IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

The PEOPLE of the State of California,
Appellant/Plaintiff

vrs.

BRIAN ARANDA,
Respondent/Defendant

S214116

RESPONDENT'S BRIEF
ON THE MERITS.

Court of Appeal Case No E056708
Riverside County Superior Court No. RIF154701
The Honorable Michele D. Levine and Helios Hernandez, Judges

RESPONDENT'S BRIEF ON THE MERITS

Virginia M. Blumenthal, SBN 65240
BLUMENTHAL LAW OFFICES
3993 Market Street
Riverside, CA 92501
Ph. (951) 682-5110
Fax (951) 788-6303

Attorneys for Respondent Brian Aranda

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

The PEOPLE of the State of California,
Appellant/Plaintiff

vrs.

BRIAN ARANDA,
Respondent/Defendant

S214116

RESPONDENT'S BRIEF
ON THE MERITS.

Court of Appeal Case No E056708
Riverside County Superior Court No. RIF154701
The Honorable Michele D. Levine and Helios Hernandez, Judges

RESPONDENT'S BRIEF ON THE MERITS

Virginia M. Blumenthal, SBN 65240
BLUMENTHAL LAW OFFICES
3993 Market Street
Riverside, CA 92501
Ph. (951) 682-5110
Fax (951) 788-6303

Attorneys for Respondent Brian Aranda

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Virginia M. Blumenthal, SBN 65240
BLUMENTHAL LAW OFFICES
3993 Market Street
Riverside, CA 92501
Ph. (951) 682-5110
Fax (951) 788-6303

Attorneys for Respondent Brian Aranda

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

The PEOPLE of the State of California, Appellant/Plaintiff vrs. BRIAN ARANDA, Respondent/Defendant	S214116 RESPONDENT'S BRIEF ON THE MERITS.

Court of Appeal Case No E056708
Riverside County Superior Court No. RIF154701
The Honorable Michele D. Levine and Helios Hernandez, Judges

RESPONDENT'S BRIEF ON THE MERITS

INTRODUCTION

Defendant/Respondent Brian Aranda was prosecuted for first degree murder. At the conclusion of evidence, the jury was instructed that Count One (1st degree murder) included therein two lesser included offenses, 2nd degree murder and voluntary manslaughter. Rather than being provided with "guilty" and "not guilty" verdict forms for 1st degree murder, 2nd degree murder and voluntary manslaughter, the jury was

provided with only four (4) verdict forms; "Guilty of 1st Degree Murder", "Guilty of 2nd Degree Murder", "Guilty of Voluntary Manslaughter", and "Not Guilty."

During the third day of deliberations, the foreman revealed no juror had voted guilty for 1st Degree murder verdict. Three jurors were considering 2nd degree murder, and the remaining jurors were deliberating the lesser included offense of manslaughter. The jury continued deliberating.

The following day, the foreman announced the jury voting had shifted. There were still no votes for 1st degree murder, now only a single vote for 2nd degree murder, two votes for manslaughter, and the remaining nine jurors were now voting for acquittal. The foreman expressed concern that the jury might not be able to reach a unanimous verdict and asked for guidance from the court.

At this point, the defense had requested on three separate occasions that the jury be given a "Not Guilty of 1st Degree Murder" verdict form to confirm they had acquitted defendant of 1st degrer murder. Each time the prosecutor objected, and each time the trial judge declined to provide the jury with a "Not Guilty" verdict form for 1st degree murder.

The jury deliberated for an additional 40 minutes. Thereafter, the foreman told the trial judge that they were still divided 1 juror for 2nd degree murder, 2 jurors for manslaughter, and 9 jurors for acquittal. Without hearing argument from the defense, the trial judge then declared a mistrial on its own motion.

Following the declaration of a mistrial, the case was set for retrial. Defendant filed a motion to dismiss the 1st degree murder charge based on once-in-jeopardy grounds. The defense cited the partial acquittal rule enunciated in *Stone v. Superior Court* (1982) 31 Cal.3d 503 (*Stone*). The motion court granted the defense motion to dismiss the 1st degree murder charge. The motion court concluded that the defendant was entitled to request the jury return a partial verdict of acquittal as to 1st degree murder. This would have allowed the jury to acquit defendant of 1st degree murder if they had, in fact, reached that conclusion. The motion court concluded that the double jeopardy protections, as enunciated in *Stone,* prohibited the prosecution from retrying defendant on

the charge of 1st degree murder, but allowed for retrial on the lessen included offenses of 2nd degree murder and manslaughter.

