

In the Supreme Court of the State of California

**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

OPENING BRIEF ON THE MERITS

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QUESTION PRESENTED

Does Penal Code¹ section 12022.7, subdivision (g), evidence the legislative intent that a defendant receive a lesser sentence for killing two people compared to killing one person and injuring another?

INTRODUCTION

While speeding and driving recklessly during a bout of road rage, appellant caused an accident that killed three people and severely injured a fourth person.

A jury convicted appellant of three counts of gross vehicular manslaughter. As to count 1, the jury found true three great bodily injury enhancements: one for each of the two additional manslaughter victims, and one for the surviving victim.

The court imposed sentence on counts 1 through 3. It also imposed sentence for the great bodily injury enhancement for the surviving victim attached to count 1. The court struck the enhancements for the additional manslaughter victims attached to count 1, pursuant to section 1385.

The appellate court reversed the true findings on the enhancements arising from the injuries suffered by the additional manslaughter victims, holding that section 12022.7, subdivision (g), prohibits imposition of a great bodily injury enhancement relative to any victim who is also the subject of a manslaughter conviction. The court upheld the enhancement related to the surviving victim, holding that section 12022.7, subdivision (g) only limits imposition of the enhancement with respect to a victim for whom the defendant has already been convicted of manslaughter. (Slip Op. at p. 16.)

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

The appellate court erred in reversing the enhancements. The plain language of section 12022.7, subdivision (g), only prohibits imposition of a great bodily injury enhancement for the injuries suffered by the victim who is also the subject of the same manslaughter conviction. Any other interpretation would result in a defendant receiving a lesser sentence for killing his victims than he would have received if he had only injured his victims. Even if the language of the statute can be considered 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, and to avoid an absurd result. For these reasons, respondent urges this Court to overrule the opinion of the Fourth District Court of Appeal below and find that a section 12022.7, subdivision (a) enhancement may be imposed for injuries suffered by separate manslaughter victims.

STATEMENT OF THE CASE

On June 28, 2011, a jury convicted appellant of three counts of gross vehicular manslaughter, in violation of section 192, subdivision (c)(8), for the deaths of Zaria W. (count 1); Cedric Page (count 2); and Christine Giambra (count 3). With regard to count 1, the jury found it true that appellant personally inflicted great bodily injury on Page, Giambra, and a surviving victim, Robert Valentine, within the meaning of sections 12022.7, subdivision (a), and 1192.7, subdivision (c)(8). (1 CT 259-264.)

On August 16, 2011, the court sentenced appellant to a total term of nine years and eight months in prison, consisting of four years for count 1, one year and four months each for counts 2 and 3, and three years for the great bodily injury enhancement as to Valentine attached to count 1. The court struck the remaining great bodily injury enhancements as to Page and Giambra, pursuant to section 1385. (3 RT 663; 2 CT 372.)

Appellant appealed, contending, among other things, that all three great bodily injury enhancements attached to count 1 must be reversed because section 12022.7, subdivision (g), prohibits imposition of any great bodily injury enhancement to a murder or manslaughter conviction. (2 CT 323.)

In the published portion of its opinion, the Court of Appeal agreed in part with appellant. The court reversed the true findings on the great bodily injury enhancements related to victims Giambra and Page, holding that section 12022.7, subdivision (g), prohibits imposition of a great bodily injury enhancement relative to any victim in a case in which the defendant has been convicted of for manslaughter as to that victim. In so doing, the court expressly disagreed with the contrary holding in *People v. Julian* (2011) 198 Cal.App.4th 1524 (*Julian*). The court below affirmed imposition of judgment on the enhancement as to Valentine, holding that section 12022.7, subdivision (g), does not prohibit imposition of a great bodily injury enhancement with respect to a victim who is not the subject of a defendant's manslaughter conviction. (Slip Op. at p. 10.) Because the trial court had already stricken the enhancements as to Giambra and Page in the interests of justice, the Court of Appeal's decision did not affect appellant's sentence.

On January 17, 2014, respondent filed a petition for review in this Court. On March 12, 2014, the Court granted review.

