

No. S256978

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

GOLDY RAYBON,
Defendant and Appellant.

[And four other cases]

Court of Appeal, Third Appellate District,
Case Nos. C084853, C084911, C084960, C084964, and Co85101
Sacramento County Superior Court,
Case Nos 09F08248, 13F03230, 08F07402, 12F00411, and 06F11185.
The Honorable Curtis M. Fiorini, Judge

SUPPLEMENTAL BRIEF

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May 7, 2021

The People respectfully submit the following supplemental brief regarding two new authorities that were not available in time to be included in the briefs on the merits: *People v. Taylor* (2021) 60 Cal.App.5th 115 [274 Cal.Rptr.3d 204], review granted April 14, 2021, S267344; and *People v. Herrera* (2020) 52 Cal.App.5th 982, review granted October 14, 2020, S264339.

In both *Taylor* and *Herrera*, the Sixth Appellate District agreed with the People that Health and Safety Code section 11362.1 does not make it lawful for an adult to possess 28.5 grams or less of cannabis in a custodial institution without official authorization. (*Taylor, supra*, 274 Cal.Rptr.3d at pp. 217-222; *Herrera, supra*, 52 Cal.App.5th at pp. 991-993.) The court explained that the statute does not affect, restrict, or preempt “laws pertaining to smoking or ingesting cannabis” in custodial institutions pursuant to the “carve out” provision in Health and Safety Code section 11362.45, subdivision (d). (*Taylor*, at p. 218; *Herrera*, at p. 991.) And laws prohibiting the unauthorized possession of cannabis in a custodial institution pertain to smoking or ingesting for the same reasons already discussed in the briefs here. (*Taylor*, at pp. 218-222; *Herrera*, at pp. 991-993.)

The court also determined that the unauthorized possession of 28.5 grams or less of cannabis by an adult in a custodial institution still violates the particular provisions in Penal Code section 4573.6, subdivision (a). (*Taylor, supra*, 274 Cal.Rptr.3d at pp. 210-217; *Herrera, supra*, 52 Cal.App.5th at pp. 993-995.) That statute prohibits the unauthorized possession of “any controlled substances, the possession of which is prohibited by

Division 10 (commencing with Section 11000) of the Health and Safety Code.” The court explained that the quoted language “refers to a general category of controlled substances, rather than a particular instance of possession, and encompasses those controlled substances, the possession of which is *in any way* prohibited by Division 10.” (*Taylor*, at p. 214, original italics.) And, because division 10 continues to prohibit the possession of cannabis in certain ways (such by prohibiting possession on school grounds), Penal Code section 4573.6 continues to prohibit unauthorized possession in custodial institutions. (See Health & Saf. Code, §§ 11357, subds. (c) & (d), 11362.3, subd. (a)(5), 11362.4, subd. (c).)

In so holding, the Sixth Appellate District was “compelled to disagree” with *People v. Fenton* (1993) 20 Cal.App.4th 965 regarding the reference to controlled substances “the possession of which is prohibited by Division 10.” (*Taylor, supra*, 274 Cal.Rptr.3d at pp. 213-215.) The Third Appellate District reasoned in *Fenton* that, because division 10 does not prohibit possession with a prescription, smuggling a prescribed substance into a custodial institution does not violate Penal Code section 4573. (*Fenton*, at p. 969.) But the Sixth Appellate District criticized *Fenton* for having “neglected to consider related statutes using that same language.” (*Taylor*, at p. 213.) The court pointed in particular to Penal Code section 4573.9, which applies when a person who is not in custody offers to furnish contraband to an inmate. (*Id.* at pp. 213-214.) The court reasoned that it “makes little sense” for the culpability of the

offeror to turn on individualized circumstances of the inmate, such as whether the inmate has a prescription for the contraband or is of a certain age. (*Id.* at p. 214.) Indeed, allowing exceptions for some inmates could lead to “surreptitious use, circulation, or sale of those substances by persons in custody” and thereby undermine the legislative purpose “to maintain institutional supervision, discipline, order, and safety.” (*Id.* at p. 216.)

As a result, *Taylor* and *Herrera* provide further support for the superior court’s determination that appellants were not entitled to relief from their convictions for violating Health and Safety Code section 4573.6.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached Supplemental Brief uses a 13 point Century Schoolbook font and contains 611 words.

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May 7, 2021

DECLARATION OF ELECTRONIC SERVICE

Case Name: **People v. Raybon**
No.: **S256978**

I declare:

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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 7, 2021, at Sacramento, California.

A. Cerussi
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/s/ A. Cerussi
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.**
RAYBON

Case Number: **S256978**

Lower Court Case Number: **C084853**

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