Approximately 10 days after the motion court's ruling, the United States Supreme Court published *Blueford v. Arkansas* (2012) 566 U.S. ____ [132 S.Ct. 2044, 182 L.Ed.2d 937] (*Blueford*). In *Blueford*, the United States Supreme Court held that the Double Jeopardy Clause of the Federal Constitution does not require that a trial court aid a jury to return a partial verdict of acquittal when that jury has indicated they may have rejected the 1st degree murder charge, but are deadlocked as to the lesser included offenses.

Based on the *Blueford* decision, the People filed a Motion for Reconsideration with the motion court. The People argued that *Blueford* abrogated *Stone* because *Stone* was based exclusively on an erroneous interpretation of the Federal Constitution's Double Jeopardy Clause; hence, defendant was not entitled to a partial verdict of acquittal and defendant's motion to dismiss the 1st degree murder charge should be reversed. This would allow defendant to be retried on 1st degree murder. The defense argued that *Stone* addressed a California statutory anomaly that potentially would give state prosecutors a unilateral, and potentially unfair, advantage over defendants merely because of the manner in which they sought to charge the accused. Stone addressed the potential problem created by the California statute. Hence, *Stone* was based not only on federal grounds, but also on independent state constitutional and statutory grounds. Therefore, *Stone* is still valid law in California state criminal prosecutions. The motion judge agreed with the defense and denied the People's motion for reconsideration.

The People appealed the motion court's ruling to Division Two of the Fourth District Court of Appeal. That court, after considering the written briefs and hearing oral argument, agreed with the defense and affirmed the motion court's dismissal of the 1st degree murder charges.

The People filed a Petition for Review with this Court. The Petition was granted, and this issue is now before California's Supreme Court.

It is important this Court clarify and affirm the Court of Appeal's holding that *Blueford v. Arkansas* may have abrogated the reasoning of the California Supreme Court in *Stone* regarding partial verdicts of acquittal as far as it was based on the Fifth Amendment of the federal Constitution, but that California law provides added double jeopardy protections to defendants prosecuted in California state courts. Hence, the law as enunciated in *Stone* regarding partial verdicts of acquittal is still valid law in California since it is based on the added double jeopardy protections provided by the California Constitution and California statutory law.

ISSUE PRESENTED:

WHETHER THIS COURT'S HOLDING IN *STONE VERSUS SUPERIOR COURT* WAS BASED ON THE ADDITIONAL DOUBLE JEOPARDY PROTECTIONS PROVIDED BY CALIFORNIA'S INDEPENDENT CONSTITUTIONAL AND STATUTORY GROUNDS?

BRIEF SUMMARY OF EVIDENCE ELICITED AT TRIAL

For purposes of this appeal, defendant adopts the People's Statement of Facts included in their Opening Brief. (AOB, pp. 6-7.) Additionally, evidence was presented that defendant had been told by his girlfriend Alexis that her father was sexually assaulting and raping her. These assaults happened because her father forced her to sleep in a bed with him in a one bedroom apartment. On December 2, 2009, defendant received an urgent text message from Alexis in which she pled with him to come to her house because her father "had that look in his eyes." She told defendant that she was pregnant with their twins, that she could not handle being raped again, and that it would result in a miscarriage. She told him where to find the key to the house.

Defendant went to Alexis' house. He took no weapon with him. He knew, however, that her father had a gun. Hence, upon entering the home, he found an ice pick in the kitchen to use for protection. Defendant found Alexis in the bed with her father. As she got out of bed, her father awakened. The defendant and her father fought

as defendant attempted to remove her from the apartment. During the fight, defendant stabbed the father numerous times with the ice pick. The father subsequently died from these wounds. Defendant was thereafter arrested.

At trial, the defense argued that defendant acted in defense of Alexis and in self defense when he stabbed and killed Alexis' father.