STATEMENT OF FACTS

Austin Welch was driving his silver Subaru WRX in the fast lane of Highway 74 on June 2, 2009, when he noticed appellant driving her charcoal grey Ford Fusion erratically. (1 RT 88, 91-92.) Traffic slowed in the right lane, in which appellant was traveling. Appellant made a “very fast” lane change, moving from the slow lane to the fast lane, cutting off a silver Audi driven by Cedric Page. (1 RT 92-93.) Page “slammed” on his brakes and swerved to avoid a collision. (1 RT 91-94, 99, 131-132, 138.)

Appellant immediately sped up as Page slowed to allow space between the two cars. (1 RT 94-95, 140.) Appellant later changed back into the slow lane. As traffic slowed in that lane, appellant once again changed lanes back into the fast lane without signaling, cutting Page off and forcing Page to “slam on [his] brakes really hard.” (1 RT 99-100, 166.)

Both drivers then sped up quickly. (1 RT 100, 168.) Page’s Audi was behind appellant’s Ford, traveling so close that Welch could not see a gap between the vehicles. (1 RT 100-101, 167.) Appellant’s Ford was getting closer to a white service truck in the fast lane. She was driving much faster than the service truck. As appellant approached the back of the truck, she moved without signaling into the slow lane, in a space too small for her car to fit, hitting the front left section of Welch’s Subaru with the right wheel area of her Ford. (1 RT 102-103, 146, 168.) This caused appellant’s vehicle to fishtail, dart across lanes and hit Page’s Audi, forcing it directly into oncoming traffic. (1 RT 103-104; 2 RT 338-339.) Page’s Audi collided with a Mitsubishi SUV driven by Robert Valentine. The impact made a very large boom, and launched the Mitsubishi into the air. (1 RT 107-109.)

Christine Giambra, a passenger in the Mitsubishi, Cedric Page, and his passenger Zaria W., were all killed in the collision. (1 RT 76-77.) Valentine was in a coma for a month following the collision. He suffered,

among other things, five broken ribs, a broken knee cap, a crushed heel, and a ruptured diaphragm. Valentine had no memory of the collision. (1 RT 79-81.)

Experts determined that the primary cause of the collision was appellant's unsafe lane change. (2 RT 299-300.)

ARGUMENT

I. 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

The plain language of section 12022.7 authorizes imposition of a great bodily injury enhancement for the injuries suffered by a separate victim who is also the subject of a manslaughter conviction. 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 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.

Even if the statutory language is 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 promote a fundamental objective of the criminal justice system -- to ensure a defendant's punishment is commensurate with his or her culpability.

A. Statutory Framework

Section 1170.1 provides the overarching statutory framework that governs limitations on the number of enhancements to be imposed, the dual use of facts, and the total length of the overall term to which a defendant is to be sentenced. Section 1170.1, subdivision (g), states, in part:

When two or more enhancements may be imposed for the infliction of great bodily injury on the same victim in the commission of a single offense, only the greatest of those enhancements shall be imposed for that offense. This subdivision shall not limit the imposition of any other enhancements applicable to that offense, including an enhancement for being armed with or using a dangerous or deadly weapon or a firearm.

As a general rule, the Legislature prevents multiple punishment based on a single act through section 654.² However, section 654 has long recognized an exception for crimes of violence against multiple victims. (E.g., *People v. Oates* (2004) 32 Cal.4th 1048, 1063.) With these general principles in mind, it is possible to turn to the language of section 12022.7.

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 . . .” The enhancement term is increased to five years if the defendant “causes the victim to become comatose due to brain injury or to suffer paralysis of a permanent nature,” or if the victim is 70 years old or older or under the age of five. (§ 12022.7, subs. (b), (c), and (d).)

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.”

² Section 654 provides: “An act or omission that is punishable in different ways by different provisions of the law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision.”

³ Sections 451 and 452 are arson statutes. Both statutes have specific provisions setting forth additional punishment when the arson results in
(continued...)

