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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner and Appellant,

v.

BRIAN MICHAEL ARANDA,
Defendant and Respondent.

SUPREME COURT
FILED

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OCT 22 2013

Frank A. McGuire Clerk
Deputy

Fourth Appellate District, Division Two, No. E056708
Riverside County Superior Court No. RIF154701
The Honorable Michele D. Levine and Helios J. Hernandez, Judges

PETITION FOR REVIEW

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

v.

S _____

BRIAN MICHAEL ARANDA,
Defendant and Respondent.

TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND
TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA
SUPREME COURT:

The People of the State of California, plaintiff and appellant in the above-captioned action, hereby petitions this Honorable Court pursuant to California Rules of Court, rule 8.500, to grant review of the decision of the Court of Appeal of the State of California, Fourth Appellate District, Division Two, filed on September 12, 2013. A copy of the opinion is attached as an appendix to this Petition.

ISSUE PRESENTED

Whether the United States Supreme Court's holding in *Blueford v. Arkansas* ([May 24] 2012) 566 U.S. ___ [132 S.Ct. 2044, 182 L.Ed. 2d 937] (*Blueford*) that the Double Jeopardy Clause of the Federal Constitution does not require a trial court to assist a deadlocked jury in rendering a partial acquittal prior to the declaration of a mistrial based on manifest legal necessity abrogates *Stone v. Superior Court* (1982) 31 Cal.3d 503 (*Stone*)?

STATEMENT OF FACTS AND STATEMENT OF THE CASE

In the early morning hours of December 2, 2009, victim Fernando Castillo was found beaten to death. (1CT at pp. 20, 79-81.) Respondent Brian Aranda admitted to police that he armed himself with an ice pick, went to the apartment the victim shared with his daughter Alexis (who was also Aranda's girlfriend) and entered the bedroom. Aranda and Fernando then fought. Aranda confessed that he gained the upper hand and stabbed Fernando with the ice pick more than 30 times. (1CT at pp. 54, 56-58, 79-81.) Aranda was charged with murder and the personal use of a deadly weapon (Pen. Code, §§ 187, 12022, subd. (b)(1)). (1CT at pp. 90-91.)

On November 9, 2011, trial commenced with jury selection. (1CT at pp. 215-216.) On November 30, 2011, the jury began deliberations. (2CT at pp. 374-375.) During the course of deliberations the jury asked several questions. After several days of deliberations the jury notified the court that it was deadlocked. The court directed the jury to continue deliberating. After an additional fifty minutes of deliberations, the jury again notified the court that it was deadlocked. As a result, the court declared a mistrial and set a new jury trial date. (2CT at pp. 444.)

On March 22, 2012, defendant filed a motion to dismiss alleging that double jeopardy prevented the further prosecution of defendant Aranda on any charges. (2CT at pp. 453-469.) The People opposed the motion. The court granted the motion to dismiss the first degree murder charge and denied the motion as to the lesser-included offense of second degree murder. Following the publication of the decision of the United States Supreme Court in *Blueford*, the People filed a motion for reconsideration. (2CT at pp. 499-509.) On June 18, 2012, the court denied the People's motion for reconsideration and the matter remained set for trial.

The People appealed to the Court of Appeal of the Fourth Appellate District, Division Two. On September 12, 2013, the Court of Appeal affirmed the judgment with a published opinion by Justice McKinster, acknowledging the contradiction between *Blueford* and *Stone*.

STANDARD FOR GRANTING REVIEW

This Court generally orders review when necessary to secure uniformity of decision or to settle an important question of law. (Cal. Rules of Court, rule 8.500(b)(1).) The Supreme Court’s role is to “supervise and control the opinions of the several District Courts of Appeal, each of which is acting concurrently and independently of the others, and by such supervision to endeavor to secure harmony and uniformity in the decisions . . . and in some instances [issue] a final decision by the court of last resort of some doubtful or disputed question of law.” (*People v. Davis* (1905) 147 Cal. 346, 348.) It is “emphatically the province and duty of the judicial department to say what the law is.” (*Marbury v. Madison* (1803) 5 U.S. (1 Cranch) 137, 177.)

REASONS FOR GRANTING REVIEW

I.