STATEMENT OF THE CASE

Jury Deliberations:

At the conclusion of the trial, the jury was instructed that there were two lesser included offenses of 1st degree murder; 2nd degree murder and manslaughter. Rather than being provided guilty and not guilty verdict forms for 1st degree murder and each of the lesser included offenses, the jury was provided with four (4) verdict forms for Count One; guilty of 1st degree murder, guilty of 2nd degree murder, guilty of voluntary manslaughter, and not guilty.[1] Thereafter, on November 29, 2011 at 14:45 p.m., jury deliberations began and continued through December 5, 2011. (See Court Docket Sheets for Nov. 29 and 30, and Dec. 2 and 5, 2011.)

Jury Activity on December 2, 2011

(See Reporter's Transcript of Dec. 2, 2011):

On December 2, 2011, the third day of jury deliberations, jurors spoke to the courtroom bailiff and expressed concern regarding one of the jurors who was acting "hostile" towards others if they disagreed with him. The bailiff told the court of this conversation, and at 14:40 p.m., the court had the bailiff tell counsel what the bailiff

---

[1] This is the second alternative for providing the jury with verdict forms when the prosecution has filed a count that has lesser included offenses. See *Stone v. Superior Court* (1982) 31 Cal.3d 503. Had the prosecutor provided "guilty" and "not guilty" verdict forms for 1st degree murder, 2nd degree murder and voluntary manslaughter (the charged offense and the lesser included offenses . . . the first alternative discussed in Stone), this jury would have returned a verdict of "not guilty" of 1st degree murder, then announced they could not reach a unanimous verdict as to the lesser included offenses.

previously told the court. The court decided to ask the jury foreman how deliberations were coming. When asked, the jury foreman said nothing about any acrimony in the jury deliberation room. However, the foreman volunteered the numerical status of the jury deliberations, that the jurors had initially discussed 1st degree murder, then shifted to 2nd degree murder. He said that "a couple" jurors were considering 2nd degree murder, whereas the other jurors were now discussing whether defendant was guilty of manslaughter. The court instructed the jury to continue deliberating. The court made no further inquiry as to the potential problem with one of the jurors. (Reporter's Transcript of December 2, 2011.)

Jury Activity on December 5, 2011

(See Reporter's Transcript of Dec 5, 2011):

On the next court day, December 5, 2011, at 14:40 p.m., the jury foreman sent a note to the court and indicated a need to speak with the court. However, prior to meeting with the jury foreman and based on what the foreman had said on December 2, 2011, defense counsel requested the jury be provided a "not guilty of 1st degree murder" verdict form in order to determine if the jury had reached a partial verdict as to 1st degree murder. The prosecutor "strenuously" objected. The trial court did not respond to the defense request. The court brought the foreman into court, and the foreman told the court that the jury may have reached a deadlock, that their numerical status had shifted, so that now only one juror was "stuck on" 2nd degree murder, two jurors were for voluntary manslaughter, and the remaining nine jurors were for acquitting the defendant of all crimes alleged in Count One. He asked for direction from the court. (RT of December 5, 2011.)

The foreman was excused briefly. In the ensuing discussions, defense counsel requested two more times that the jury be provided a "not guilty of 1st degree murder" verdict form in order to determine if the jury had reached a partial verdict as to 1st degree murder. Again, the prosecutor "strenuously" objected. The trial court refused the defense request to determine if the jury had reached a partial verdict as to 1st degree murder. (Docket entry for Dec. 5, 2011; RT of Dec. 5, 2011.)

The entire jury was brought into the courtroom. The court asked the jurors if there was anything the court could do to assist them in their deliberations. Four jurors responded. Two indicated they believed that with assistance from the court, the jury may be able to reach a verdict. Juror #12 (the potentially problematic juror) stated he did not believe the jury could reach a verdict. A fourth juror asked what they should do if one of the jurors refused to change his mind. The court instructed the jury to continue deliberating, but the trial judge said he intended to call them back into court in 40 minutes. The court intended to declare a mistrial at that time. (RT of December 5, 2011.)

