

No. S280551

**In the Supreme Court of the State of California**

---

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

v.

LOUIS SANCHEZ EMANUEL,  
*Defendant and Appellant.*

---

Sixth Appellate District, Case No. H049147  
Santa Clara County Superior Court, Case Nos. C1246799, S280551  
The Honorable Vanessa A. Zecher, Judge

---

**ANSWER TO AMICUS CURIAE BRIEF**

---

ROB BONTA (SBN 202668)  
*Attorney General of California*  
LANCE E. WINTERS (SBN 162357)  
*Chief Assistant Attorney General*  
JEFFREY M. LAURENCE (SBN 183595)  
*Senior Assistant Attorney General*  
SETH K. SCHALIT (SBN 150578)  
*Supervising Deputy Attorney General*  
\*BRIDGET BILLETER (SBN 183758)  
*Supervising Deputy Attorney General*  
SARAH J. FARHAT (SBN 228179)  
*Deputy Attorney General*  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
Telephone: (415) 510-3763  
Fax: (415) 703-1234  
Bridget.Billeter@doj.ca.gov  
*Attorneys for Plaintiff and Respondent*

August 9, 2024

## TABLE OF CONTENTS

	<b>Page</b>
Introduction.....	6
The Court should decline amicus’s request to clarify further the reckless indifference standard.....	7
A. Background .....	7
B. The correctness of the applicable jury instructions is not fairly presented.....	9
C. Amicus has not demonstrated that trial courts and Courts of Appeal misunderstand the legal standard of reckless indifference .....	11
Conclusion .....	16

## TABLE OF AUTHORITIES

	Page
<b>CASES</b>	
<i>Cavazos v. Smith</i> (2011) 565 U.S. 1 .....	13
<i>Coleman v. Department of Personnel Administration</i> (1991) 52 Cal.3d 1102 .....	10
<i>In re Culbreth</i> (1976) 17 Cal.3d 330 .....	15
<i>In re Scoggins</i> (2020) 9 Cal.5th 667.....	6, 8, 11, 16
<i>In re Wright</i> (Nov. 14, 2022, C094514) [nonpub. opn.], review den. Feb. 22, 2023, S277820.....	11, 12
<i>Leone v. Medical Board</i> (2000) 22 Cal.4th 660.....	14
<i>Pearson v. Dental Supplies, Inc. v. Superior Court</i> (2010) 48 Cal.4th 665.....	9
<i>People v. Clark</i> (2016) 63 Cal.4th 522.....	<i>passim</i>
<i>People v. Douglas</i> (2018) 22 Cal.App.5th 1162.....	14
<i>People v. Emanuel</i> (May 12, 2023, H049147) [nonpub. opn.], review granted Sept. 13, 2023, S280551 .....	11, 12
<i>People v. Estrada</i> (1995) 11 Cal.4th 568.....	9, 10
<i>People v. Jones</i> (July 20, 2023, B320040) [nonpub. opn.], review granted Sept. 27, 2023, S281508 .....	11, 12

**TABLE OF AUTHORITIES**  
**(continued)**

	<b>Page</b>
<i>People v. King</i> (1993) 5 Cal.4th 59.....	15
<i>People v. Lopez</i> (2020) 9 Cal.5th 254.....	13
<i>People v. Mitchell</i> (2022) 81 Cal.App.5th 575, review denied October 12, 2022, S276189 .....	11
<i>People v. Pantoja</i> (June 23, 2023, F083581) [nonpub. opn.], review granted Sept. 27 2023, S281228 .....	11, 12
<i>People v. Roehler</i> (1985) 167 Cal.App.3d 353 .....	14
<i>People v. Stowell</i> (2003) 31 Cal.4th 1107.....	15
<i>People v. Strong</i> (2022) 13 Cal.5th 698.....	<i>passim</i>
<i>People v. Thomas</i> (2011) 52 Cal.4th 336.....	14
<i>Tison v. Arizona</i> (1987) 481 U.S. 137.....	7, 8

