality. You have someone deceased. And, you know, if there's going to be a prosecution, that evidence, the blood draw of whoever is deemed to be responsible for the accident, might determine whether it's manslaughter or murder. [¶] So it's clear that there is exigent circumstances to get the blood sample from both drivers as quickly as possible. And in this instance, there would be no legitimate justification to delay it."

C. Analysis

In reviewing the denial of a motion to suppress evidence, "[w]e defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

The Fourth Amendment provides that "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause." (U.S. Const., 4th Amend.) However, a warrantless search of a person is reasonable if it falls within a recognized exception. (*Missouri v. McNeely* (2013) 569 U.S. 141, 148 (*McNeely*), citing *United States v. Robinson* (1973) 414 U.S. 218, 224.)

"One well-recognized exception," and the one at issue here, "applies when the ' "exigencies of the situation" make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable under the Fourth Amendment.' " (*Kentucky v. King* (2011) 563 U.S. 452, 460.) In some circumstances, law enforcement may conduct a search without a warrant to prevent the imminent destruction of evidence. (See *Cupp v. Murphy* (1973) 412 U.S. 291, 296.) Nevertheless, while the natural dissipation of alcohol in the blood may support a finding of exigency in a specific case, it does not do so categorically. (*McNeely*, *supra*, 569 U.S. at p. 156; *Schmerber v. State of California* (1966) 384 U.S. 757, 770-771 (*Schmerber*).) Instead, the court looks to the totality of the circumstances to determine whether law enforcement faced an emergency that justified acting without a warrant. (*People v. Toure* (2015) 232 Cal.App.4th 1096, 1103 (*Toure*), citing *McNeely*, *supra*, at p. 149.) The relevant factors in determining whether a warrantless search is reasonable include the practical problems of obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence. (*Id.* at p. 164; see *Schmerber*, *supra*, at p. 770.)

In *McNeely*, the defendant was pulled over for speeding and crossing the centerline. He refused to take a breath or blood test, and subsequently, the defendant's blood was drawn without a warrant. (*McNeely*, *supra*, 569 U.S. at pp. 145-146.) The Supreme Court noted that the situation the officer was facing did not constitute an emergency in which he could not practicably obtain a warrant. (*Ibid*.) In fact, the court concluded the officer dealt with a routine DUI investigation where no factors other than the natural dissipation of blood alcohol suggested that there was an emergency, and thus,

the nonconsensual, warrantless test violated the defendant's right to be free from unreasonable searches of his person. (*Id*. at pp. 147, 165; see *Toure*, *supra*, 232 Cal.App.4th at p. 1104.)

Benavidez cites *McNeely* in support of her position that exigent circumstances did not exist here. However, *McNeely*, *supra*, 569 U.S. 141 is distinguishable from the instant matter. There are several factors present that show the accident in the instant action was anything but routine. As noted, Benavidez caused a multicar collision by driving the wrong way on a street in Palm Desert, which resulted in a fatality as well as serious injuries to three people, including Benavidez. All three of those injured people were taken to the hospital and the road was temporarily closed. The instant case thus did not involve a "routine DUI stop" like the situation in *McNeely*, but instead, involved an emergency in the early morning where only a few officers were even on duty at that time.

The Supreme Court in *Schmerber* held that a nonconsensual, warrantless blood draw was reasonable due to the presence of "special facts" that created an emergency that justified an exception to the warrant requirement. (*Schmerber*, *supra*, 384 U.S. at pp. 770-771.) In that case, the officer arrived at the scene of a car accident and noticed that the defendant smelled like liquor and had bloodshot eyes. (*Id*. at pp. 768-769.) The defendant was taken to the hospital and the officer had to investigate the scene of the accident, which delayed him getting to the hospital. (*Ibid.*) These "special facts" and the naturally dissipating blood alcohol content taken together, created a situation where the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances threatened the

'destruction of evidence.' " (*Id*. at p. 770, citing *Preston v. United States* (1964) 376 U.S. 364, 367 (*Preston*).)

In *Toure*, the court held that a nonconsensual, warrantless blood draw was proper under the Fourth Amendment because it was justified by exigent circumstances. (*Toure*, *supra*, 232 Cal.App.4th at p. 1105.) In that case, there was a traffic accident in which at least one person sustained injuries, the collision was spread out over approximately 2,000 feet, the defendant was combative at the scene, which delayed officers from investigating the accident, he prevented officers from conducting field sobriety tests, and he refused to provide officers with information about when he had stopped drinking. (*Id.* at p. 1104.) The amount of time it took officers to conduct their investigation and to subdue the defendant threatened the destruction of evidence. (*Id*. at pp. 1104-1105.) The court concluded that the finding of an exigency was not based solely on the natural dissipation of alcohol in the blood, rather it was established by the totality of the circumstances and therefore the blood draw was justified. (*Id*. at p. 1105.)

