

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Appellant,

v.

BRIAN MICHAEL ARANDA,

Defendant and Respondent.

S214116

SUPREME COURT
FILED

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Court of Appeal Case No. E056708
Riverside County Superior Court No. RIF154701
The Honorable Michele D. Levine, Judge

Frank A. McGuire Clerk

Deputy

OPENING BRIEF ON THE MERITS

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INTRODUCTION

Defendant, Brian Aranda, was prosecuted for first degree murder. At the conclusion of the evidence, the jury was sent to deliberate with four verdict forms. At the defendant's request, the jury was given a "Guilty" form for the singularly charged count of first degree murder, a "Guilty" form for each of the uncharged but necessarily included lesser offenses, and a single "Not Guilty" verdict form. After several days of deliberations, an exasperated foreperson expressed to the court that the jury was deadlocked. The Court inquired of the foreperson regarding the vote split and was informed that there were no votes for first degree murder, one vote for second degree

murder, two votes for voluntary manslaughter and nine votes for not guilty. Once the foreperson expressed the deadlock to the court, the defendant requested the jury be provided with a separate “Not Guilty” form for first degree murder, contrary to his earlier insistence that the jury receive only one “Not Guilty” form. The trial court denied this request and sent the jury back to deliberate further. Slightly less than an hour later, the foreperson again informed the court that the jury was hopelessly deadlocked and, as a result, the trial court declared a mistrial.

Following the declaration of a mistrial, the matter was set for retrial and defendant filed a once-in-jeopardy motion. The defendant argued that the trial court violated the partial acquittal rule as announced in *Stone v. Superior Court* (1982) 31 Cal.3d 503. The motion court agreed and granted defendant’s motion as to the charge of first degree murder. The motion court held that pursuant to *Stone*, there was no manifest legal necessity to grant the mistrial due to the failure of the trial court to first provide the jury with a “Not Guilty” verdict form on first degree murder. This would have enabled the jury, had they so desired, to render a partial verdict, acquitting defendant on the charge of first degree murder while deadlocking as to the lesser included offenses. As a result, the motion court found that double jeopardy protections prohibited the prosecution from retrying defendant on the charge of first degree murder, but allowed for retrial on the lesser included offense of second degree murder.

Ten days after the motion court’s initial ruling, the United States Supreme Court issued its opinion in *Blueford v. Arkansas* (2012) 566 U.S. ____ [132 S.Ct. 2044, 182 L.Ed. 2d 937] (*Blueford*). In *Blueford*, the High Court held that the Double Jeopardy Clause of the Federal Constitution does not require a trial court to aid a deadlocked jury in rendering a partial verdict before manifest legal necessity exists for the lawful declaration of a mistrial. As a result of the *Blueford* opinion, the People filed a motion for reconsideration.

In its motion for reconsideration, the People argued that *Stone* interpreted the federal constitutional double jeopardy provisions and thus *Blueford* now abrogated *Stone*. The People asserted that despite the *Stone* court's acknowledgment at the outset of the opinion that California courts can provide additional protections under the state constitution, this Court did not affirmatively establish a right to a partial verdict under the double jeopardy protections of the California Constitution. Rather, this Court in *Stone* conducted a purely federal constitutional analysis and contrary to *Blueford*, determined that federal double jeopardy protections require a trial court provide the jury with the opportunity to render a partial verdict before manifest legal necessity exists for a mistrial. In response, defendant argued that *Stone* instead interpreted the state constitutional double jeopardy provisions and thus *Stone* remained good law.

On reconsideration, the motion court held that *Stone* extended additional double jeopardy protections under the California Constitution. Accordingly, there was no manifest legal necessity for the declaration of the mistrial because the trial court did not first provide the deadlocked jury with the opportunity to render a partial verdict.

On appeal to the Fourth District Court of Appeal, Division Two, the appellate court affirmed the ruling of the lower court. However, the published opinion acknowledged that post-*Blueford*, there now exists ambiguity in the double jeopardy protections available to criminal defendants in California. This confusion exists because this Court in *Stone* did not expressly articulate which constitutional double jeopardy provision it was interpreting, state or federal, when it held that manifest legal necessity for the declaration of a mistrial does not arise until a deadlocked jury has first been given the opportunity to render a partial verdict.

