

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

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

SUPREME COURT
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REPLY BRIEF ON THE MERITS

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REPLY BRIEF ON THE
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INTRODUCTION

In *Blueford v. Arkansas* (2012) 566 U.S. __ [132 S.Ct. 2044] (*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 v. Superior Court* (1982) 31 Cal.3d 503 (*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. In his brief on the merits respondent urges this Court to require a trial court to provide a jury the opportunity to render partial verdicts as a counter balance to prosecutorial discretion because to do otherwise would be “unilaterally unfair.” The People disagree.

The equity of prosecutorial discretion is not a factor in the determination of the legal necessity requirements for the Double Jeopardy Clause. Under the separation of powers doctrine, as members of the executive branch of government, prosecutors are conferred charging discretion to ensure the implementation of checks and balances. Consequently, if there was a need to balance a prosecutor’s right to charging discretion by providing a criminal defendant with a right to a partial verdict, the United States Supreme Court would have done so in *Blueford*. Moreover, even if respondent could establish a charging inequity, it is the role of the Legislature, and not this Court, to enact statutory provisions defining the scope of the prosecutorial discretion codified in Penal Code section 1160 and Government Code section 26500 et seq.

ARGUMENT

THE DOUBLE JEOPARDY CLAUSE OF THE CALIFORNIA CONSTITUTION DOES NOT AND SHOULD NOT PROVIDE CRIMINAL DEFENDANTS WITH A RIGHT TO A PARTIAL VERDICT

In its Opening Brief on the Merits, the People discussed the multiple jurisdictions which have already determined that the Double Jeopardy Clause does not provide a criminal defendant with the right to a partial verdict. The Supreme Courts in each of these jurisdictions have determined that the potential benefit of any legal necessity right requiring a trial court to provide a jury with a means to render a partial verdict before the declaration of a mistrial is outweighed by the threat of such a requirement resulting in the unintended consequence of a directed verdict and the unwarranted invasion into the province of the jury. (See, e.g., *People v. Richardson* (Colo. 2008) 184 P.3d 755, 763; *People v. Hall* (Ill.Ct.App. 1975) 324 N.E.2d 50, 52-53; *State v. Bell* (1982) 322 N.W.2d

93; *Commonwealth v. Roth* (Mass. 2002) 776 N.E.2d 437, 450; *State v. Booker* (N.C. 1982) 293 S.E.2d 78, 80; *People v. Hickey* (Mich.Ct.App. 1981) 303 N.W.2d 350, 352; *State v. McKay* (Kan. 1975) 535 P.2d 945, 947.) In Respondent's Brief on the Merits, respondent has failed to discuss any of these cases. Instead, respondent asks this Court to create a partial verdict right that does not exist under the Double Jeopardy Clauses of either the United States Constitution or the California Constitution due to alleged legal inequities. Respondent bases his request on the premise that in California a prosecutor's charging discretion is fundamentally unfair unless it is tempered by the right to a partial verdict. Indeed, respondent claims that, "it was the 'statutory scheme [Penal Code section 1160 which provides charging discretion to prosecutors] in California that created the issue presented in *Stone*.'" (ROBM at p. 14.) He is mistaken. It was the analysis of the legal necessity requirement of the Double Jeopardy Clause of the United States Constitution that gave rise to the issue in *Stone*. (*Stone v. Superior Court, supra*, 31 Cal.3d 503.) Consequently, respondent's argument that the *Stone* Court recognized some inequity as a result of prosecutorial charging discretion and sought to correct this "unilateral unfairness" by providing criminal defendants with the right to a partial verdict is misguided.

Indeed, the *Stone* Court addressed whether or not the Federal Constitution's Double Jeopardy Clause affords a criminal defendant the right to a partial verdict and determined that such a right did exist. Recently, however, the United States Supreme Court in *Blueford* abrogated the *Stone* decision and held that no such right exists. (*Blueford v. Arkansas* (2012) 566 U.S. ___ [132 S.Ct. 2044, 2052].) Thus, even if an inequity exists as a result of the lawful exercise of such prosecutorial discretion, any remedy lies with the Legislature, not in judicial creation of a state constitutional right to rectify a perceived inequity of a statutory scheme. (*People v. Bunn* (2002) 27 Cal.4th 1, 14-15 ["The Legislature is charged, among other things, with making law by statute. This essential function embraces the far-reaching power to weigh competing interests and

determine social policy Quite distinct from the broad power to pass laws is the essential power of the judiciary to resolve ‘specific controversies’ between parties”].) “It is the court’s duty not to be ingenious to find ambiguity in a statute because of extraneous matters, but rather to interpret it free of ambiguity, constitutional, and consistent with common sense and wise policy, with a view toward promoting justice.” (*People v. Mixon* (1990) 225 Cal.App.3d 1471, 1481; Pen. Code, §4.)

Additionally, it has already been established that a prosecutor’s charging discretion does not play a role in a criminal defendant’s Constitutional Double Jeopardy Right. In *Fields*, this Court analyzed whether or not criminal defendants enjoy a right to implied acquittal under either the state or federal Double Jeopardy Clause and determined that implied acquittal was not constitutionally mandated. (*People v. Fields* (1996) 13 Cal.4th 289.) Indeed, the *Fields* Court rejected the idea that implied acquittal was grounded in the Double Jeopardy Clause and instead concluded that implied acquittal was a statutory mandate. Consequently, it would be incongruous to now hold that a criminal defendant has a state constitutional right to a partial verdict under Double Jeopardy provisions.

Moreover, this alleged charging inequity is nothing more than a legal fiction. In practice, a prosecutor rarely, if ever, charges separate counts to enumerate the degrees of murder because to do so would risk the defendant entering a plea of guilty to one of the lesser charged offenses. It is legally inappropriate to convict a defendant of both a greater and a lesser offense. Consequently, the idea of a prosecutor charging these counts in the alternative is a legal fallacy. However, even if a prosecutor chose to charge one murder defendant with separate counts enumerating the degrees of murder while charging another defendant with a single count of first degree murder, the result is not fundamentally unfair. The Legislature has granted the prosecution the discretion to charge cases, including the discretion to charge either singularly or in the alternative. (Pen. Code, § 1160; Gov. Code, § 26500 et seq.) This Court cannot amend the Penal

Code. If they so choose, the Legislature can amend the Penal Code to eliminate the charging discretion for murder or any other crime with lesser included offenses. In the context of homicide, for example, the Legislature could make first and second degree murder separate independent crimes and remove prosecutorial charging discretion by making the singular charging of murder impossible. The Legislature has not done so. Instead, the Legislature enacted the present form of both Penal Code sections 187 and 1160 and Government Code sections 26500 et seq. This provides the prosecution with the discretion to either charge murder in a single count and allow a jury to determine the degree of homicide or to charge murder and each of the lesser included offenses in separate counts. This is why, to the extent respondent complains about the fairness of charging discrepancies, his argument lies with the Legislature and not this Court. (*See Mixon, supra*, 225 Cal.App.3d at p. 1481.)

Furthermore, respondent seems to inaccurately assert that fairness cannot result unless all defendants who commit the same crime are identically charged by the prosecution. Equality is not the equivalent of fairness and there is no legal requirement that all defendants be charged identically. In fact, there are many instances in the law which demonstrate that absolute equality can in fact render an absurd result. For example, the prosecution is granted the discretion to elect to seek an indictment rather than proceed by way of a preliminary hearing and information. To many this may appear to be unfair. However, in reality it is the ethical obligation of a prosecutor to seek justice in the individual case, with particularized consideration of the individual defendant, the circumstances and effects of the crime(s) committed, as well as the protection of the victim and the public.

Additionally, if degrees of culpability were not considered in charging criminal defendants it would result in nothing less than a miscarriage of justice. For example, imagine an 18-year-old defendant who enters a liquor store and steals a case of beer, then while fleeing he knocks over the store clerk in his attempt to escape. This individual,

with no criminal record, could be charged with robbery. Now imagine that a seasoned criminal entered that same liquor store, and knocked out the store clerk by hitting him with a closed fist, then stole the money out of the till. The law not only welcomes prosecutorial discretion in the charging of these two defendants, but the Legislature has also created an entire sentencing scheme focused on evaluating the culpability of each individual defendant based on particularized sentencing factors in mitigation and aggravation to achieve the statutory objectives of sentencing. (Cal. Rules of Court, rule 4.410.) Thus, it is specious to assert that Constitutional equity requires identical treatment.

Significantly, “equity” is not truly the issue here, nor is prosecutorial discretion; these arguments are merely red herrings. The question presented is whether or not *Blueford* abrogates the *Stone* Court’s holding that there are additional requirements for establishing legal necessity under the Double Jeopardy Clause of the Constitution, and if so whether this Court should now provide the additional right to a partial verdict that is not required by the United States Constitution. As the People addressed extensively in the Opening Brief on the Merits, it should not. Moreover, any issues with the statutory scheme have no bearing on whether or not the defendant has twice been placed in jeopardy.

CONCLUSION

As neither the People of the State of California, nor the Legislature intended to create additional requirements for establishing legal necessity under the California Constitution, the People respectfully request this Court find the United States Supreme Court case of *Blueford* to be controlling in this matter. The People further request that this Court reverse the double jeopardy finding of the lower court and remand this matter for trial on the charge of murder in the first degree.

Dated: April 24, 2014

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

Case No. S214116

The text of the **REPLY BRIEF ON THE MERITS** in the instant case consists of 1,800 words as counted by the Microsoft Word program used to generate the said **REPLY BRIEF ON THE MERITS**.

Executed on April 24, 2014.

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DECLARATION OF SERVICE BY MAIL

Case No. S214116

I, the undersigned, declare:

I am a resident of or employed in the County of Riverside; I am over the age of 18 years and not a party to the within action. My business address is 3960 Orange Street, Riverside, California. That on April 24, 2014, I served a copy of the within, **REPLY BRIEF ON THE MERITS**, on the following, by placing a copy of same in postage prepaid envelopes addressed as follows:

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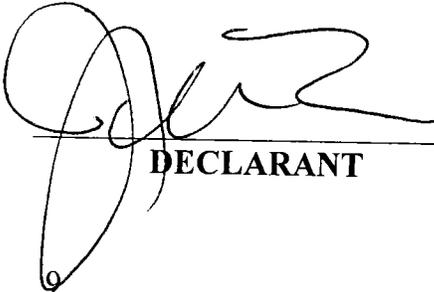
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Each envelope on April 24, 2014, was sealed and deposited in a United States mailbox in the City of Riverside, State of California, with postage thereon fully prepaid.

I declare the foregoing to be true and correct under penalty of perjury.

Executed on April 24, 2014, at Riverside, California.



DECLARANT