B. Principles of Statutory Construction

In interpreting a statute, a reviewing court's "fundamental task . . . is to determine the Legislature's intent so as to effectuate the law's purpose." (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) In approaching this task, the reviewing court begins with the plain, commonsense meaning of the language. (*People v. King* (2006) 38 Cal.4th 617, 622; *People v. Murphy*, *supra*, 25 Cal.4th at p. 142.) The words, however, must not be considered in isolation. (*People v. Hammer* (2003) 30 Cal.4th 756, 762.) Rather, it is necessary to "look to the entire substance of the statute . . . in order to determine the scope and purpose of the provision" (*Id.* at pp. 762-763.) That is, the words in question must be construed in context, "keeping in mind the nature and obvious parts of a statutory enactment" (*Id.* at p. 763.) The various parts of a statutory enactment must be harmonized "by considering the particular clause or section in the context of the statutory framework as a whole." (*Ibid*; *Sierra Club v. Superior Court* (2013) 57 Cal.4th 157, 165-166; § 7, subd. (16).) "[W]henver possible, significance must be given to every word [in a statute] in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage." (*Agnew v. State Bd. of Equalization* (1999) 21 Cal.4th 310, 330.)

If there is no ambiguity in the language of the statute, 'then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs.' [Citation.] 'Where the statute is clear, courts will not "interpret away clear language in favor of an ambiguity that does not exist.

(...continued)

great bodily injury. (§451, subd. (a) [enhancement of five, seven, or nine years]; §452, subd. (a) [enhancement of two, four, or six years.]

[Citation.]” (*Lennane v. Franchise Tax Bd.* (1994) 9 Cal.4th 263, 268; *People v. Benson* (1998) 18 Cal.4th 24, 30)

But even where the language of the statute is clear, “[the reviewing court] may reject a literal construction that is contrary to the legislative intent apparent in the statute” (*Simpson Strong–Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 27), or “would result in absurd consequences that the Legislature could not have intended.” (*In re J.W.* (2002) 29 Cal.4th 200, 210.)

[W]here a statute’s terms are unclear or ambiguous, [the reviewing court] may ‘look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part.

(*In re M.M.* (2012) 54 Cal.4th 530, 536.)

C. The Plain Language of Section 12022.7, Subdivision (g), Operates Only to Bar an Enhancement Punishing a Defendant for Both The Injuries and the Death of the Same Manslaughter Victim.

The plain language of section 12022.7, subdivision (g) – “[t]his section shall not apply to murder or manslaughter” bars an enhancement punishing a defendant for both the injuries and the death of the same murder or manslaughter victim. (*People v. Verlinde* (2002) 100 Cal.App.4th 1146, 1168 (*Verlinde*).

The plain language of section 12022.7, subdivision (a), makes clear that the statute applies to great bodily injuries sustained by “any person other than an accomplice.” This language is sufficiently broad to include persons other than the manslaughter or murder victim who sustain great bodily injury during the defendant’s commission of that offense. Indeed, the court below, and other appellate courts have recognized this. (Slip. Opn. at p. 16 [upholding enhancement for surviving victim]; e.g.,

Julian, supra, 198 Cal.App.4th at p. 1530 [upholding enhancement for surviving victim and manslaughter victim named in another count]; *People v. Weaver* (2007) 149 Cal.App.4th 1301, 1330-1331 (*Weaver*) [upholding enhancement for surviving victim]; *Verlinde, supra*, 100 Cal.App.4th at p. 1168 [same].)

Construing section 12022.7 to permit the imposition of enhancements for the great bodily injury suffered by others as a result of the defendant's conduct is also consistent with this court's holding in *People v. Oates, supra*, 32 Cal.4th at p. 1062, which construed similar language in section 12022.53. (See *Weaver, supra*, 149 Cal.App.4th at p. 1334 [*Oates* involved an analogous enhancement statute and upheld the imposition of great bodily injury enhancements when the ostensible victims of those offenses were not persons injured by the defendant in the commission of those offenses, thus "the reasoning in *Oates* applies to this case and supports our interpretation of section 12022.7, subdivision (a)".].)

With respect to whether the injuries suffered by other victims may include death, section 12022.7 defines great bodily injury as "a significant or substantial injury." (§ 12022.7, subd. (f).) Death, obviously, is a type of great bodily injury. (See *People v. Valencia* (2000) 82 Cal.App.4th 139, 145.)

Thus, reading the statute as a whole, subdivisions (a) and (g) authorize imposition of a great bodily injury enhancement for injuries suffered by separate victims who are also the subject of a manslaughter conviction.