As a result, the People requested and were granted review by this Court to settle the important question of law as to whether the United States Supreme Court's holding in *Blueford* abrogates *Stone* and to secure uniformity of decision for future defendants,

prosecutors, and trial courts who presently lack crucial guidance when facing a deadlocked jury.

ISSUE PRESENTED

Whether the United States Supreme Court's holding in *Blueford v. Arkansas* 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

In the early morning hours of December 2, 2009, victim Fernando Castillo was found beaten to death in his apartment by police officers who responded to a 911 call placed by Fernando's 15-year-old daughter, Alexis Castillo. (1CT 20, 79-81.)¹ When officers arrived at the apartment in response to the 911 call, they were met by Fernando's children, Alexis and her 11-year-old half-brother, Raul Hernandez. Alexis claimed two armed men woke her up and attacked her father. (1CT 22-24.) In response, officers conducted a safety check of the residence and found Fernando dead in the bedroom between the bed and the wall. His bloody face was partially covered by a pillow. (1CT 79-80.)

After interviewing both Alexis and Raul, officers determined Alexis had made up the story about two armed male intruders. Eventually, Alexis admitted that she and her boyfriend, defendant Brian Aranda, killed Fernando, after Alexis told defendant Fernando was molesting her. Alexis confessed to police that the day before the murder she told defendant that she thought her father was about to rape her again and that defendant told her he would take care of it. Alexis admitted that she knew this meant defendant was either going to "beat the shit out of her dad" or "kill her dad." Defendant was questioned by police. (1CT 26-28.) After initially denying any relationship with Alexis, defendant admitted to police that he loved Alexis and went to her apartment on December 2, 2009, to get her away from her father. Defendant told police that Alexis texted him on December 1, 2009, and told him that her father had raped her again. Defendant admitted he wanted to get Alexis away from her father. Defendant confessed to leaving work on December 1, 2009, and to going home to arm himself with an ice pick, out of fear that Fernando had a gun, before going to Alexis' house to confront her father. Now armed, defendant went to Alexis' apartment and entered the bedroom where

¹ Because the trial transcript is not part of the present record, the People cite the transcript of the preliminary hearing for the Statement of Facts.

he and Fernando fought. Defendant confessed that he gained the upper hand and stabbed Fernando with the ice pick repeatedly. (1CT 54, 56-58.)

An autopsy was performed on Fernando Castillo on December 3, 2009, by Dr. M. Scott McCormick. Dr. McCormick observed a total of thirty-three puncture wounds on Fernando's body. He also determined Fernando suffered from multiple bilateral rib fractures, including three rib fractures on the right and five rib fractures on the left. (1CT 79-81.)

STATEMENT OF THE CASE

On September 9, 2010, the District Attorney of Riverside County filed an information in *People v. Brian Michael Aranda*, Riverside County Superior Court case number RIF154701, charging defendant with a violation of Penal Code section 187, subdivision (a), willful, premeditated and deliberate murder. Additionally, it was alleged pursuant to Penal Code section 12022, subdivision (b)(1), that defendant personally used a deadly and dangerous weapon, to wit, an ice pick, to commit the charged offense. (1CT 90-91.)

On November 9, 2011, trial commenced with jury selection. (1CT 215-216.) On November 29, 2011, the evidence portion concluded. On November 30, 2011, the jury began deliberations, with verdict forms for a verdict of guilty on first degree murder and all included lesser offenses and one not-guilty verdict form at the request of defendant. (2CT 374-375; RT 11-12.) On December 5, 2011, the jury foreperson notified the court that it was deadlocked. The court inquired of the foreperson regarding the deadlock and was informed (by the foreperson outside the presence of the remaining jurors) that, at present, the vote split was one for second degree murder, two for voluntary manslaughter and nine for not guilty. (RT 8-9.) The court sent the foreperson back to the jury room and directed the jury to continue deliberations. The Court then said to the attorneys, "I think today is enough," and asked, "any other opinions?" Defense counsel responded by

stating, “No, your Honor.” (RT 10-11.) However, the defense then requested verdict forms on first degree murder be given to the jury based on the comments of the foreperson. (RT 10-11.) The court ruled:

I’m not going to do it. I’ll tell you why. I don’t want to change horses midstream. We sent it in a certain way, and to change anything makes it seem like we’re directing them as to which way to think, and I don’t want to do that.