**TABLE OF AUTHORITIES**  
**(continued)**

**Page**

**STATUTES**

Evidence Code  
    § 664..... 15

Penal Code  
    § 189, subd. (e) ..... 15  
    § 1172.6..... 6, 9, 13, 15  
    § 1172.6, subd. (d) ..... 12

**COURT RULES**

California Rules of Court  
    Rule 8.516(b)(1).....9  
    Rule 8.1115..... 12

## INTRODUCTION

The parties' briefing addresses whether there was substantial evidence at the evidentiary hearing under Penal Code section 1172.6 to prove that Emanuel acted with reckless indifference to human life during his participation in a robbery in which his confederate killed the victim. In conducting that analysis, both parties rely on the definition of the term "reckless indifference" provided in *People v. Clark* (2016) 63 Cal.4th 522, 616-618. (OBM 19-21; ABM 9-12.)

Amicus, the State Public Defender, argues that this Court should clarify *Clark's* definition of reckless indifference. (ACB 8-9.) However, amicus's proposed "clarification" is language this Court has already used in *Clark*, and which it has repeated in *In re Scoggins* (2020) 9 Cal.5th 667, 676-677 and *People v. Strong* (2022) 13 Cal.5th 698, 706. Thus, amicus is not proposing any *new* clarifying language; instead, she proposes that "juries and courts below . . . be instructed that an accused can only be held to have exhibited 'reckless indifference to human life' if there is proof beyond a reasonable doubt of that individual's 'willingness to kill, or to assist another in killing, to achieve a distinct aim.'" (ACB 13; see also *ibid.* [this Court should "clarify that its own words *are* the standard"].) As discussed below, the correctness of standard jury instructions is beyond the scope of review in this case, and, in any event, amicus has not provided any meaningful evidence that courts need additional guidance in applying the reckless indifference standard as defined in *Clark*, *Scoggins*, and *Strong*.

**THE COURT SHOULD DECLINE AMICUS’S REQUEST TO CLARIFY FURTHER THE RECKLESS INDIFFERENCE STANDARD**

Amicus argues that the rule in *Clark* must be clarified by “making explicit what its own cases have repeatedly implied: that an accused can only be held to have exhibited ‘reckless indifference to human life’ if there is proof beyond a reasonable doubt of that individual’s ‘willingness to kill, or to assist another in killing, to achieve a distinct aim.’” (ACB 9-10.) Amicus’s request is motivated by two concerns, but neither supports her requested action.

First, she contends that juries are not properly instructed with the quoted language from *Clark*, and thus cannot understand the concept of reckless indifference. (ACB 10-19.) Reconsideration of the standard jury instruction, however, is well beyond the scope of review.

Second, pointing to four unpublished cases, including the instant case, she claims superior courts and Courts of Appeal are failing to properly apply the quoted language. (ACB 20-33.) But amicus’s disagreement with the outcome of only four cases is hardly proof that courts are misapplying *Clark*’s well-established reckless indifference standard.

**A. Background**

In *Clark*, this Court analyzed the formulation of reckless indifference as that concept was first discussed in *Tison v. Arizona* (1987) 481 U.S. 137, 157. It explained that *Tison* provided examples of defendants who exhibited reckless indifference, like one who shoots “someone in the course of the

robbery, utterly indifferent to the fact that the desire to rob may have the unintended consequence of killing the victim” or one who “tortures another not caring whether the victims lives or dies.” (*Clark, supra*, 63 Cal.4th at p. 616.) Those examples “provide some indication of the high court’s view of ‘reckless indifference,’ namely that it encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions.” (*Id.* at pp. 616-617; see also *Scoggins, supra*, 9 Cal.5th at pp. 676-677; *Strong, supra*, 13 Cal.5th at p. 706.)<sup>1</sup>