Moreover, as set forth above, section 1170.1 is the statutory framework that governs limitations on the number of enhancements to be imposed, and the dual use of facts, and must be considered in interpreting section 12022.7. (See *Sierra Club v. Superior Court, supra*, 57 Cal.4th at pp. 165-166.) Section 1170.1, subdivision (g), read in conjunction with 12022.7, subdivision (g), indicates the Legislature's intent to limit only the

number of great bodily injury enhancements that may be imposed to one per injured victim. Consistent with longstanding case law, there is no indication that the Legislature intended to restrict multiple punishment based on separate harms to victims of violent crime. Section 654 will prevent multiple punishment for the same act – ie., an enhancement and a substantive count for the same death.

The Court of Appeal here suggested that respondent's interpretation of section 12022.7 would render section 12022.7, subdivision (g), surplusage. (Slip Op. at pp. 17-18.) The court posited that under the interpretation set forth by respondent and *Julian*, "the only function subdivision (g) then effectively serves is to prohibit a defendant from suffering a conviction for murder or manslaughter and an enhancement as to the victims of that same crime when she just happens to kill only one individual." (*Ibid.*) The court's concern begs the question. This is a commonsense interpretation of the statute, and it has meaning – it is not surplusage. Personal infliction of great bodily injury is not an element of manslaughter. (See *People v. Wilson* (2013) 219 Cal.App.4th 500, 509.) Thus, without subdivision (g), a defendant could have his sentence for a manslaughter conviction enhanced by the injuries suffered by the same manslaughter victim. This outcome would be inconsistent with the purpose of the statute. "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." (*Verlinde, supra*, 100 Cal.App.4th at p. 1168.) However, "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. [Citations.]" (*Ibid.*)

The Court of Appeal also noted its belief that the second sentence in subdivision (g), i.e., "Subdivisions (a), (b), (c), and (d) shall not apply if

infliction of great bodily injury is an element of the offense,” would bar imposition of the section 12022.7, subdivision (a) enhancements in this case as to Giambra and Page. (Slip Opn. at p. 20.) The court explained that the section 12022.7 enhancements as to Giambra and Page cannot stand because appellant had already been found guilty for their deaths, “a finding that inherently involves “great bodily injury.”” (Slip Opn. at p. 21.) However, for the same reasons pertaining to the first sentence of subdivision (g), the second sentence of subdivision (g) applies only to bar the enhancement for injuries suffered by the victim who is the subject of the particular count. Moreover, as noted above, while death “which is most certainly a great bodily injury,” is inherent in murder and manslaughter, infliction of great bodily injury is not an element of either crime.

D. Interpreting Section 12022.7, Subdivision (g), to Bar an Enhancement Only for the Injuries and the Death of the Same Manslaughter Victim Furthers the Statutory Purpose

Respondent’s interpretation also furthers the purposes of section 12022.7. One purpose of section 12022.7, of course, is “to punish more severely those crimes that result in great bodily injury “on any person.” (*Verlinde, supra*, 100 Cal.App.4th at p. 1168, citing § 12022.7, subd. (a), and *People v. Parrish* (1985) 170 Cal.App.3d 336, 344; see also *People v. Ahmed* (2011) 53 Cal.4th 156, 163 [enhancement provisions increase the punishment for criminal acts: “They focus on aspects of the criminal act that are not always present and that warrant additional punishment.”].) Another purpose is to deter infliction of serious bodily injury on victims of felonies. (*People v. Johnson* (1980) 104 Cal.App.3d 598, 608 [“In enacting section 12022.7, the clear intent of the Legislature was to deter infliction of serious bodily injury on victims of burglary, robbery and other felonies.”].)

Respondent’s interpretation of the statute is in accord with the purpose of the statute, because it allows a defendant to be sentenced to a

longer term for killing multiple victims while still prohibiting double punishment for the same crime. Conversely, allowing imposition of the enhancement for a surviving victim's injuries, but prohibiting the enhancement when that same victim dies, results in a lesser punishment for a defendant who kills his victim than for a defendant who only injures his victim. This interpretation contravenes the purpose of the statute and leads to an absurd result.

