IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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| PEOPLE OF THE STATE OF CALIFORNIA,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>BRIAN MICHAEL ARANDA,<br><br>Defendant and Respondent. | S- S214116<br><br>(Court of Appeal<br>Case No. E056708) |



**APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF**

and

**AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT/RESPONDENT BRIAN ARANDA**

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Attorneys for Amicus Curiae

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Ronald L. Brown, the Los Angeles County Public Defender, herewith applies for permission to file an Amicus Curiae brief in support of defendant and respondent Brian Michael Aranda.

The Los Angeles County Public Defender is the largest publicly funded criminal defense law office in California. We handle a very high volume of criminal cases, and, like every other criminal law practitioner in California, we have relied upon and applied this court's decision in *Stone v. Superior Court* (1982) 31 Cal.3d 503. This decision is firmly ingrained in

California criminal jurisprudence, which is easily seen by the 250 citing references found in Shepard's. We believe that *Stone* was correctly decided despite *Blueford v. Arkansas* (2012) 566 U.S. ___, 132 S.Ct. 2044, based upon a consideration of independent state grounds. We seek permission to file an amicus curiae brief to support the continued viability of *Stone* and in so doing we write on the narrow topic of independent state grounds. We believe our briefing will assist this Court as it examines this critical issue.

Rule of Court 8.520, subdivision (f)(4), requires amicus to identify persons who are a party, or counsel for a party, or made a monetary contribution. The Los Angeles County Public Defender is not a party or counsel for a party and has made no monetary contributions to fund the appeal or the Amicus Brief, other than providing the staff to write the Amicus Brief.

## BRIEF OF AMICUS CURIAE

*Stone v. Superior Court* (1982) 31 Cal.3d 503 turned out to be an extremely important decision. This court recognized that the "deceptively simple" yet "complex, rapidly expanding body of law" surrounding the constitutional prohibition against double jeopardy arose from both the Fifth Amendment to the United States Constitution *and* Article I, section 15 of the California Constitution.

The parties disagree about the basis upon which this court decided *Stone*. The prosecution, as expected, argues that this court relied upon the federal Constitution and United States Supreme Court precedent which was overruled in *Blueford v. Arkansas* (2012) 566 U.S. ___, 132 S.Ct. 2044. The defense, as expected, argues that *Stone* was based upon California's Constitution and California precedent. The majority opinion in *Stone* discusses both state and federal law without expressing a leaning toward one predominating over the other. Justice Richardson, in dissent, recognized that this court examined both state and federal law while Justice Kaus, also in dissent, focused solely upon the outcome under California law.

This court has long emphasized and protected California's Constitution as an independent source of protections enjoyed by the populace.

> "The construction of a provision of the California Constitution remains a matter of California law regardless of the narrower manner in which decisions of the United States Supreme Court may interpret provisions of the federal Constitution. Respect for our Constitution as 'a document of independent force ([*People v.*]*Brisendine*, [1975] at pp. 549-550 of 13 Cal.3d [528]) forbids us to abandon settled applications of its terms every time changes are announced in the interpretation of the federal charter. Indeed our Constitution expressly declares that 'Rights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution.' (Cal. Const., art. I, § 24.)" (*People v. Pettingill* (1978) 21 Cal.3d 231, 247-248.)

This court has rejected the idea that it can only interpret the California Constitution to provide greater protection than the Federal Constitution in limited circumstances. Rather, this court is the final authority on California Constitutional matters. Our Constitution is considered the "first referent" when fundamental civil liberties, such as double jeopardy protections, are at issue.

> "In their opposition to the brief filed by amici curiae the People argue that our ability to adopt a higher standard under the California Declaration of Rights (Cal. Const., art. I) than that set forth by the United States Supreme Court as a matter of federal constitutional law can be exercised only in 'limited circumstances.' It is further argued that 'it is essential that this court clearly delineate the criteria which govern the question of when [former] article I, section 19 will serve as an independent state ground for adoption of a more stringent standard than that announced by the United States Supreme Court.'
>
> "This argument presupposes that on issues of individual rights we sit as no more than an intermediate appellate tribunal, and that to the presumption of further review there is but a 'limited' exception which must be 'clearly delineated.' On the contrary, in the area of fundamental civil liberties -- which includes not only freedom from unlawful search and seizure but all protections of the California Declaration of Rights -- we sit as a court of last resort, subject only to the qualification that our interpretations may not restrict the guarantees accorded the national citizenry under the federal charter. In such constitutional adjudication, our first referent is California law and the full panoply of rights Californians have come to expect as their due. Accordingly, decisions of the United States Supreme Court defining fundamental civil rights are persuasive authority to be afforded respectful consideration, but are to be followed by California courts only when they provide no less individual protection than is guaranteed by California law." (*People v.*

*Longwill* (1975) 14 Cal.3d 943, 951, fn. 4; disapproved on other grounds in *People v. Laiwa* (1983) 34 Cal.3d 711, 728.)