After extrapolating this principle from *Tison*, *Clark* further explained that the term “reckless indifference” included both an objective and subjective component. (*Clark*, at p. 617.) “The subjective element is the defendant’s conscious disregard of risks known to him or her”; the objective element looks at whether the actions “involved a gross deviation from the standard of conduct that a law-abiding person in the actor’s situation would observe.” (*Ibid.*) Thus, *Clark* made clear that participation in a “garden-variety armed robbery,” i.e., a robbery with the use of a gun, was insufficient, without “more,” to establish the mental state of

---

<sup>1</sup> Both parties quoted this language in their opening and answering briefs on the merits. (OBM 20-21 [“[r]eckless indifference to human life ‘encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions’”]; ABM 27 [“It ‘encompasses a willingness to kill (or to assist another in killing) to achieve a distinct aim, even if the defendant does not specifically desire that death as the outcome of his actions’”].)

reckless indifference. (*Id.* at p. 617, fn. 74.) A fact finder determines the “more” by applying the ordinary, nontechnical meaning of the term “reckless indifference.” *Clark* also identified a nonexclusive (and nonmandatory) list of factors for consideration in making that assessment. (*Id.* at pp. 618-623.)

**B. The correctness of the applicable jury instructions is not fairly presented**

Amicus devotes a substantial portion of her brief to discussing whether the standard jury instructions on reckless indifference, along with the optional provisions reflecting the factors in *Clark*, provide sufficient guidance to juries in applying the legal standard to the facts. (ACB 10-19.) However, the correctness of the standard jury instructions was not “raised or fairly included in the petition or answer.” (Cal. Rules of Court, rule 8.516(b)(1).) Thus, that issue is not properly before the Court. (*People v. Estrada* (1995) 11 Cal.4th 568, 580 [defendant failed to show that his due process and cruel and unusual punishment claims were “‘fairly included’ in the issue on which his petition for review granted,” thus the claims were “not properly before the court”]; *Pearson v. Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665, 682, fn. 5.)

Indeed, this case did not involve a jury trial. The trial court was acting as the finder of fact at an evidentiary hearing under Penal Code section 1172.6. Thus, no jury instructions were proffered in the hearing below from which this Court could determine their validity. “Under these circumstances, an opinion” on the subject of proper jury instructions “would be purely advisory,” and the “rendering of advisory opinions falls

within neither the functions nor the jurisdiction of this court.”  
(*Coleman v. Department of Personnel Administration* (1991) 52  
Cal.3d 1102, 1126.)

Further, amicus’s suggestion that this Court mandate additional jury instructions defining reckless indifference would require overruling established precedent. This Court held in *Estrada, supra*, that the “common understanding of the phrase ‘reckless indifference to human life’ conveys the notion that a defendant subjectively appreciated that his or her conduct created a grave risk of death” and thus, “the trial court had no sua sponte duty to further explain the statutory phrase for the jury.” (11 Cal.4th at p. 581; *Strong, supra*, 13 Cal.5th at p. 719 [“the standard jury instruction has not in fact changed in the wake of *Banks* and *Clark*”].) An argument seeking a dramatic change to well-settled law cannot be said to be “fairly presented” in a petition for review from a superior court hearing not involving a jury, let alone jury instructions. Thus, this Court should not consider amicus’s suggestion that it expand its review beyond the issues presented to require that juries “be instructed that an accused can only be held to have exhibited ‘reckless indifference to human life’ if there is proof beyond a reasonable doubt of that individual’s ‘willingness to kill, or to assist another in killing, to achieve a distinct aim.’” (ACB 13; see also ACB 37.) Amicus’s procedurally inapposite request should be made another day, in another case, that was actually tried to a jury on instructions that amicus believes were inadequate and where the parties have provided full adversarial briefing.