Consider the following illustration: Where a defendant is convicted of two counts of manslaughter, with imposition of the section 12022.7, subdivision (a) enhancement, a court could sentence a defendant to a four, six or ten-year prison term on count 1, plus an additional three years for the great bodily injury enhancement for victim 2's injuries attached to count 1. The sentence for the second manslaughter conviction in count 2 would be stayed pursuant to section 654. Because the enhancement makes the felony a serious or violent one, the rate at which the defendant could earn conduct credit is limited to 15 percent. (§§ 2933.1, subd. (a), and 667.5, subd. (c).)

Without the enhancement, the court could still sentence the defendant to a four, six, or ten-year term on count 1, but it would be required to sentence the defendant to only one-third of the middle term on count 2 (or run it concurrent). (§ 1170.1, subd. (a).) And without the enhancement, the crime is not considered a serious or violent felony and the defendant can earn conduct credit at a rate of 50 percent. (§ 2933, subd. (b).)

The net effect when the enhancement is imposed is a potential maximum prison term of 10 years, plus 3 additional years for the enhancement, with a 15 percent cap on the ability to earn credit. This equates to 11 years (and a few days) of actual prison time. In the second situation, where the great bodily enhancement cannot be imposed, the defendant's maximum exposure is the ten-year term on count 1, two years on count 2, minus 50 percent credit, for a total of 6 years actual time.

Hence, if subdivision (g) is interpreted to prohibit imposition of a great bodily injury enhancement for the injuries suffered by separate additional manslaughter victims, the defendant will receive less punishment than he would have if he had killed only one victim and injured others. This result, directly contrary to the statutory purpose, was rejected in *Julian*.

There, Julian, while driving under the influence of alcohol, plowed into a sports utility vehicle with a mother (Terri Keller) and her two daughters (Alexis Keller and Amanda Keller) inside. Terri was killed instantly and Amanda died after being in a permanent vegetative state. Alexis survived, but suffered severe injuries. A jury convicted Julian of two counts of vehicular manslaughter while intoxicated and found true four great bodily injury allegations under section 12022.7, subdivision (a) -- two allegations for each manslaughter charge. For the manslaughter charge related to Terri, both daughters were alleged as the injured victims. For the manslaughter charge related to Amanda, Terri and Alexis were alleged as the injured victims. (*Julian, supra*, 198 Cal.App.4th at pp. 1527-1528.)

The court sentenced *Julian* to the upper term on count 1 (victim Terri), and imposed sentence for two great bodily injury enhancements: one for Amanda and one for Alexis. With respect to count 2, the court stayed (under section 654) a four-year sentence, and stayed the sentences of three years for each of the enhancements. (*Julian, supra*, 198 Cal.App.4th at pp. 1527-1528.)

On appeal, the court affirmed the sentence. In doing so, the court discussed two of its earlier decisions (*Verlinde* and *Weaver*) in which it had upheld the enhancement of manslaughter convictions with injuries sustained by surviving victims. The *Julian* court observed that in *Verlinde*, it held that the statutory exemption for murder and manslaughter in subdivision (g) operates “to bar imposition of an enhancement for “the

injuries inflicted on the homicide victim, who obviously has suffered great bodily injury.” Thus, the statutory exemption prevents prohibited dual punishment for the same crime.” (*Julian, supra*, 198 Cal.App.4th at p. 1529, quoting *Verlinde, supra*, 100 Cal.App.4th at p. 1167.) But *Verlinde* ruled subdivision (g) does not preclude a defendant from being punished separately for the injuries the defendant inflicts on others during the defendant’s violent conduct. (*Julian, supra*, 198 Cal.App.4th at p. 1529, quoting *Verlinde, supra*, 100 Cal.App.4th at p. 1168.) *Julian* also observed that *Weaver* followed *Verlinde* in rejecting the argument that great bodily injury enhancements could not be imposed in cases involving victim-specific offenses like murder and manslaughter, noting subdivision (a) does not limit its application to a specific victim of a felony, but instead applies to “any person” upon whom the defendant personally inflicts great bodily injury “in the commission of a felony.” (*Julian, supra*, at pp. 1529-1530, quoting *Weaver, supra*, 149 Cal.App.4th at pp. 1330-31.)