(RT 12.) After an additional 50 minutes of deliberations, the foreperson again notified the court that the jury was deadlocked. The court brought the jury back into the courtroom and asked the jurors if the court could provide any assistance that would end the stalemate. After the jurors indicated that some additional items might assist in the rendering of a verdict, the court provided the requested information and sent the jury out to further deliberate. (RT 13-15.) After an additional 40 minutes, the court again inquired of the foreperson. The foreperson informed the court that the additional deliberations were not productive and the jury was still in the same situation. (RT 16.) In response, the court found that the jury had been “at it for a couple of days” and that they “gave it [their] best shot” and declared a mistrial. (RT 16-17.) There was no objection to the declaration of the mistrial by the defense. Defense counsel merely informed the court that it was her belief that defendant had been acquitted of first degree murder based on the comments of the foreperson. (RT 20.) The court declared a mistrial and set a new jury trial date of January 23, 2012. (2CT 444.)

On March 22, 2012, defendant filed a motion to dismiss alleging that double jeopardy prevented any further prosecution. (2CT 453-469.) On May 8, 2012, the People filed an opposition to the motion. (2CT 476-492.) On May 14, 2012, the court denied the motion in part and granted the motion in part, prohibiting prosecution of first degree murder. On June 1, 2012, the People filed a motion for reconsideration in light of the United States Supreme Court’s then recent decision in *Blueford* (May 24, 2012).

(2CT 499-509.) On June 18, 2012, the People's motion for reconsideration was denied. The matter was set for retrial on August 27, 2012. (2CT 512-514.)

The People filed a timely notice of appeal on July 13, 2012, in the Court of Appeal, Fourth Appellate District, Division Two. On September 12, 2013, the Court of Appeal affirmed the judgment in a published opinion by Justice McKinster, acknowledging the contradiction between *Blueford* and *Stone*. The Court of Appeal found that to the extent *Stone* was rooted in a federal constitutional analysis, it has been abrogated by *Blueford*. However, the court also found that because of the ambiguous statement at the outset of the *Stone* opinion acknowledging this Court's ability to implement greater double jeopardy protections under the State Constitution, the Court of Appeal was bound to follow *Stone* under *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.

ARGUMENT

I.

Stone Was Based On Federal Constitutional Grounds And Has Been Abrogated By Blueford

A. There Is No Federal Constitutional Right To A Partial Verdict

The United State Supreme Court has rejected the proposition that the Federal Constitution requires a jury be provided with the means to render a partial verdict before manifest necessity arises for a mistrial. In *Blueford*, the State of Arkansas charged Alex Blueford with capital murder for the death of a one-year-old child. That charge included the lesser offenses of first degree murder, manslaughter, and negligent homicide. The trial court presented the jury with a set of verdict forms, which allowed the jury either to convict Blueford of one of the charged offenses, or to acquit him of all charges.

Rendering a *partial verdict*, i.e. acquitting on some but not others was not an option. (*Blueford, supra*, 123 S.Ct. at p. 2046.)

After deliberating for a few hours, the jury reported that it could not reach a verdict. The trial court inquired about the jury's progress on each offense. The foreperson disclosed that the jury was unanimous against guilt on the charges of capital murder and first degree murder, was deadlocked on manslaughter, and had not voted on negligent homicide. (*Blueford, supra*, 123 S.Ct. at p. 2046.)

In response to the vote tally presented to the court by the foreperson, the trial court told the jury to continue deliberating. After deliberations resumed, Blueford's counsel asked the trial court to submit new verdict forms to the jurors, to be completed "for those counts that they have reached a verdict on." (*Blueford, supra*, 123 S.Ct. at p. 2049.) The trial court denied Blueford's request. To allow for a partial verdict, the trial court explained, would be "like changing horses in the middle of the stream," given that the jury had already received instructions and verdict forms. (*Ibid.*) When the jury returned

a half hour later, the foreperson informed the trial court that the jury had still not reached a verdict. The trial court declared a mistrial and discharged the jury. (*Ibid.*)

When the State of Arkansas subsequently sought to retry Blueford, he moved to dismiss the capital and first degree murder charges on double jeopardy grounds. The trial court denied the motion, and the Supreme Court of Arkansas affirmed on appeal. (*Blueford, supra*, 123 S.Ct. at pp. 2049-2050.) On appeal to the United States Supreme Court, Blueford argued that the foreperson's representation to the court that the jury reached a vote tally for not guilty on the murder offenses should be treated as an acquittal barring retrial on the murder offense because the vote tally indicated that a resolution of some or all of the elements of those offenses was completed in his favor by the jury. (*Blueford, supra*, 123 S.Ct. at pp. 2050-2051.)

In his argument, Blueford relied heavily on the very same case relied on by this court in *Stone, Green v. United States* (1957) 355 U.S. 184, as well as its progeny, *Price v. Georgia* (1970) 398 U.S. 323. The Court rejected Blueford's arguments, and specifically differentiated his case from *Green* and *Price* holding:

In those cases, we held that the Double Jeopardy Clause is violated when a defendant, tried for a greater offense and convicted of a lesser included offense, is later retried for the greater offense. [Citations] Blueford argues that the only fact distinguishing his case from *Green* and *Price* is that his case involves a deadlock on the lesser included offense, as opposed to a conviction. In his view, that distinction only favors him, because the Double Jeopardy Clause should, if anything, afford greater protection to a defendant who is *not* found guilty of the lesser included offense.

Blueford's argument assumes, however, that the votes reported by the foreperson did not change, even though the jury deliberated further after that report. That assumption is unjustified, because the reported votes were, for the reasons noted, not final. Blueford thus overlooks the real distinction between the cases: In *Green* and *Price*, the verdict of the jury

was a final decision; here, the report of the foreperson was not.

(*Blueford, supra*, 123 S.Ct. at pp. 2051-2052.) Ultimately, this distinction drawn between the facts presented in *Blueford* and those in *Green* led to the United States Supreme Court's holding that the jury did not acquit Blueford of capital or first degree murder because the jury's deliberations had not yet concluded. Specifically, the Supreme Court held:

It was therefore possible for Blueford's jury to revisit the offenses of capital and first degree murder, notwithstanding its earlier votes. And because of that possibility, the foreperson's report prior to the end of deliberations lacked the finality necessary to amount to an acquittal on those offenses, quite apart from any requirement that a formal verdict be returned or judgment entered.

(*Blueford, supra*, 123 S.Ct. at p. 2052.)

Next, Blueford argued that even if there was not an acquittal on the murder counts as a result of the foreperson's report of the vote, the trial court's declaration of a mistrial was still improper. According to Blueford, the impropriety arose out of the trial court's failure to take some action, whether through new partial verdict forms (*Stone* instructions) or other means, to allow the jury to give effect to the votes as reported by the foreperson. In response to this argument the Supreme Court held:

We reject that suggestion. We have never required a trial court, before declaring a mistrial because of a hung jury, to consider any particular means of breaking the impasse—let alone to consider giving the jury new options for a verdict.

(*Blueford, supra*, 123 S.Ct. at p. 2052.) As a result, the High Court ultimately concluded:

The jury in this case did not convict Blueford of any offense, but it did not acquit him of any either. When the jury was

unable to return a verdict, the trial court properly declared a mistrial and discharged the jury. As a consequence, the double jeopardy clause does not stand in the way of a second trial on the same offenses.

(*Id.* at p. 2053.)

Thus, in *Blueford*, the United States Supreme Court clearly articulated that a finding of legal necessity for a mistrial does not require a trial court to provide additional options for partial verdicts to a jury once it has informed the court that it is deadlocked. As a result, under *Blueford*, defendant can be retried for first degree murder.

B. There Is No Right To A Partial Verdict Under The California Constitution

In the instant case both the Superior Court and the Court of Appeal acknowledged that pursuant to *Blueford*, there is no federal right to a partial verdict before manifest legal necessity for a mistrial arises under the Federal Constitution. However, both lower courts also determined that the *Stone* court created a state right to a partial verdict under the California Constitution. In reality, *Stone* did not clearly articulate a right to a partial verdict under the California Constitution, and thus, because the decision rested on the Federal Constitution, it was abrogated by *Blueford*. This Court has not addressed the right to a partial verdict or the continued viability of *Stone* since the United States Supreme Court first addressed the right to a partial verdict under the Federal Constitution in *Blueford* decision published in May 2012. This decision abrogated the prior California precedent in *Stone* because the *Stone* court interpreted the federal, not state constitutional double jeopardy bars.

In *Stone*, the California Supreme Court held that when a jury indicates 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. This is known as a partial verdict and is referred to as the partial acquittal doctrine because it allows the jury to issue an acquittal on the singularly charged greater offense while failing to reach a verdict on the uncharged lesser included offenses. In the event of a partial verdict, double jeopardy prevents retrial of the defendant on the greater offense but allows the prosecution to retry the defendant on the lesser included offenses. “Failure to do so will cause 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. (*Stone, supra*, 31 Cal.3d at p. 519.)

At the outset of the *Stone* opinion, this Court recognized its ability to determine that a greater protection against double jeopardy exists under the California Constitution than the Federal Constitution. (*Stone, supra*, 31 Cal.3d at p. 510.) After making this initial observation, however, this Court *never* articulated its intention to do so. Instead, this Court went on to conduct an analysis of the requirements of double jeopardy protection under the Federal Constitution, and never reached the issue of what additional protections, if any, are provided for in the California Constitution.

This Court in *Stone* analyzed the double jeopardy issues by first addressing previous case authority, including two Court of Appeals cases, *People v. Doolittle* (1972) 23 Cal.App.3d 14, and *Magee v. Superior Court* (1973) 34 Cal.App.3d 201, which interpreted the Supreme Court’s prior ruling in *People v. Griffin* (1967) 66 Cal.2d 459. In *Griffin*, as well as the Court of Appeal cases, the issue was whether or not a court could rely on the expression of the foreperson regarding the vote split which resulted in the mistrial. In each of these cases, the trial court inquired of the foreperson after declaring a mistrial, and it was determined that the expression of the foreperson alone could not be relied on as the final expression of all jurors, and thus, would not result in an acquittal or a once-in-jeopardy claim. This Court in *Stone* found this line of cases inapplicable because in *Stone*:

clear and uncontradicted evidence revealed that the jury was prepared to render a partial verdict of acquittal of murder and the court was inclined to accept the verdict, it was only the lack of an established procedure for giving formal effect to the jury's conclusion that prevented the court from receiving such a verdict. Because of these compelling circumstances, we conclude the jury's obvious intent should be recognized here by holding that defendant was in fact acquitted of murder.

(*Stone, supra*, 31 Cal.3d at p. 514.) The *Stone* court determined that:

[t]he primary concern of the *Griffin* court was to insure that a verdict represents the definite and final expression of the jury's intent with respect to the disposition of the factual issues presented by a particular case. The members of the jury in *Griffin* never gave any indication of a final intent to acquit the defendant of the murder charge, and the facts in *Doolittle* and *Magee* were similarly equivocal. Here, by contrast, the foreman twice declared—*prior to discharge, in open court, and in the presence of the other jurors*—that the jury stood firmly and finally 12 to nothing in favor of acquittal of both degrees of murder. The court then made a factual finding and legal ruling to the same effect.

(*Ibid*, italics in the original.) This factual distinction between *Griffin* and its progeny and *Stone*, resulted in this Court in *Stone* looking to other cases to address its particular factual scenario.

In *Stone*, as here, the defendant was charged with first degree murder and the jury indicated, albeit by different means than in the present case, that it was deadlocked and that the split ranged across the various degrees of murder.² Consequently, this Court framed the question presented as:

² After the foreperson informed the court the jury was deadlocked and articulated the vote split, the *Stone* jurors were individually polled for their votes. (*Stone, supra*, 31 Cal.3d at p. 507.)

whether the double jeopardy clause requires that trial courts, in future cases, receive a partial verdict when the jury clearly favors acquittal on a charged offense but is unable to agree on the proper disposition of an uncharged lesser included offense. If we conclude that such a procedure is constitutionally mandated, then the discharge of the jury in the present case was premature with respect to the murder offenses, and Stone could not be retried thereon even if the jury had not in fact acquitted him.

(*Stone, supra*, 31 Cal.3d at p. 514.) In other words, this Court focused its analysis on whether or not the “constitution” requires a court to take additional steps, such as providing split verdict forms for necessarily included offenses in a singularly charged case, before the requisite finding of legal necessity can be established so as not to bar future retrial. Ultimately, the *Stone* Court held that such additional steps are required before legal necessity can be established. However, the legal basis for that ruling was derived from federal precedents in analogous situations. This Court clearly conducted its analysis under the Federal and not the State Constitution.

In reaching its conclusions, this Court first analogized the facts in that case to a situation in which the People have charged at least one of the lesser included offenses separately and the jury has hung on one but not both counts. In so doing, this Court reviewed the requirements of a mistrial in a case where the prosecutor charged the lesser included offenses separately. Relying on federal case precedent, *Stone* concluded where the offenses are charged separately, the court must take a partial verdict and the People can retry only the counts on which the jury could not agree. (*Stone, supra*, 31 Cal.3d at p. 517, citing *Selvester v. United States* (1898) 170 U.S. 262, 269–270.)

This Court then determined:

For the purpose of delineating the scope of the double jeopardy protection, we believe the situation before us to be logically indistinguishable from the case in which a greater offense and a lesser included offense are charged in separate

counts. It would be anomalous to formulate a rule that prevents a trial court from receiving a partial verdict on a greater offense on which the jury clearly favors acquittal merely because the prosecutor elected to charge only that offense, and left it to the court to instruct on any lesser included offense supported by the evidence.

(*Stone, supra*, 31 Cal.3d at pp. 517-518.) To support this position, the *Stone* court relied on the United States Supreme Court case of *Green v. United States, supra*, 355 U.S. 184. The High Court adopted the rule that a defendant who succeeds in obtaining a reversal on appeal of a conviction of a lesser included offense may not be retried for the greater offense. (*Stone, supra*, 31 Cal.3d at p. 518.) Ultimately, it was reliance on this analogy to *Green*, a federal constitutional case originating in the Circuit Court for the District of Columbia, that led the *Stone* Court to conclude Federal Constitutional protections against double jeopardy require a trial court to provide a means for a jury to acquit a defendant on each potential offense. Thus, the *Stone* Court never addressed any state constitutional double jeopardy bars.

In fact, after reviewing the *Green* court's conclusion that "[t]he constitutional issues at stake here should not turn on the fact that both offenses were charged to the jury under one count" the very next sentence of this Court's opinion states:

[[f]or the same reason, we decline to perpetuate the artificial distinction that has developed between expressly charged and impliedly charged lesser included offenses.

(*Stone, supra*, 31 Cal.3d at p. 518, emphasis added.) By relying specifically on *Green* as the crux of its analysis, this Court made it abundantly clear that, at least for this portion of its opinion, its decision was firmly grounded in rights the *Stone* Court deemed provided by the Federal Constitution and not any additional rights this Court could have but failed to expressly declare under the State Constitution.

This Court analyzed only federal double jeopardy precedent to reach its determination that defendants have a right to a partial verdict in a singularly charged case. State constitutional precedent was *never* analyzed or discussed. While the United States Supreme Court never had the opportunity to review *Stone*, that does not compel the conclusion that the *Stone* court's ruling was also based on state constitutional protections, especially when an analysis of *Stone*'s holding reveals its clear federal constitutional underpinnings. Consequently, when the United States Supreme Court decided *Blueford* in May of 2012, and rejected the proposition that the Federal Constitution granted defendants a right to partial verdicts, this Court's decision in *Stone* was abrogated on this point.

Any remaining question as to whether or not the *Stone* Court was interpreting the federal constitution as opposed to creating a new protection under the California Constitution can be resolved by reading the dissent in *Blueford*. In her dissent, Justice Sotomayer cites to *Stone* four separate times in furtherance of her opinion that there should be a contrary application of federal double jeopardy protections than that ultimately adopted by the *Blueford* majority. At one point, Justice Sotomayer cites *Stone* and concludes, unlike the majority, that she, "would hold that the double jeopardy clause requires a trial judge in an acquittal-first jurisdiction, to honor a defendant's request for a partial verdict before declaring a mistrial on the ground of jury deadlock." (*Blueford, supra*, 123 S.Ct. at p. 2058.)³ Justice Sotomayer's reliance upon *Stone* as a contrary interpretation of the federal double jeopardy protections further indicates that the *Stone*

³ Acquittal-first jurisdictions, such as California, instruct jurors that they should unanimously issue a "verdict" of not guilty, or must "acquit" the defendant of the singularly charged greater offense, before considering the uncharged lesser included offense. Despite this instruction, jurors are entitled to revisit earlier votes during the course of deliberations. Thus, an informal vote may occur in which the jurors agree that the defendant is not guilty of first degree murder and as a result the jury moves on to deliberate on second degree murder. However, these votes are not final until the verdict forms are signed. (See e.g., *Stone, supra*, 31 Cal.3d at pp. 511-512, fn. 5.)