**C. Amicus has not demonstrated that trial courts and Courts of Appeal misunderstand the legal standard of reckless indifference**

Amicus further argues that, despite this Court’s articulation of the definition of reckless indifference in *Clark* in 2016 (repeated in *Scoggins* and *Strong*), courts are applying the test to “impose felony murder liability on virtually anyone involved in an armed robbery in which an unforeseen death occurs.” (ACB 9.) As support for her claim that the reckless indifference standard should be “clarified,” amicus cites four unpublished cases, including the instant case, in which she alleges the Courts of Appeal failed to understand and apply the teachings of *Clark*. (ACB 21-33, citing *People v. Emanuel* (May 12, 2023, H049147) [nonpub. opn.], review granted Sept. 13, 2023, S280551; *People v. Jones* (July 20, 2023, B320040) [nonpub. opn.], review granted Sept. 27, 2023, S281508; *People v. Pantoja* (June 23, 2023, F083581) [nonpub. opn.], review granted Sept. 27 2023, S281228; *In re Wright* (Nov. 14, 2022, C094514) [nonpub. opn.], review den. Feb. 22, 2023, S277820.)<sup>2</sup> Amicus details the facts of each case (ACB 21-33) and concludes that because each court in applying the *Clark* factors found sufficient evidence of reckless indifference, the courts must have understood “accomplice

---

<sup>2</sup> Amicus also cites *People v. Mitchell* (2022) 81 Cal.App.5th 575, review denied October 12, 2022, S276189, but does not discuss the facts of the case.

liability for felony murder” in a manner “disapproved” of by *Clark* (ACB 33).<sup>3</sup>

At the outset, it is important to note that the cases cited do not provide support for amicus’s request to revisit the jury instructions on reckless indifference. *Emanuel, Jones, and Pantoja* did not involve jury determinations. (ACB 21-23, 26-27, 28-29.) Rather, all three were appeals from resentencing denials under Penal Code section 1172.6, subdivision (d). (ACB 21-23, 26-27, 28-29.) And in none of these cases was the original jury instructed on reckless indifference. (ACB 21-23, 26-27, 28-29.) The fourth case, *Wright*, involved habeas review of a 1995 murder conviction with a felony-murder special circumstance that was originally upheld pre-*Clark*. (ACB 31-33.)

Nor do these cases provide support for amicus’s broad assertion that courts are struggling to apply the rule set out in *Clark*. Indeed, *four* cases hardly shows any meaningful problem exists. In arguing the facts of four cases that amicus believes are

---

<sup>3</sup> Amicus suggests in a footnote that her citation to these cases does not run afoul of California Rules of Court, rule 8.1115, barring citation to unpublished opinions, because she claims not to rely on the cases cited. (ACB 26, fn. 17.) This assertion is dubious at best. Amicus does not offer these unpublished cases as mere list of examples of what has been decided. Rather, she attempts to relitigate these cases, applying her own analysis of the facts to assert they were wrongly decided, and she then relies on that new analysis to argue for broader changes in the law. Amicus’s approach to these unpublished cases stands in sharp contrast to that of the authority she cites as supporting her purported compliance with rule 8.1115.

flawed, amicus ignores the vast multitude of cases in which *Clark* has been repeatedly and consistently applied without problem.<sup>4</sup>

The mere fact that different cases applying the same legal standard in different factual situations have resulted in different outcomes—or more to the point, outcomes other than those preferred by an advocate—does not prove that the law is unworkable. Our adversarial system depends on fact finders, “the jury or the court,” to apply the facts to the law. (*People v. Lopez* (2020) 9 Cal.5th 254, 274.) Not only does each case involve a unique set of facts, reasonable people may have different opinions about how the facts apply to the law, but ordinarily it is the fact finder’s opinion that controls. (*Cavazos v. Smith* (2011) 565 U.S. 1, 2 [“Because rational people can sometimes disagree, the inevitable consequence of this settled law is that judges will sometimes encounter convictions that they believe to be mistaken, but that they must nonetheless uphold”].)