This court has recognized that the United States Constitution sets forth the minimum standards of double jeopardy for criminal defendants. Importantly, and perhaps critically, this court also recognized that "[o]f course, we remain free to delineate a higher level of protection under article I, section 15 . . . of the California Constitution." (*People v. Superior Court (Marks)* (1991) 1 Cal.4th 56, 71, fn. 13 citing *Stone, supra.*)

For almost 150 years, this court has accorded criminal defendants more protections under California's double jeopardy clause than the minimum decreed by the United States Constitution. *Cardenas v. Superior Court of Los Angeles County* (1961) 56 Cal.2d 273 is a very clear example of how this court has historically given California's Constitutional double jeopardy clause independent significance and priority, despite United States Constitutional law to the contrary.

In *Cardenas* the issue was whether double jeopardy precluded a retrial when a mistrial was granted over the defendant's objection. This court refused to follow the United States Supreme Court's decision in *Gori v. United States* (1961) 367 U.S. 364, but instead reaffirmed "the uniform construction placed by this court upon the jeopardy provision of the

California Constitution contained in article I, [formerly] section 13." (*Cardenas* at pp. 275-276.)

How long has California uniformly construed its own double jeopardy clause in a manner that turns out to have been inconsistent with the federal Constitution and *Gori*? Since at least 1869 when this court held: "we are entirely satisfied that this Court has no authority in criminal cases, under our State Constitution, to order a new trial of a defendant, at the instance of the prosecution, for mere errors in the ruling of the Court during the progress of the trial, after the jury have been charged with the case, and have rendered a verdict of not guilty." (*People v. Webb* (1869) 38 Cal. 467, 476.)

The prosecution might choose to point out that the Fifth Amendment's double jeopardy provision was not held to be applicable to the states through the 14th Amendment until 1969, some 8 years after *Cardenas* was decided. (*Benton v. Maryland* (1969) 395 U.S. 784, 794.) Thus, there was no real rejection of *Gori* because it was not then applicable to California. That argument, however, would be wrong because after *Benton,* this court specifically rejected application of the lesser federal standard enunciated in *Gori* in favor of the higher California protections. (*Curry v. Superior Court of San Francisco* (1970) 2 Cal. 3d 707, 715-717.)

> "In any event, we adhere to our decision in *Cardenas* not to adopt the *Gori* rule in applying the double jeopardy provision of the California Constitution. *Benton* requires only that the states accord their citizens at least as much protection against double jeopardy as is provided under the Fifth Amendment of the United States Constitution; it does not forbid a state from according a greater degree of such protection. (See, e.g., *People v. Henderson* (1963) 60 Cal.2d 482, 496-497.)" (*Curry* at p. 716.)

In some cases, such as *Larios v. Superior Court of Ventura County* (1979) 24 Cal.3d 324, this court decided a double jeopardy issue by relying entirely upon California's double jeopardy clause and not even mentioning the Fifth Amendment.

This court has not hesitated to decline to follow federal precedent when doing so would result in the failure to fully implement the protections found in California's double jeopardy clause.

> "As noted above, we have concluded that a narrow test, focussing solely upon whether the prosecutor intended to induce a successful mistrial motion, fails to protect fully the legitimate interest of a defendant in securing a resolution (and possible acquittal) in the pending trial, and hence inadequately protects double jeopardy interests set out in California Constitution article I, section 15. Accordingly, we conclude that 'cogent reasons . . . exist' for construing the double jeopardy clause of the state Constitution differently from its federal counterpart ([*People v.*] *Monge* [1997] 16 Cal.4th 826, 844) and that a broader test is required in order to more fully protect double jeopardy interests guaranteed under our state Constitution." (*People v. Batts* (2003) 30 Cal.4th 660, 692.)

The parties have spent a great deal of ink examining this court's decision in *People v. Fields* (1996) 13 Cal.4th 289. This court made it clear, if it was not already clear from many prior cases, that California's double jeopardy clause has independent vitality. Federal precedent informs, but does not control, how California interprets its own Constitution.

> "Protection against double jeopardy is also embodied in article I, section 15 of the California Constitution, which declares that '[p]ersons may not twice be put in jeopardy for the same offense.' As we reaffirmed in *Raven v. Deukmejian* (1990) 52 Cal. 3d 336, the California Constitution is a document of independent force and effect that may be interpreted in a manner more protective of defendants' rights than that extended by the federal Constitution, as construed by the United States Supreme Court. [Citations.] Our inquiry here is thus guided by the decisions announcing the minimum standards of double jeopardy protection under the Fifth Amendment, as well as the decisions interpreting the California Constitution and the statutory provisions implementing those constitutional protections. (*Stone v. Superior Court* (1982) 31 Cal. 3d 503, 509-510 (hereafter *Stone*).) (*Field* at pp. 297-298.)

> "Although we conclude the Fifth Amendment of the United States Constitution does not compel application of the doctrine of implied acquittal in every case in which the jury returns a verdict of guilty on the lesser included offense, our inquiry does not end there. As previously noted, federal law sets the minimum standards of double jeopardy protection. Under California law, in some instances, an accused may be entitled to greater double jeopardy protection than that afforded under the federal Constitution. (*Stone, supra*, 31 Cal. 3d at p. 510; see also *Raven v. Deukmejian, supra*, 52 Cal. 3d at p. 355.) Thus, we must consider whether, under California law, the doctrine of implied acquittal operates to bar defendant's retrial for gross vehicular manslaughter while intoxicated." (*Fields* at pp. 302-303.)

One Court of Appeal examined how California's double jeopardy protections are broader than mandated by federal law. "As will become clear in our discussion of California's application of its double jeopardy provision set out below the protections afforded by our state Constitution are broader than those afforded by the federal Constitution." (*People v. Craig* (1998) 66 Cal.App.4th 1444, 1447.) The *Craig* court determined that the rule that after successful appeal of a conviction a defendant may not upon reconviction be subjected to an aggregate sentence greater than that imposed at the first trial is "an instance in which the state double jeopardy clause provides broader protections than those accorded by our federal Constitution." (*Ibid.)*

It is actually rare for this court to construe California's double jeopardy clause so that it does not afford more protection than the United States Constitution. *People v. Monge* (1997) 16 Cal.4th 826 is one of those rare cases yet that decision does not foreclose or even inform against utilizing independent state grounds in the present matter. *Monge* dealt with the trial of a prior conviction which "is relatively perfunctory, and the outcome is usually predictable." That issue is vastly different from the issue in the present case, which involves the very trial of the present offense. The trial in the present case most certainly is not relatively perfunctory and the outcome cannot be said to be usually predictable.

A decision more typical of the independent state ground double jeopardy analysis this court undertakes is *People v. Hanson* (2000) 23 Cal.4th 355. *Hanson* involved not a trial, but resentencing after a reversal on appeal. This court had to decide whether to continue to follow *People v. Henderson* (1963) 60 Cal. 2d 482 which, based upon state double jeopardy ground, precluded an increased sentence after appeal, or *North Carolina v. Pearce* (1969) 395 U.S. 711, which held that the federal double jeopardy clause does not preclude a greater sentence after a successful appeal.

This court examined California's long history of interpreting the state double jeopardy clause more broadly than the federal clause and decided that there was no reason to deviate from that tradition. This court rejected the United States Supreme Court's analysis and continued to utilize independent state grounds, writing that "the court has never retreated from the rationale or holding of *Henderson*." (*Hanson* at p. 365.)

*Stone* has become embedded in California's criminal law fabric. It is a well understood doctrine that is neither confusing nor difficult to implement. *Stone* was a fair and reasoned decision that has, for the past 32 years, been the clear law in California. This court is respectfully requested to carefully examine and apply California's independent double jeopardy clause and to determine that *Stone* is indeed mandated by Article I, Section

15 of the California Constitution. There is no reason to retreat from 32 years of consistent application.

Respectfully submitted,

RONALD L. BROWN, PUBLIC DEFENDER
OF LOS ANGELES COUNTY, CALIFORNIA

Albert J. Menaster,
Mark Harvis,
Deputy Public Defenders

By: 

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(SB No. 110960)
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CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that the APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF in this action contains 2468 words. Counsel relies on the word count of the WordPerfect X3 program used to prepare this brief.

MARK HARVIS
Deputy Public Defender

## DECLARATION OF SERVICE

I, the undersigned, declare:

I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012; that on May 19, 2014, I served a copy of the within APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF and BRIEF OF AMICUS CURIAE, on each of the persons named below by depositing a true copy thereof, enclosed in a sealed envelope with postage fully prepaid in the United States Mail in the County of Los Angeles, California, addressed as follows:

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I declare under penalty of perjury that the foregoing is true and correct. Executed May 19, 2014, at Los Angeles, California.

ALICIA A. ALBURO