

SUPREME COURT COPY

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff and Respondent,

v.

JULIAN BULLARD,

Defendant and Appellant.

Case No. S239488

SUPREME COURT
FILED

DEC 19 2019

Jorge Navarrete Clerk

Fourth Appellate District Division Two, Case No. E06590 Deputy
San Bernardino County Superior Court, Case No. FVI1200894
The Honorable John Peter Vander Feer, Judge

SUPPLEMENTAL BRIEF

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CLERK SUPREME COURT

The People respectfully inform the Court of the following authorities issued after their answer brief was filed. (See Rules of Court, rule 8.520, subd. (d)(1).)

1. In *In re C.B.* (2018) 6 Cal.5th 118, 122, 133-135, this Court held that equal protection did not require the expungement of DNA samples collected from juveniles who committed felonies before Proposition 47's enactment, even though their DNA would not have been collected had they committed their crimes after the Act became law. California law requires the collection and storage of DNA samples from all juveniles "adjudged wards of the court based on felony conduct." (*Id.* at p. 121.) Pursuant to that provision, the juveniles in *In re C.B.* submitted DNA samples to the California Department of Justice based on conduct that was felonious at the time it was committed. (*Id.* at pp. 122-123.) Proposition 47, however, reclassified their offenses from felonies to misdemeanors; as a result, juveniles who engage in the same conduct today are not required to submit their DNA to the State's databank. (*Id.* at p. 133.)

In rejecting the juveniles' equal protection claim, this Court reaffirmed that a "challenged disparity in treatment need only survive rational basis scrutiny," unless the distinction "implicates a suspect classification or fundamental right." (*In re C.B.*, *supra*, 6 Cal.5th at p. 134.) It also reiterated that under rational basis review, "any reasonably conceivable basis for the disparity that is rooted in a legitimate government interest, whether or not expressly articulated by the voters, is sufficient." (*Ibid.*) And it held that "cost considerations"—both the cost of obtaining samples in the future, and the cost of expunging samples already obtained—was enough to sustain the voters' choice. (*Ibid.*) This analysis supports the

People’s arguments that rational basis is the appropriate standard of review in this case. (ABM 31-32.)¹

2. *People v. Lara* (2019) 6 Cal.5th 1128, 1130-1131 involved a defendant’s challenge to his felony Vehicle Code section 10851 conviction in light of changes made to that provision by Proposition 47. Lara committed his crimes before Proposition 47 was adopted; but was not sentenced until afterwards. (*Id.* at p. 1132.) The Court held that Lara was entitled to invoke Proposition 47’s ameliorative provisions based on his post-enactment sentencing. (*Id.* at p. 1135.) But that raised the further question of whether application of Proposition 47 made a difference in Lara’s case. (*Ibid.*) In holding that it did not, the Court reiterated that section 10851 “prohibits taking *or* driving a vehicle without the owner’s consent,” and that Proposition 47 only applies to a “theft-based violation” of the statute. (*Id.* at p. 1136, italics added.) Because the evidence in the case showed that Lara had engaged in “posttheft driving”—driving that occurs or continues after the theft is complete—the Court affirmed his felony conviction. (*Id.* at pp. 1136-1137.) *Lara*’s conclusion that section 10851 prohibits the driving of someone else’s vehicle without their consent separate and apart from the taking of the same vehicle is consistent with this Court’s prior interpretation of that provision. (See ABM 29 [collecting cases].) And the electorate was presumably aware of that longstanding interpretation when it limited Proposition 47 to the section 10851 convictions based on theft. (See ABM 11-12, 29-30.)

¹ In a concurrence, Justice Liu suggested that a claim that a state law “implicat[ing] a constitutionally protected privacy interest” might “require a more stringent equal protection analysis.” (*In re C.B.*, *supra*, 6 Cal.5th at p. 135 (conc. opn. of Liu, J.)) This case does not involve any such privacy interests.

3. In *People v. Morales* (2019) 33 Cal.App.5th 800, 806-809, the Fourth District Court of Appeal addressed the same question presented here: whether equal protection or the avoidance of absurd consequences require extending Proposition 47's misdemeanor sentencing provisions to section 10851 convictions based on unlawful driving. The court of appeal held that they did not, concluding that it was "entirely reasonable" to punish driving violations of section 10851 more harshly than taking violations. (*Id.* at p. 807.) The court reasoned that "[d]riving is an inherently dangerous activity"; that driving illegally is "even more so"; and that while the theft of a car is a "single incident, driving a car without its owner's permission may be done many times, multiplying the threat to public safety." (*Id.* at p. 807.) This conclusion directly supports the People's argument in this case. (ABM 18-19, 22-23, 32-33.)²

² *Morales* also rejected the defendant's equal protection claim, concluding that persons convicted of the theft version of section 10851 are not "similarly situated" to those who are convicted of the driving version. (*Morales, supra*, 33 Cal.App.5th at pp. 808-809.) Although the People have not advanced that argument (see ABM 33), the Court could reject Bullard's equal protection claim on that ground. And *Morales*'s conclusion that it is not absurd to punish illegal driving more harshly than illegal taking supports the People's contention that this distinction is a rational one. (ABM 32-33.)

Dated: December 19, 2019

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **SUPPLEMENTAL BRIEF** uses a 13-point Times New Roman font and contains 819 words.

Dated: December 19, 2019

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/s/ Samuel P. Siegel

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Julian Micah Bullard**
Case No.: **S239488**

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 December 19, 2019, I served the attached **SUPPLEMENTAL BRIEF** 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 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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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 December 19, 2019, at San Francisco, California.

M. Campos
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Signature