A GRANT OF REVIEW IS NECESSARY IN THIS CASE IN ORDER TO SECURE UNIFORMITY OF DECISION AND TO SETTLE THE IMPORTANT QUESTION OF LAW RAISED BY THE DIRECT CONTRADICTION BETWEEN THE UNITED STATES SUPREME COURT’S DECISION IN *BLUEFORD* AND THIS COURT’S DECISION IN *STONE*

In *Blueford*, the United States Supreme Court reviewed the manifest legal necessity provisions of the Double Jeopardy Clause of the federal constitution and relying heavily on an analysis in *Green v. United States* (1957) 355 U.S. 184 (*Green*), rejected the partial acquittal doctrine. The *Blueford* Court’s holding directly contradicts that in *Stone*, in which this Court also relying heavily on

Green, held that manifest legal necessity requires a trial court to provide a deadlocked jury with the opportunity to render a partial acquittal before the lawful declaration of a mistrial. As a result, the trial and appellate courts in California presently lack uniformity of decision due to the unresolved question of “whether the *Stone* partial acquittal rule survives *Blueford*.” (*People v. Aranda* (2013) 219 Cal.App.4th 764 [Slip Opn. at p. 9.]

In *Stone*, this Court recognized its ability to determine that a greater protection against double jeopardy exists under the California Constitution. (*Stone, supra*, 31 Cal.3d at p. 510.) However, the Court never articulated an intention to do so. Instead, this Court in *Stone* went on to conduct an analysis of the requirements of double jeopardy protection under the federal constitution, and never reached the issue of additional protections, if any, provided for in the California Constitution. At the time *Stone* was decided, there was no federal case authority addressing the partial acquittal rule and its relationship to the double jeopardy clause of the federal constitution.

Consequently, without contradictory federal precedent, the doctrine articulated in *Stone* continued to exist regardless of which constitution gave rise to the protection and this Court was never been called upon to clarify the constitutional basis for its partial acquittal doctrine. However, the United States Supreme Court’s recent decision in *Blueford* makes clear any federal constitutional underpinning for *Stone*’s partial acquittal doctrine is now eviscerated. If it was this Court’s intent to anchor *Stone*’s partial acquittal doctrine in state constitutional protections, it has never so held. Holdings by later courts which assume a state constitutional basis, such as the holding of the lower court, do so exclusively on dicta. With the advent of *Blueford*, this Court must now directly confront and specify the constitutional underpinning for *Stone*’s partial acquittal doctrine, providing crucial guidance to defendants, prosecutors, and trial courts when confronted with potentially deadlocked juries and avoiding the inconsistent application of justice in the State of California.

Significantly, in reaching this ultimate conclusion that double jeopardy protections require trial courts to provide deadlocked juries with a means for rendering a partial verdict, this Court in *Stone* conducted an almost exclusively federal constitutional analysis. In *Blueford*, the United States Supreme Court looked to the same federal constitutional precedent in *Green v. United States*, *supra*, 355 U.S. 184, that was reviewed by this Court in *Stone* and came to a decidedly contrary conclusion, that the partial acquittal doctrine is not encompassed by the Double Jeopardy Clause of the federal constitution. It is because of the directly contradictory interpretations of *Green* by this Court and the United States Supreme Court on the issue of legal necessity and the partial acquittal doctrine, that this Court must grant review in order to settle the important question of law regarding the partial acquittal doctrine in California cases post-*Blueford*.

This ambiguity in California law post-*Blueford* was acknowledged by the District Court of Appeal in the instant case in which the court noted that, “the California Supreme Court did not explicitly state in *Stone* that the partial acquittal rule arises independently under the California Constitution. Although the court stated that it remains free to delineate a higher level of protection under article I, section 15 of the California Constitution (*Stone, supra*, 31 Cal.3d at p. 510), the court did not state that it *was* delineating a higher level of protection under the California Constitution.” (*People v. Aranda* (2013) Slip Opn. at p. 7.) Moreover, this Court in *Stone* engaged in a solely federal constitutional analysis and never addressed the state constitution much less conducted a state constitutional analysis. As a result, there is ambiguity in the law of partial acquittal post-*Blueford* which this Court must address to gain uniformity of decision.

The Court of Appeal went on to affirm the judgment in the instant case by looking to post-*Stone* California Supreme Court authority in *People v. Fields* (1996) 13 Cal.4th 289. Although acknowledging the ambiguity of the constitutional basis for *Stone*'s partial acquittal doctrine, the appellate court

indicated it was bound by *Fields* pursuant to *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455. The Court of Appeal's reliance on *Fields* to interpret *Stone* is misplaced, as *Fields* did not directly address the partial acquittal doctrine and thus does not resolve the question of *Blueford*'s impact upon the *Stone* holding. While *Fields* does address the application of the *implied* acquittal doctrine which, like the *Stone* instruction finds a legal basis in the double jeopardy clause, these two doctrines are distinct and can have different constitutional underpinnings.