Julian construed subdivision (g) as it had in *Verlinde* and *Weaver*, holding the provision precludes enhancement of a murder or manslaughter conviction with the injury suffered by the murder or manslaughter victim, but permits enhancement of manslaughter convictions with “injuries caused to other victims of the defendant’s conduct” (*Julian, supra*, 198 Cal.App.4th at p. 1530.) The court then applied this holding to the facts of the case.

The court observed that *Julian*’s conviction for the death of Teri could not be enhanced with the injuries Teri sustained, but could clearly be enhanced, under *Verlinde* and *Weaver*, for the injury of the surviving victim, Alexis, as Alexis’s injuries were caused by the same conduct that caused Teri’s injuries. The court then considered whether it made a difference that Amanda died from her injuries. The court reasoned that Amanda’s injuries were just as distinct from Teri’s injuries as Alexis’s

injuries and that “under *Verlinde* and *Weaver* their separate and distinct nature permits the injuries to be used as an enhancement.” (*Julian, supra*, 198 Cal.App.4th at pp. 1530-1531.) The court continued, “[t]o hold Alexis's injuries will support an enhancement but, because she died, Amanda's injuries will not, would permit a defendant, such as *Julian*, to benefit to some extent from the fact one of his multiple victims died rather than survived. We of course must reject such a grotesque interpretation of the statute.” (*Julian, supra*, 198 Cal.App.4th at p. 1531.) The court noted that “[a]s we stated in *Verlinde*, ‘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.’” (*Ibid.*, citing *People v. Verlinde* (2002)100 Cal.App.4th 1146, 1168–1169.)

Julian also considered and rejected the argument that the fact that Amanda’s fatal injuries resulted in a second manslaughter conviction precluded enhancement of Teri’s manslaughter based on Amanda’s injuries. The court noted that the trial court properly stayed execution of the second manslaughter sentence under section 654. It explained that under section 654, “*Julian* could not and was not punished twice for the fatal injuries Amanda suffered.” (*Julian, supra*, 198 Cal.App.4th at p. 1531.)

Julian’s analysis was correct. The language in section 12022.7 indicates that the Legislature did not intend for subdivision (g) to prohibit application of the subdivision (a) enhancement where there are multiple manslaughter victims. The lower appellate courts including the court below, however, have adopted two other interpretations of subdivision (g). As the discussion of these decisions shows, the interpretation of subdivision (g) advanced in these cases is inconsistent with the language of section 12022.7, principles of statutory construction, and the purpose of the statute.

In *Beltran*, a case in which the defendant killed one victim and inflicted great bodily injury on another during a vehicle collision, the court

summarily concluded that section 12022.7 enhancements could not apply to any vehicular manslaughter offenses regardless of injuries sustained by victims other than the deceased, relying exclusively on the language of section 12022.7, subdivision (g). The court in *Beltran* did not offer an analysis in support of its conclusion. And its conclusion conflicts with the plain language of section 12022.7, subdivision (a), that an enhancement can be imposed for great bodily injuries the defendant personally inflicts on “any person” “in the commission of a felony.” Thus, *Beltran*’s interpretation of subdivision (g) should be rejected.

The Court of Appeal below did not follow *Beltran*. Instead, the court agreed with *Verlinde* and *Weaver* that a manslaughter conviction could be enhanced for the injuries sustained by surviving victims. But the court ruled that “[s]ubdivision (g) would appear to mean what it clearly reads, i.e., the enhancement does not attach with regard to a victim of murder or manslaughter for which a conviction on the substantive count has been obtained.” A recent decision from Division Three of the Fourth District Court of Appeal similarly construed subdivision (g). (*Hale v. Superior Court* (2014) 225 Cal.App.4th 268 (*Hale*) [“The statutory language plainly states a GBI enhancement “shall not apply to murder or manslaughter”].) Yet, 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].) But this construction of the statute requires this Court to read additional language into subdivision (g), namely, “this section shall not apply to a murder or manslaughter conviction.” This, of course, would violate “the cardinal rule of statutory construction that courts must not add provisions to statutes.” (*Security Pacific National Bank v. Wozab* (1990) 51 Cal.3d 991, 998, citing *People v. Campbell* (1902) 138 Cal. 11, 15.)

Hale also expressed concern that “nothing in the statutory language suggests the Legislature intended to limit subdivision (g) to vehicular manslaughter cases involving one victim, but allow GBI enhancements in multiple victim cases.” (*Hale, supra*, at p. 274.)

To the contrary, subdivision (a) suggests just this scenario. By providing an enhancement for injuries suffered by *any* person, the language of subdivision (a) clearly allows imposition of the enhancement in multiple manslaughter victim cases, notwithstanding the limitation in subdivision (g).

Moreover, this Court has previously recognized the need to interpret a similar provision broadly to effectuate the Legislature’s purpose and to avoid absurd consequences. In *People v. Modiri* (2006) 39 Cal.4th 481 (*Modiri*), the defendant challenged a jury instruction that allowed the jury to find a defendant guilty of the enhancement in a group beating situation, even if it was not possible to determine whether the defendant personally inflicted a particular injury.

In *Modiri*, the defendant participated in a group beating, and the victim suffered severe cuts to his head, facial trauma, and a broken nose. (*Id.* at pp. 488-489.) The jury convicted the defendant of felony assault and found he personally inflicted great bodily injury, even though it could not be determined whether the defendant’s blows were the blows that caused the injuries. (*Id.* at p. 485.) The jury was instructed with CALJIC No. 17.20, which provides a group beating exception to the personal infliction requirement. The issue in *Modiri* was whether the group beating theories described in CALJIC No. 17.20 were consistent with the personal infliction requirement of section 1192.7, subdivision (c)(8), considering the construction by *People v. Cole* (1982) 31 Cal.3d 568 of the parallel language contained in an earlier version of section 12022.7. (See *People v. Cole, supra*, at p. 574 [interpreting 12022.7 to punish those who merely

aid in the infliction of the injury would frustrate the intent of the Legislature to impose the enhancement only on those who "personally" inflict great bodily injury].)

Modiri held that "nothing in *Cole* precludes a person from receiving enhanced sentencing treatment where he joins others in actually beating and harming the victim, and where the precise manner in which he contributes to the victim's injuries cannot be measured or ascertained." (*Id.* at p. 495.) It found this interpretation to be consistent with the personal infliction requirement intended by the Legislature, in part because "those who participate directly and substantially in a group beating should not be immune from a personal-infliction finding for the sole reason that the resulting confusion prevents a showing or determination of this kind." (*Modiri, supra*, at p. 497.)

Hence, *Modiri* interpreted the plain language of the statute broadly to avoid an absurd result, and to comport with the legislative intent behind the statute. Just as in *Modiri*, this Court should construe the language of the statute broadly here in order to effect the Legislature's intent to increase punishment commensurate with one's culpability.

E. EVEN IF SUBDIVISION (g) IS AMBIGUOUS, THIS COURT SHOULD INTERPRET THE STATUTE TO ALLOW AN ENHANCEMENT FOR A SEPARATE MANSLAUGHTER VICTIM'S INJURIES TO AVOID ABSURD RESULTS

Even if the statutory language can be considered ambiguous, the statute should still be interpreted to allow an enhancement for injuries suffered by separate deceased victims in order to effectuate the purpose of the statute, and to avoid an absurd result. "It is a settled principle of statutory interpretation that 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." (*People v. Pieters* (1991) 52 Cal.3d 894, 898 [citations omitted].) While reasonable doubt as to an ambiguous criminal

statute should normally be resolved in favor of defendant, this rule does not apply where the result is absurd or contrary to legislative intent. (*Ibid*, citing *People v. Davis* (1985) 166 Cal.App.3d 760, 766.)

Interpreting the statute to allow imposition of the enhancement for a separate deceased victim's injuries "comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*People v. Jenkins* (1995) 10 Cal.4th 234, 246.) Furthermore, this interpretation of section 12022.7 is consistent with the long recognized principle that multiple punishment is proper when a single act of violence injures or kills multiple victims. (*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].)

In *Hale*, the district attorney argued that *Julian's* construction of 12022.7, subdivision (g), must be employed to avoid the absurd result of a defendant receiving less punishment if his victims die than if they live. The court rejected this argument, explaining that it must "exercise caution" in "using the 'absurd result' rule; otherwise, the judiciary risks acting as a "super-Legislature" by rewriting statutes to find an unexpressed legislative intent." (*Hale, supra*, 225 Cal.App.4th at p. 276.) The court reached this conclusion even though it found "the disparity here glaring and unjust." (*Ibid.*) It further stated that the holding in *Julian* creates an anomaly in which some fatal injuries are subject to a great bodily enhancement (multi-victim accidents) and some are not (single victim). (*Ibid.*)

Hale's reasoning is incorrect. First, as set forth above, interpreting section 12022.7 to allow for the enhancement when multiple victims die is

consistent with the legislative intent behind the statute. The “glaring and unjust” result of an alternative interpretation is precisely the situation in which the “absurd result” rule should be employed to rectify the absurd result. Further, its use is consistent with the principles of statutory construction.

Second, respondent’s interpretation does not create an anomaly by applying the enhancement to multiple victim homicides, and not to single victim homicides. In each situation the defendant is punished for the death of each victim, and in neither situation is the defendant punished more than once for the same crime. This application of section 12022.7 allows for the defendant to be punished commensurate with his culpability, and punished more severely for killing rather than injuring multiple victims, consistent with the intent of the statute.

Thus, while *Hale* recognized the absurd result its interpretation of subdivision (g) created, it failed to adhere to well-established principles of statutory construction to avoid this outcome. Instead, it “appeal[ed] to the Legislature to correct this manifest sentencing disparity by ensuring proportional punishment for offenders who commit vehicular manslaughter.” (*Id.* at p. 277.) An appeal to the Legislature is unnecessary under the circumstances here because the statute is reasonably interpreted to avoid this absurd outcome.

Recognizing the effect of its ruling, the court below offered suggestions for the prosecution to use in order to avoid this absurd result. (Slip Opn. at pp. 18-19.) It suggested that the People could have charged only one count of manslaughter, with enhancements for the additional deceased victims, or the People could simply move for the dismissal of the additional manslaughter counts at sentencing. (Slip Op. at pp. 18-19.) However, requiring a prosecutor to refrain from bringing entirely warranted charges, or to dismiss charges at sentencing to avoid an absurd result,

ignores a fundamental basis of our judicial system: that a prosecutor has complete charging discretion. (*People v. Birks* (1998) 19 Cal.4th at pp. 134-136 [allowing court to instruct on lesser related offenses over the objection of the prosecutor would interfere with the prosecutor's "sole discretion to determine whom to charge with public offenses and what charges to bring".]) It is also contrary to well-settled principles of statutory construction.

Further, the court's suggestion would force prosecutors to choose which charges to file based on factors not yet known, i.e. how the proof will come out at trial. This is contrary to the purpose of section 954, which "permits the charging of the same offense on alternative legal theories, so that a prosecutor in doubt need not 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.) Similarly, given that it is unknown what claims may have merit on appeal, dismissing counts at sentencing forces the prosecutor into an unreasonable gamble and essentially requires her to predict the future.

In sum, the appellate court's construction of subdivision (g) makes no sense when applied to a situation in which the defendant's conduct results in the death of multiple victims. Instead of increasing punishment and creating a deterrent effect, it gives a defendant a lesser punishment than he would have received had he injured but not killed multiple victims. This interpretation conflicts with the plain language of the statute, contravenes the purpose of the statute, and leads to an absurd result.

CONCLUSION

For the foregoing reasons, respondent respectfully requests that the judgment of the Court of Appeal be reversed.

Dated: May 9, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 6,384 words.

Dated: May 9, 2014

KAMALA D. HARRIS
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DECLARATION OF SERVICE BY U.S. MAIL

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 with postage thereon fully prepaid that same day in the ordinary course of business.

On May 9, 2014, I served the attached **OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope 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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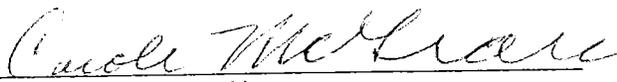
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on May 9, 2014, at San Diego, California.

Carole McGraw

Declarant



Signature