---

<sup>4</sup> According to Westlaw, *Clark* has been cited by over 1,500 California appellate cases, including in over 100 published cases. Also of note, those appellate cases, published and unpublished, addressing *Clark*, account for only that subset of cases where the factfinder found a defendant had in fact exhibited reckless indifference. For the other subset where the fact finder—either at jury trial or at a hearing pursuant to Penal Code section 1172.6—found the defendant did not meet the reckless indifference standard under *Clark*, there would be no *Clark* issue raised on appeal, or in the case of a section 1172.6 resentencing finding, potentially no appeal at all. Amicus makes no effort to identify, let alone grapple with, the entire universe of applicable cases in making her sweeping generalization about the ability of courts to understand and correctly apply *Clark*.

Indeed, that some courts have applied *Clark's* definition of reckless indifference (and the corresponding factors) in a manner with which amicus disagrees proves nothing more than the unremarkable proposition that reaching into an individual's mind to uncover a mental state is "rarely susceptible of direct proof and must therefore be proven circumstantially." (*People v. Thomas* (2011) 52 Cal.4th 336, 355.) And, ultimately, even if a court gets it wrong in a particular instance, that does not mean the standard is flawed or in need of revision. As the Court of Appeal aptly observed in *People v. Roehler* (1985) 167 Cal.App.3d 353, 395, "Perfection is often not possible, nor is it required." This is not to say that courts should shrug off imperfection. (See *People v. Douglas* (2018) 22 Cal.App.5th 1162, 1176 ["[A]lthough perfection is neither required nor possible [citation], the judicial system must not only reach correct results, it must maintain its own dignity"].) Rather, those unlikely instances of imperfection are properly addressed through the appellate review process, not through iterative revisions of an established and workable legal standard. Notably, three of the cases discussed by amicus are currently on review before this Court, and should this Court find reversible error, which respondent disputes, the error will be remedied through the review process.

"[T]he ordinary and widely accepted meaning of the term 'appellate jurisdiction' is simply the power of a reviewing court to *correct error* in a trial court proceeding." (*Leone v. Medical Board* (2000) 22 Cal.4th 660, 666, italics added.) If amicus is correct that those cases are "wrong" on the law or the facts, then review

by this Court protects those defendants who, according to amicus, are simply participants “in a ‘garden-variety armed robbery,’ during which a fatality occurs.” (ACB 9; see also ACB 12, fn. 5, 16, 22, 24.)

Amicus grudgingly concedes that “*some* appellate panels have applied the considerations set out in *Banks* and *Clark* in a manner that reflects the fundamental teaching of those cases.” (ACB 34, italics added.) The parsimoniousness of amicus’s acknowledgement lays bare the weakness of her premise. In the eight years since *Clark* was decided, the legal standard of “reckless indifference” has been applied in all trials involving felony aiders and abettors charged with murder with special circumstances, as well as in post-2019 trials charging felony murder under Penal Code section 189, subdivision (e), and in countless evidentiary hearings under Penal Code section 1172.6. Despite these myriad cases requiring proof of reckless indifference, there is no evidence that any superior court or Court of Appeal has called for a clarification or a redefinition of the legal standard. (Cf. *People v. King* (1993) 5 Cal.4th 59, 77 [overruling *In re Culbreth* (1976) 17 Cal.3d 330 because “we agree with the Courts of Appeal which have criticized the rule” and “appellate courts (and undoubtedly trial courts) have found it very difficult, if not impossible to consistently implement the rule”].) Indeed, absent evidence to the contrary, courts are “presumed to have been aware of and followed the applicable law.” (*People v. Stowell* (2003) 31 Cal.4th 1107, 1114; Evid. Code, § 664.)

Simply put, amicus offers a solution in search of a problem. That amicus disagrees with the outcome in four unpublished cases, out of the many hundreds decided after *Clark*, does not, without more, prove any need for revision of jury instructions or clarification of the reckless indifference standard articulated by this Court in *Clark*, *Scoggins*, and *Strong*.