The implied acquittal doctrine, such as that discussed in *Fields*, addresses the legality of retrying a defendant on the greater offense when the jury hangs on that offense *but returns a verdict* on the lesser included offense. That did not occur in *Stone*, nor did it occur in the instant case. Moreover, *Fields* expressly rejected a state or federal constitutional underpinning for its holding on implied acquittal; rather, it grounded its analysis in the statutory mandate of Penal Code section 1023. Thus, the *Fields* court engaged in a decidedly statutory analysis, not a constitutional one, and therefore does not fully resolve the ambiguity in California law created by *Blueford*. (*Fields*, supra, 13 Cal.4th 290-291.)

The question in *Aranda*, and all post-*Blueford* legal necessity cases is whether the trial court violates the partial acquittal doctrine by failing to provide a deadlocked jury with additional verdict forms upon the indication of the foreman that the jury cannot reach a verdict. Here, the foreman told the court the jury was unable to agree on a verdict and offered a vote count outside the presence of the other jurors. The jury deliberated for an additional period of time and the foreman again told the court the jurors were divided in the same manner. No poll of the jurors was done and no other jurors were present when either breakdown was provided to the court. After determining that the jury was hopelessly deadlocked, but without taking any additional steps, the trial court declared a mistrial.

Under *Stone*, because the jury expressed a deadlock, the trial court should have provided a *Stone* instruction in order to obtain the requisite legal necessity

for the declaration a mistrial without invoking double jeopardy protection. Under *Blueford*, no such extra step was necessary to meet the double jeopardy requirements of manifest legal necessity for the declaration a mistrial. Consequently, which constitution the *Stone* Court was interpreting when it determined that double jeopardy requires a trial court to provide the jury with the means to render a partial acquittal before legal necessity for a mistrial exists, must be resolved by this Court.

CONCLUSION

Accordingly, for the reasons stated, the People respectfully request that this Court grant this Petition for Review to address whether the United States Supreme Court holding in *Blueford*, abrogates this Courts holding in *Stone*. Such review is necessary because, as indicated in the opinion of the Court of Appeal in this case, the *Stone* court's decision did not affirmatively create a separate right to partial acquittal under the California Constitution. Without this Court's intervention future defendants, prosecutors, and trial courts, lack crucial guidance when facing a deadlocked jury, risking uniform application of law and inconsistent justice.

Dated: October 21, 2013

Respectfully submitted,

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KELLI M. CATLETT
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CERTIFICATE OF WORD COUNT

Case No. E056708

The text of the *PETITION FOR REVIEW* consists of 1,952 words as counted by the Microsoft Word Program used to generate the said *PETITION FOR REVIEW*.

Executed on October 21, 2013.

Respectfully submitted,

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County of Riverside

JEFF VAN WAGENEN
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PROOF OF SERVICE BY MAIL

Case No. E056708

I, the undersigned, say: I am a resident of or employed in the County of Riverside, over the age of 18 years and not a party to the within action or proceeding; that my residence or business address is 3960 Orange Street, Riverside, California 92501.

That on October 21, 2013, I served a copy of the paper to which this proof of service by mail is attached, *PETITION FOR REVIEW*, by depositing said copy enclosed in a sealed envelope with postage thereon fully prepaid, in a United States Postal Service mailbox, in the City of Riverside, State of California, addressed as follows:

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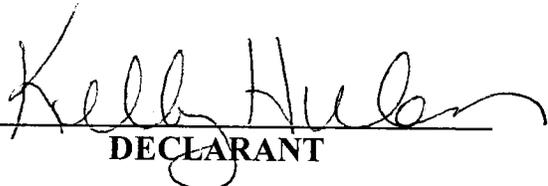
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I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on October 21, 2013, at Riverside, California.



DECLARANT

APPENDIX

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Appellant,

v.

BRIAN MICHAEL ARANDA,

Defendant and Respondent.

E056708

(Super.Ct.No. RIF154701)

OPINION

APPEAL from the Superior Court of Riverside County. Michele D. Levine and Helios (Joe) Hernandez, Judges. Affirmed and remanded.

Paul E. Zellerbach, District Attorney, and Kelli Catlett, Deputy District Attorney, for Plaintiff and Appellant.

Blumenthal Law Offices, Virginia Blumenthal and Brent F. Romney for Defendant and Respondent.

INTRODUCTION

In *Stone v. Superior Court* (1982) 31 Cal.3d 503 (*Stone*), the California Supreme Court held that when a jury indicates that it has unanimously determined that the defendant is not guilty of a greater offense but is deadlocked only on a lesser included offense, the court must afford the jury the opportunity to return a partial verdict of acquittal on the greater offense before the trial court may declare a mistrial. If the court does not do so, the mistrial is deemed to be without legal necessity as to the greater offense, and double jeopardy principles preclude retrying the defendant for that offense. (*Id.* at p. 519.)

Not all states have a partial acquittal rule. In *Blueford v. Arkansas* (2012) 566 U.S. ____ [132 S.Ct. 2044] (*Blueford*), which was decided while this case was pending in the trial court, the United States Supreme Court held that the Fifth Amendment's double jeopardy clause does not mandate such a procedure, and that, in a state which does not have a partial acquittal rule, if the jury deadlocks on a lesser included offense without formally returning a verdict of not guilty on the greater offense, the defendant may be retried on both the greater and lesser offenses. (*Id.*, 132 S.Ct. at pp. 2048-2053.)

The People, the appellants in this case, contend that *Blueford* abrogates *Stone*, because *Stone* based its analysis solely on double jeopardy jurisprudence under the United States Constitution. Defendant contends that *Stone* is based instead on the California Constitution and that *Blueford* consequently does not abrogate the partial verdict rule enunciated in *Stone*.

We conclude that *Stone* continues to apply in criminal prosecutions in California state courts until such time as the California Supreme Court holds otherwise.

BACKGROUND

Defendant Brian Michael Aranda was tried on an information which alleged a single count of first degree murder.¹ The jury was instructed on first degree murder and the uncharged lesser included offenses of second degree murder and voluntary manslaughter. The jury was apparently given “guilty” verdict forms for first degree murder, second degree murder and voluntary manslaughter, but only a single “not guilty” verdict form.²

On Friday, December 2, 2011, after the court received a report of possible misconduct by one juror—“throwing things” when the juror disagreed with other jurors—and that the jury was possibly deadlocked, the court summoned the jury foreman into the courtroom. The court asked the foreman “how things are going.” The foreman replied that the jury was at a stalemate. He stated that the jury had “basically ruled out murder in the first degree” and had “worked down to voluntary manslaughter, but there’s still a couple that are still stuck on second degree.” He stated that the jury was having “a

¹ Because no verdict was returned, the underlying facts were not determined. The trial evidence is in any event not relevant to the issues raised in this appeal.

² The clerk’s transcript does not contain the unused verdict forms, and neither party cites any portion of the record which makes this explicit. Nevertheless, it is clear that the jury was not given a “not guilty” verdict form for first degree murder.

tough time coming to a unanimous decision.” The court told the foreman to go back to the jury room and to continue deliberations.

The following Monday, December 5, the foreman sent a request to speak to the court. The foreman stated that there was still one juror who thought that defendant was guilty of second degree murder and two others who were “on the side of voluntary.” Nine jurors “are not guilty.” The foreman stated that the jury was “kind of at a stalemate.” He stated that the jury had gone through all of the evidence, “over and over and over.” He reported that some jurors were concerned about Juror No. 10 because Juror No. 10 “knows a lot of Corona police officers” and worked for the city. It was Juror No. 10 who was “pretty much stuck on second degree.”

The court asked the foreman to step out into the hallway. After discussion with counsel, the court decided to bring the jury in and “ask them what they can do” to assist the jury, but to have them continue to deliberate for the rest of the afternoon. When the jury came into the courtroom, several jurors asked questions concerning instructions. Juror No. 12 then said that although the jury had been deliberating for six days, they were still “at different ends of the spectrum.” Juror No. 12 did not believe that the jury would ever reach a verdict. The court directed the jury to continue deliberations until 3:30 pm. (It was then 2:49 p.m.)

Both before and after the colloquy with the foreman on December 5, 2011, defense counsel asked the court to give the jury a “not guilty” verdict form to allow the jury to state that it had found defendant not guilty of first degree murder, if that was the case. The court refused, saying that doing so after having not originally given the jury

“not guilty” verdicts on any of the offenses might give jurors the impression that the court was “directing them as to which way to think.”

At 3:30 p.m., the foreman reported that the jury was “still at the same spot,” i.e., nine to acquit, two for voluntary manslaughter and one for second degree murder. The court concluded that the jury was hopelessly deadlocked and declared a mistrial. Referring back to her request that the jury be given a “not guilty” verdict form for first degree murder, defense counsel then stated that defendant “should not be able to be tried again on first degree murder” because the jury had indicated that it had acquitted him of that offense.

The defense filed a motion to dismiss the first degree murder charge and the lesser included offenses, asserting “once in jeopardy.” The prosecution opposed the motion. After argument, the court³ held that the trial judge’s failure to afford the jury the opportunity to return a not guilty verdict on first degree murder precluded retrial on that offense, but that the trial judge had properly declared a mistrial on the lesser offenses and that retrial on the lesser offenses was permissible. The court subsequently denied the prosecution’s motion for reconsideration, which was based on the recently decided case of *Blueford, supra*, 132 S.Ct. 2044.

³ The Honorable Helios (Joe) Hernandez presided over the trial. The posttrial motion was heard by the Honorable Michele D. Levine.

The prosecution filed a timely notice of appeal.⁴

LEGAL ANALYSIS

It has long been established that the double jeopardy clause of the Fifth Amendment to the United States Constitution does not permit retrial of a criminal defendant after a mistrial has been declared without the defendant's consent, unless the mistrial resulted from "manifest necessity"—typically, a deadlocked jury which is unable to return a unanimous verdict. (See *Blueford*, *supra*, 132 S.Ct. at pp. 2050, 2053.) The same rule, termed "legal necessity," arises under the California Constitution. (*People v. Fields* (1996) 13 Cal.4th 289, 300 (*Fields*).

As noted above, in *Stone*, *supra*, 31 Cal.3d 503, the California Supreme Court held that when a jury indicates that it has unanimously determined that a defendant is not guilty of a charged offense but reports that it is deadlocked on an uncharged lesser included offense, the trial court must offer the jury the opportunity to return a verdict of not guilty on the greater offense before it declares a mistrial. "Failure to do so will cause

⁴ An order granting a motion to dismiss based on a plea of former jeopardy is appealable as long as the motion was granted before a jury has been impaneled in a subsequent proceeding. (*People v. McDougal* (2003) 109 Cal.App.4th 571, 580-581; Pen. Code, § 1238, subd. (a)(8).)

a subsequently declared mistrial to be without legal necessity,” with respect to the greater offense, and double jeopardy principles preclude a retrial on that offense.⁵ (*Id.* at p. 519.)

The People contend that *Blueford* implicitly overruled *Stone* because in that case the United States Supreme Court held that the Fifth Amendment does not require that a jury which is deadlocked on a lesser included offense be given the opportunity to return a partial verdict of not guilty on the greater offense. (*Blueford, supra*, 132 S.Ct. at pp. 2050-2053.) If *Stone* based its rule exclusively on the Fifth Amendment, as the People assert, then its holding was abrogated by *Blueford*. *Blueford* does not, however, hold that a state may *not* require the opportunity for partial acquittal upon deadlock on a lesser included offense. Accordingly, if the partial acquittal rule arises independently under the California Constitution, the partial acquittal rule enunciated in *Stone* retains its validity.

The People are correct that the California Supreme Court did not explicitly state in *Stone* that the partial acquittal rule arises independently under the California Constitution. Although the court stated that it remains free to delineate a higher level of protection under article I, section 15 of the California Constitution (*Stone, supra*, 31 Cal.3d at p. 510), the court did not state that it *was* delineating a higher level of protection under the California Constitution. After discussing California authorities involving somewhat

⁵ The *Stone* rule does not require the jury to make any formal announcement that it has unanimously decided that the defendant is not guilty of the charged offense. Rather, “some indication of deadlock only on an uncharged lesser included offense” suffices to trigger the trial court’s duty to afford the jury the opportunity to return a partial verdict of not guilty on the charged offenses. (*People v. Marshall* (1996) 13 Cal.4th 799, 826.)

similar but distinguishable scenarios (*id.* at pp. 512-516), the court “turn[ed] to the precise issue here—whether the double jeopardy clause requires formulation of a procedure for the receipt of partial verdicts in [the circumstances present in that case].” (*Id.* at pp. 516-517.) The court did not specify *which* double jeopardy clause it was relying on. And, the ensuing discussion leading to the court’s holding is based almost entirely on *Green v. United States* (1957) 355 U.S. 184, a Fifth Amendment case. (*Stone*, at pp. 517-518.)⁶

Nevertheless, the court has made it clear that the legal necessity rule, of which the partial acquittal rule is a part, is a doctrine which arises independently under the California Constitution. In *Fields*, *supra*, 13 Cal.4th 289, the court addressed the contention that the implied acquittal rule, which applies when a jury returns a guilty verdict on a lesser offense without expressly stating that it is deadlocked on a greater offense, should also apply when a jury reports that it is deadlocked on a greater offense and returns a verdict of guilty on a lesser offense. (*Id.* at p. 295.) The court held that the implied acquittal rule arises both under the federal and state Constitutions. (*Id.* at p. 299.) Analyzing the defendant’s argument first under the federal double jeopardy clause, the

⁶ In *Blueford*, the court rejected the argument that *Green v. United States*, *supra*, 355 U.S. 184, mandated a finding of implied acquittal. In *Green*, the court held that when a jury *convicts* a defendant of a lesser included offense and does not return a verdict on the greater offense, acquittal of the greater offense is implied. That rule does not apply when the jury has deadlocked on a lesser included offense, even if the jury was instructed that it must acquit the defendant of the greater offense before returning a verdict on a lesser included offense. (*Blueford*, *supra*, 132 S.Ct. at pp. 2050-2052.) Implied acquittal, however, is distinct from the doctrines of manifest necessity and legal necessity to justify a retrial following jury deadlock. (*Fields*, *supra*, 13 Cal.4th at pp. 299-300.)

court found the rule inapplicable where the jury is “expressly deadlocked, rather than merely silent, on the greater offense.” (*Id.* at p. 301) Based on cases where under other circumstances the United States Supreme Court “recognized a distinction, for double jeopardy purposes, between a jury’s silence and its expressed inability to return a verdict” (*ibid.*), the court concluded that the federal Constitution “does not compel the conclusion” that the doctrine of implied acquittal applies in every case in which the jury returns a verdict of guilty on the lesser included offense. (*Id.* at pp. 301-302.) Nevertheless, the court held, that does not end the inquiry, because the doctrines of implied acquittal and of manifest necessity/legal necessity “are well established under both the federal and state Constitutions.” Accordingly, a different result could obtain under California law. (*Id.* at pp. 302-303.) The court held, however, that there is “nothing in the state decisions suggesting it is any more plausible under California law than under federal law” to apply the doctrine of applied acquittal when the jury has expressly deadlocked on the greater offense. (*Id.* at p. 303.)

This does not directly resolve the question presented here, i.e., whether the *Stone* partial acquittal rule survives *Blueford*. However, because *Fields* makes it abundantly clear that California’s Constitution is the independent source of its double jeopardy jurisprudence to the extent that it may provide protection greater than is mandated by the federal Constitution, we conclude that we are compelled to hold that the *Stone* rule arises independently of the federal Constitution and that it retains its validity under the California Constitution until such time as our Supreme Court holds otherwise. We emphasize that in *Blueford*, the court did not hold that a partial acquittal rule is

impermissible under the federal Constitution; on the contrary, it held only that such a rule is not *compelled* by the Fifth Amendment. (*Blueford, supra*, 132 S.Ct. at pp. 2050-2053.) Because *Blueford* does not mandate the abrogation of *Stone*, we do not believe it is our prerogative to disregard a rule enunciated by the California Supreme Court simply because the court did not explicitly hold that the rule arises under both the state and federal Constitutions. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Accordingly, we hold that *Blueford* abrogates *Stone* only to the extent that *Stone* held that the partial acquittal rule arises under the federal Constitution, and that the partial acquittal rule continues to apply in prosecutions in California state courts.

The remainder of the People's arguments are based on the contention that the trial court should have applied *Blueford* to determine whether the mistrial was properly granted with respect to the charged offense of first degree murder. Accordingly, we need not address them.⁷

⁷ Because the People do not assert that the trial court erred in finding the mistrial without legal necessity under *Stone*, we need not address the merits of the ruling. Defendant, on the other hand, argues that double jeopardy bars retrial on both the charged offense and the uncharged lesser offenses and asks that we dismiss "all charges." We cannot grant defendant affirmative relief with respect to the uncharged lesser offenses because he has not appealed from that aspect of the trial court's ruling on his motion. (*Estate of Powell* (2000) 83 Cal.App.4th 1434, 1439.) In any event, the trial court correctly concluded that retrial on the lesser included offenses is permissible pursuant to *Stone*.

DISPOSITION

The order granting the motion to dismiss the charge of first degree murder is affirmed. The cause is remanded for further proceedings. The previously ordered stay is lifted.

CERTIFIED FOR PUBLICATION

McKINSTER
Acting P.J.

We concur:

RICHLI
J.

KING
J.