The case here presents "special facts" that are analogous to *Schmerber* and *Toure*. Like in *Schmerber*, both Chang and Lindsey "might reasonably have believed that [they were] confronted with an emergency, in which the delay necessary to obtain a warrant under the circumstances threatened the 'destruction of evidence.' " (*Schmerber*, *supra*, 384 U.S. at p. 770, citing *Preston*, *supra*, 376 U.S. at p. 367.) Like *Schmerber* and *Toure*, here Benavidez caused a collision that required Chang to focus his attention on matters besides securing a warrant. Moreover, the accident caused by Benavidez was more severe than either accident in *Schmerber* and *Toure*. When Chang arrived, Benavidez's

car was on fire and three people remained in the Corolla. One of those people had been killed, and the other two were seriously injured. Benavidez was out of her car, but she was injured as well. The three surviving individuals were taken to the hospital. Understandably, Chang was not focused on securing a blood draw warrant at that time. Instead, Chang was directing the investigation at the accident scene. In fact, Chang was so busy with that investigation that he called another officer (Lindsey) to go to the hospital and get a blood draw from the two drivers. In that time, Benavidez's blood alcohol content was dissipating and, like in *Toure*, Lindsey was unaware when Benavidez had stopped drinking, which would make it difficult to "calculate backward" to determine Benavidez's blood alcohol content at the time of the accident. (*Toure*, *supra*, 232 Cal.App.4th at p. 1104.) The circumstances here present " 'practical problems [to] obtaining a warrant within a timeframe that still preserves the opportunity to obtain reliable evidence.' " (*Ibid*., quoting *McNeely*, *supra*, 569 U.S. at p. 164.)

In arguing exigent circumstances do not exist, Benavidez points out that the blood draw from her occurred almost one hour and 20 minutes after the accident. She then argues that a warrant for a blood draw would have been possible to secure in about two hours. As such, Benavidez concludes "[t]here was no evidence an additional 30 or 60 minutes would have resulted in a loss of evidence." However, Benavidez's argument assumes that, upon arriving at an atrocious head-on traffic accident with a car on fire, three people seriously injured, and one person deceased, Chang's first thought should have been to secure a warrant for a blood draw. Such an argument is not reasonable considering the dire situation facing Chang.

In fact, it appears Chang realized that he was not going to be able to get to the hospital for a long time; so, he asked Lindsey to go to the hospital and make sure to get blood drawn from the two drivers involved in the accident. After unsuccessfully trying to obtain Benavidez's consent, Lindsey ordered the blood draw nurse to take a sample of Benavidez's blood without a warrant. Benavidez implies that Lindsey should have sought a warrant once she realized she was not going to obtain Benavidez's consent, but such an argument again ignores the realities of the situation here.

In 2014, the process of getting such a warrant still required an officer to complete a paper application, an attorney from the district attorney's office to review the application before tracking down a judge to review the application and issue the warrant. Facing such circumstances, it is reasonable that Lindsey believed the more prudent course would be to have the nurse draw Benavidez's blood without a warrant for fear of losing evidence in the time it might have taken to obtain a warrant.

Finally, Benavidez claims exigent circumstances did not exist because the prosecution's expert witness, Erin Crabtrey, testified that alcohol dissipates from the blood at a fixed rate, which would have allowed her to calculate an earlier blood alcohol level from a later tested sample. In other words, Benavidez argues Crabtrey's testimony established that waiting longer to take her blood sample to obtain a warrant, would not have resulted in a loss of evidence. We disagree.

Benavidez is correct that Crabtrey testified that alcohol dissipates from the blood at a fixed rate. Further, she did so in the context of being asked a hypothetical question by the prosecutor in which the prosecutor asked her to calculate Benavidez's blood

alcohol content at the time of the accident based on her known blood alcohol level of .21 percent at the time of the blood draw. In answering the hypothetical question, Crabtrey assumed that Benavidez had absorbed all the alcohol she had ingested before driving. Alternatively stated, Crabtrey assumed a point by which Benavidez consumed her last alcoholic drink. However, on cross-examination, defense counsel showed the difficulty Crabtrey would have in establishing Benavidez's blood alcohol content at the time of the accident based on a variety of variables:

> "Q. Okay. So not knowing how much she consumed, what type of alcohol she consumed, and what time she consumed, we can't know exactly what her blood alcohol level was at the time of driving?
>
> A. Correct."

Further, Crabtrey admitted that the amount of food Benavidez had eaten also could affect her alcohol absorption rate. Therefore, as defense counsel showed during cross-examination of Crabtrey, there were several obstacles to Crabtrey's ability to calculate what Benavidez's blood alcohol content was at the time of the accident. Accordingly, we are not persuaded that Crabtrey's testimony undermines the People's argument that exigent circumstances for the warrantless blood draw existed. Indeed, Crabtrey's testimony leads us to conclude this case is not unlike *Toure*, in that it would have been difficult to "calculate backward" to determine Benavidez's blood alcohol content at the time of the accident if Lindsey waited the additional time necessary to obtain a warrant before ordering the blood draw. (See *Toure*, *supra*, 232 Cal.App.4th at p. 1104.)

In summary, we conclude the trial court's finding of exigent circumstances was supported by substantial evidence in the record and was not based solely upon the natural

dissipation of Benavidez's blood alcohol content. The totality of the circumstances here presented a situation where the officer could not have reasonably obtained a warrant without threatening the destruction of evidence. (See *Schmerber*, *supra*, 384 U.S. at pp. 770-771; *Toure*, *supra*, 232 Cal.App.4th at p. 1104.) We thus independently conclude the warrantless blood draw was reasonable under the totality of the circumstances and did not constitute a violation of Benavidez's Fourth Amendment rights.[6]

II

BENAVIDEZ'S SENTENCE

Benavidez argues her sentence of 25 years to life constitutes cruel and unusual punishment under the Eighth Amendment of the United States Constitution and article I, section 17 of the California Constitution. We reject her arguments and conclude the sentence imposed in this case does not constitute cruel and unusual punishment.

To the extent Benavidez relies on the California Constitution, her challenge must be considered in light of *In re Lynch* (1972) 8 Cal.3d 410 (*Lynch*) and *People v. Dillon* (1983) 34 Cal.3d 441 (*Dillon*).

As to California's separate constitutional prohibition against cruel or unusual punishment, we note the power to define crimes and prescribe punishment is a legislative function, and we may interfere in this process only if a statute or statutory scheme prescribes a penalty so severe in relation to the crime or crimes to which it applies as to

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6 Due to our finding of exigent circumstances, we do not address the People's implied consent, express consent, or good faith arguments.

violate that constitutional prohibition. (*Lynch*, *supra*, 8 Cal.3d at pp. 423-424.) Ultimately, however, the test whether a specific punishment is cruel or unusual is whether it is " 'out of all proportion to the offense' . . . so as to shock the conscience and offend fundamental notions of human dignity." (*In re DeBeque* (1989) 212 Cal.App.3d 241, 249 (*DeBeque*), quoting *Robinson v. California* (1962) 370 U.S. 660, 676, and citing *Lynch*, *supra*, at p. 424.)

As we noted in *DeBeque*, the analysis developed in *Lynch*, *supra*, 8 Cal.3d 410 and *Dillon*, *supra*, 34 Cal.3d 441, merely provides guidelines for determining whether a given punishment is cruel or unusual and the importance of each criterion depends on the facts of the specific case. (*DeBeque*, *supra*, 212 Cal.App.3d at p. 249.) Although determinations whether a punishment is cruel or unusual may be made based on the first *Lynch* factor alone, i.e., the nature of the offense and/or offender (see, e.g., *Dillon*, *supra*, at pp. 479, 482-488; *People v. Weddle* (1991) 1 Cal.App.4th 1190, 1198-1200; *People v. Young* (1992) 11 Cal.App.4th 1299, 1308-1311), the defendant has the burden of establishing his punishment is greater than that imposed for more serious offenses in California (the second factor under *Lynch*) and that similar offenses in other states do not carry punishments as severe (the third *Lynch* factor). (See *DeBeque*, *supra*, at pp. 254-255.) Successful challenges to proportionality are an "exquisite rarity." (*Weddle*, *supra*, at p. 1196.)

Under the first *Lynch* factor, we examine the nature of the offense and of the offender, "with particular regard to the degree of danger both present to society." (*Lynch*, *supra*, 8 Cal.3d at pp. 425-426.) In analyzing the nature of the offender, we consider her

"age, prior criminality, personal characteristics, and state of mind," and in analyzing the nature of the offense, we are to consider the circumstances of the particular offense such as the defendant's motive, the way the crime was committed, the extent of her involvement and the consequences of her acts. (*Dillon*, *supra*, 34 Cal.3d at p. 479.) In so doing, we must look at the totality of the circumstances surrounding the commission of the offense. (*Ibid*.)

In the instant matter, the circumstances surrounding Benavidez and the offenses demonstrate that Benavidez's sentence does not shock the conscience or offend fundamental notions of human dignity. Benavidez was in her thirties when she committed these offenses. She had been convicted in 2006 and again in 2012 for driving under the influence. Benavidez had completed a court ordered class on the dangers of drinking and driving. She also participated in a 12-step recovery program, although she did not continue with the program. Additionally, on her plea forms, she initialed the box that stated: "Being under the influence of alcohol or drugs, or both, impairs your ability to safely operate motor vehicle. It is extremely dangerous to human life to drive while under the influence. If I drive while under the influence and someone is killed, I can be charged with murder." She was on probation for drinking and driving at the time of the accident and had a suspended driver's license because of her convictions. She nevertheless consumed alcohol so that she was over twice the legal limit and elected to drive. She then drove in a dangerous manner and ultimately killed Caballero, permanently injured Valdez, and seriously injured Ayon. The offenses involved great violence, great bodily harm, and acts disclosing a high degree of cruelty. Benavidez

engaged in violent conduct that indicates a serious danger to society, one that her history shows she would repeat. Given the circumstances of this case, Benavidez's sentence does not shock the conscience.

We do not reach a different conclusion when we consider the circumstances of the offender. Consideration of the nature of the offender focuses on "the defendant's individual culpability as shown by such factors as his age, prior criminality, personal characteristics, and state of mind." (*Dillon*, *supra*, 34 Cal.3d at p. 479.) As discussed above, Benavidez was in her thirties at the time of the offenses and had been warned on numerous occasions of the dangers of drinking and driving and had two prior convictions for drinking and driving.

In support of her position that her sentence constitutes cruel and unusual punishment, Benavidez emphasizes that she began drinking alcohol and using drugs at the age of 11 or 12, she was abandoned by her mother at the age of 13, her mother was "51/50," and Benavidez was a victim of domestic violence. She also points out that she was addicted to prescription medications and diagnosed with bipolar and impulsive disorder. Although we acknowledge the challenges Benavidez has faced, those hardships do not mitigate the wantonness of her crimes. The circumstances surrounding Benavidez and the offenses provide no basis upon which to depart from the standard sentence for this type of crime, which was proscribed by the Legislature. After all, Benavidez was convicted of second degree murder. And the way she committed the offenses here underscores her conscious disregard for human life.

Benavidez also insists that her remorse suggests that this punishment is entirely disproportionate. However, Benavidez's regret does not make her less culpable for her offenses.

Citing *People v. Caballero* (2012) 55 Cal.4th 262, Benavidez claims her sentence is essentially life without the possibility of parole, and thus, is unconstitutional. Yet, Benavidez's reliance on *Caballero* is misplaced. That case addressed juvenile sentences. (*Id.* at p. 268.) It is not applicable to Benavidez, who was in her thirties at the time she committed the instant offenses.

For these reasons, Benavidez's personal characteristics did not give the trial court any reason to impose a term below the maximum provided by law.

As to the second *Lynch* factor, Benavidez does not compare her crimes to other crimes and fails to cite to any California cases finding a sentence comparable to her own cruel and unusual punishment.

In addition, Benavidez makes no showing as to the third *Lynch* prong regarding punishment for similar offenses in other jurisdictions and thus cannot meet her burden to show cruel or unusual punishment. For these reasons, Benavidez's claim that her sentence violates the California Constitution must fail.

We also find no merit to Benavidez's claim that her sentence violates the United States Constitution. The Eighth Amendment to the United States Constitution "prohibits imposition of a sentence that is grossly disproportionate to the severity of the crime." (*Rummel v. Estelle* (1980) 445 U.S. 263, 271.) Because the federal proportionality analysis closely resembles California's *Lynch* analytical framework (*Solem v. Helm*

(1983) 463 U.S. 277, 291-292) and offers no greater protections than that provided by the California constitutional provision (see *People v. Martinez* (1999) 71 Cal.App.4th 1502, 1510), a punishment that satisfies the California standard, as here, also necessarily satisfies the federal standard.

In summary, Benavidez has not shown or provided any persuasive authority to support her claim that this is one of those rare cases in which a sentence is so grossly disproportionate to the gravity of the offense that it violates the federal constitutional proscription against cruel and unusual punishment. Accordingly, Benavidez's claim that her sentence is cruel and unusual punishment under the Eighth Amendment must fail as well.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

DATO, J.

GUERRERO, J.