### CONCLUSION

The judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

ROB BONTA

*Attorney General of California*

LANCE E. WINTERS

*Chief Assistant Attorney General*

JEFFREY M. LAURENCE

*Senior Assistant Attorney General*

SETH K. SCHALIT

*Supervising Deputy Attorney General*

SARAH J. FARHAT

*Deputy Attorney General*

*/s/ Bridget Billeter*

BRIDGET BILLETER

*Supervising Deputy Attorney General*

*Attorneys for Plaintiff and Respondent*

August 9, 2024

**CERTIFICATE OF COMPLIANCE**

I certify that the attached ANSWER TO AMICUS CURIAE BRIEF uses a 13 point Century Schoolbook font and contains 2,312 words.

ROB BONTA  
*Attorney General of California*

*/s/ Bridget Billeter*  
BRIDGET BILLETER  
*Supervising Deputy Attorney General*  
*Attorneys for Plaintiff and Respondent*

August 9, 2024

SF2023401648  
44273736.docx

**DECLARATION OF ELECTRONIC SERVICE**

Case Name: **People v. Emanuel**

No.: **S280551**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically.

On August 9, 2024, I electronically served the attached **ANSWER TO AMICUS CURIAE BRIEF** by transmitting a true copy via this Court's TrueFiling system, addressed as follows:

Solomon R. Wollack  
Attorney at Law  
Email: sol@wollack.com

Santa Clara County Superior Court  
Criminal Division - Hall of Justice  
Email: sccappeals@scscourt.org

The Honorable Jeffrey F. Rosen  
District Attorney  
Santa Clara County District  
Attorney's Office  
Email: DCA@dao.sccgov.org

AJ Kutchins  
Supervising Deputy State Public  
Defender  
State Public Defender's Office-Oakland  
Email: aj.kutchins@ospd.ca.gov

Jonathan Grossman  
Staff Attorney  
Sixth District Appellate Program  
Email: jonathan@sdap.org

Sixth District Appellate Court  
Email: sixth.district@jud.ca.gov

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on August 9, 2024, at San Francisco, California.

N. Kochiya

Declarant

/s/ N. Kochiya

Signature

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **PEOPLE v. EMANUEL**

Case Number: **S280551**

Lower Court Case Number: **H049147**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **bridget.billeter@doj.ca.gov**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S280551_RAC_People

Service Recipients:

Person Served	Email Address	Type	Date / Time
Linda Murphy California Dept of Justice, Office of the Attorney General 148564	linda.murphy@doj.ca.gov	e-Serve	8/9/2024 2:13:08 PM
Solomon Wollack Solomon Wollack 170003	sol@wollack.com	e-Serve	8/9/2024 2:13:08 PM
Attorney Attorney General - San Francisco Office Alice B. Lustre, Supervising Deputy Attorney General	sfagdocketing@doj.ca.gov	e-Serve	8/9/2024 2:13:08 PM
Attorney Attorney General - San Francisco Office Sarah J. Farhat, Deputy Attorney General 228179	Sarah.Farhat@doj.ca.gov	e-Serve	8/9/2024 2:13:08 PM
Nancy Skinner Office of Senator Nancy Skinner	kate.chatfield@sen.ca.gov	e-Serve	8/9/2024 2:13:08 PM
AJ Kutchins Office of the State Public Defender 102322	aj.kutchins@ospd.ca.gov	e-Serve	8/9/2024 2:13:08 PM
Jonathan Grossman Sixth District Appellate Program 154452	jonathan@sdap.org	e-Serve	8/9/2024 2:13:08 PM
Bridget Billeter California Dept of Justice, Office of the Attorney General 183758	bridget.billeter@doj.ca.gov	e-Serve	8/9/2024 2:13:08 PM
Santa Clara County District Attorney's Office	DCA@dao.sccgov.org	e-Serve	8/9/2024 2:13:08 PM
Santa Clara County Superior Court	sccappeals@scscourt.org	e-	8/9/2024

		Serve	2:13:08 PM
Sixth District Appellate Court	sixth.district@jud.ca.gov	e-Serve	8/9/2024 2:13:08 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

8/9/2024

Date

/s/Nga Kochiya

Signature

Billeter, Bridget (183758)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm