

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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No. S260130

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THE PEOPLE,  
*Plaintiff and Respondent,*

v.

TREYVON LOVE OLLO,  
*Defendant and Appellant.*

Court of Appeal of California  
Second District, Division Two  
No. B290948

Superior Court of California  
Los Angeles County  
No. KA115677

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**Appellant's Reply Brief**

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## Appellant's Reply Brief

**As Conceded By Respondent, This Court Should Overrule The Court Of Appeal And Hold That When A Drug User Voluntarily Ingests Drugs And Those Drugs Result In An Overdose Or Other Injury, The Question of Whether the Person Who Furnished The Drugs Is Subject To Sentence Enhancement For Personal Infliction Of Great Bodily Injury Is Fact Specific; And As The Trial Court Denied Appellant His 6th And 14th Amendment Rights By Precluding Him From Arguing That There Was Insufficient Evidence to Prove Personal Infliction Of Great Bodily Injury, The Enhancement Should Be Reversed.**

***A. Respondent Impliedly Agrees That The Court Of Appeal Opinion Is Wrongly Decided.***

In its Answering Brief, respondent agrees with appellant that “the act of providing drugs to a person who subsequently overdoses should not automatically result in a great bodily injury enhancement and that the question, instead, is to be determined on all the facts... [Section 12022.7](#) requires that a defendant directly inflict great bodily injury upon the victim. The existence of direct causation is a question of fact for the jury and no single factor is necessarily determinative.” (Answering Brief on the Merits, p. 13.)

This contradicts the Court of Appeal's holding below that “a defendant's act of furnishing drugs and the user's voluntary act of ingesting them constitute concurrent direct causes, such that the defendant who so furnishes personally inflicts great bodily injury

upon his victim when she subsequently dies from an overdose” -- i.e. in *every* case. (*People v. Ollo* (2019) 42 Cal.App.5th 1152, 1158, Slip Opinion, pp. 6–7.) The Court of Appeal made clear that “under our holding, drug dealers are liable for additional prison time *whenever* the persons to whom they furnish drugs are subjected to great bodily injury due to their drug use.” (*Id.* at p. 1159, Slip Opinion, p. 8, emphasis added.) Respondent has conceded that this is incorrect, and the Court of Appeal decision should be overruled.

***B. The Trial Court Violated Appellant’s Constitutional Rights When It Prohibited Appellant’s Counsel From Arguing That the Prosecution Had Not Met Its Burden of Proof As To The Personal Infliction Enhancement.***

Respondent is attempting to salvage the judgment below by echoing the trial court’s mischaracterization of trial counsel’s request.

Trial counsel did not request to argue to the jury that that “a victim’s voluntary ingestion of drugs *necessarily* precludes a finding of direct causation”. (See ABM p. 13, emphasis added.) The trial court repeatedly responded as if this was what trial counsel was asking, but what trial counsel actually said was, “...understanding the court has denied the motion to dismiss the allegation, but I still think I should be able to argue whether the facts meet the elements.” (3 RT 649, lines 20-22.)

The trial court said, “He wants to argue she's responsible for her own death, she took the drugs on her own volition, right? And according to these cases I don't think you can argue that.” (3 RT

651.) Trial counsel objected, “I think it would be a complete violation of Mr. Ollo's Sixth Amendment right to prevent me from arguing whether or not facts from the stand meet the elements” and tried to explain that because the *Martinez*<sup>1</sup> tribunal decided the enhancement was supported by the facts of that particular case should not preclude appellant from arguing that the facts of this case do not support personal infliction (3 RT 651-652), and that the *Martinez* fact pattern was distinguishable from the fact pattern in this case. (3 RT 654.) But the court continued to insist that counsel intended to argue that the victim’s volitional choice precluded a finding of direct causation. (3 RT 654.) When trial counsel tried to respond by proposing alternate language, the trial court interrupted him and said “...I think it’s contrary to the law. Again I realize there are factual distinctions and you have your case and all of that, and unfortunately there’s no case that’s directly on point, but they said that even if a person voluntarily takes drugs, that does not preclude a defendant from being found guilty of personally inflicting great bodily injury.” (3 RT 654.) Again, trial counsel tried to clarify that that this was *not* his argument, but the court continued to expound on its interpretation of the law, and counsel was forced to simply note his objection for the record. (3 RT 654-655.)

Thus, the trial court effectively prohibited trial counsel from arguing that the prosecution had not met its burden to prove the direct causation element of the personal infliction of great bodily injury enhancement. This prevented appellant’s counsel from presenting his theory of the case in closing argument in violation

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<sup>1</sup> *People v. Martinez* (2014) 226 Cal.App.4th 1169.

of appellant's rights to assistance of counsel and due process of law under the Sixth and Fourteenth Amendments. (*Herring v. New York* (1975) 422 U.S. 853, 865; *United States v. Kellington* (9th Cir. 2000) 217 F.3d 1084, 1100–1101.) Accordingly, the personal infliction enhancement finding must be reversed.

## CONCLUSION

For the foregoing reasons, this Court should hold that when a drug user who voluntarily ingests a drug suffers great bodily injury as a result of that drug, the question of whether the person who provided the drug is subject to the sentence enhancement for personal infliction of great bodily injury (*Pen. Code, § 12022.7*) should be determined based on the specific facts; and should reverse the personal infliction enhancement imposed here and remand for resentencing.

Respectfully submitted,

Dated: November 13, 2020

By: /s/ Rachel Lederman

Attorney for Appellant  
Treyvon Love Ollo

## **CERTIFICATE OF COMPLIANCE**

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This brief is set using **13-pt Century Schoolbook**. According to TypeLaw.com, the computer program used to prepare this brief, this brief contains **895** words, excluding the cover, tables, signature block, and this certificate.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court, rule 8.204(b) and contains fewer words than permitted by rule 8.520(c) or by Order of this Court.

Dated: November 13, 2020

By: /s/ Rachel Lederman



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Dated: November 13, 2020

By: /s/ Rachel Lederman

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Supreme Court of California

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