The Court Declared a Mistrial on It's Own Motion:

Forty minutes later, the court recalled the jury to the courtroom, and asked the foreperson if they had made "any progress"? The response was "No, we're still at the same spot." The Court confirmed the numerical vote was 9 to 2 to 1 (for acquittal, voluntary manslaughter and 2nd degree murder, respectively), then said, "I think that's about it. You've been at it a couple of days. You gave it your best shot. It didn't work out." (RT of Dec. 5, 2011, p. 10.) The Court then declared a mistrial and discharged the jury. (RT of Dec. 5, 2011, pp. 10, 11.) Defense counsel never consented to the court's declaring a mistrial. A new jury trial date was set for Jan. 23, 2012. (Docket entry for Dec. 5, 2011; RT of Dec. 5, 2011.)

Defendant Moved to Have the 1st Degree Murder Charge Dismissed on Double Jeopardy Grounds.

The case was returned to the calendar courtroom where a new trial date was to be set. While in the calendar court, defendant filed a motion to dismiss the 1st degree murder charge. The basis was that defendant had been placed once in jeopardy. On May 14, 2011, the Honorable Michele D. Levine granted defendant's motion to dismiss the 1st

degree murder charge alleged in Count One.[2] (Reporter's Transcript of Defendant's Motion to Dismiss heard on May 10 and 14, 2012.)

The People Filed a Motion for Reconsideration of the Court's Dismissal of the 1st Degree Murder Charge.

On June 1, 2012 the People filed a Motion for Reconsideration of Judge Levine's ruling that dismissed the 1st degree murder charge. This motion was based on the recently decided United States Supreme Court case of *Blueford v. Arkansas* (2013) 566 U.S. ___ [132 S.Ct.2044, 182 L.Ed. 2d 937].

On June 18, 2012, Judge Levine denied the People's Motion for Reconsideration of the trial court's ruling that dismissed the 1st degree murder charge. (Docket entry for June 18, 2012.)

The People Appealed Judge Levine's Ruling to the Fourth District Court of Appeal, Division Two.

The People filed a timely appeal with the Fourth District Court of Appeal, Division Two. The defendant filed a response. On September 12, 2013, the Court of Appeal affirmed the ruling by Judge Levine dismissing the 1st degree murder charge. The Court of Appeal held 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." (Court of Appeal Opinion, p. 10.)

---

[2] The defendant also moved to have the lesser included offenses of 2nd degree murder and manslaughter dismissed on double jeopardy grounds. The Superior Court denied this request. The defense filed a petition for writ of prohibition/mandamus with the court of appeal praying that the lesser included charges be dismissed on double jeopardy grounds. The Court of Appeal summarily denied this petition. This issue is not before this Court in this appeal.

The Supreme Court Granted the People's Petition for Review

ARGUMENTS PRESENTED:

THIS COURT'S HOLDING IN *STONE VERSUS SUPERIOR COURT* WAS BASED ON THE ADDITIONAL DOUBLE JEOPARDY PROTECTONS PROVIDED BY CALIFORNIA'S CONSTITUTION AND STATUTORY LAW.

1. THE "INDEPENDENT STATE GROUNDS" LANGUAGE USED BY THIS COURT IN *STONE* WAS NOT MERE DICTA.

2. SUBSEQUENT CASES CONFIRM THAT THE HOLDING IN STONE WAS BASED ON CALIFORNIA'S "INDEPENDENT STATE GROUNDS."

3. BECAUSE OF CALIFORNIA'S STATUTORY SCHEME, PROSECUTORS IN CALIFORNIA STATE COURTS WILL GAIN A UNILATERAL AND UNFAIR ADVANTAGE WITHOUT THE ADDED PROTECTIONS PROVIDED BY *STONE V. SUPERIOR COURT.*

1. THE "INDEPENDENT STATE GROUNDS" LANGUAGE USED BY THIS COURT IN *STONE* WAS NOT MERE DICTA.

The federal Double Jeopardy clause is binding on the states in state prosecutions pursuant to the 14th Amendment's Due Process clause. However, as long as state courts provide defendants with federal Double Jeopardy protection, as defined by the United States Supreme Court, each state is free to provide *additional* Double Jeopardy protection to individuals prosecuted in its state courts based on that state constitution's double jeopardy clause.

Partial Verdicts of Acquittal

Federal Double Jeopardy law does not recognize a defendant's right to a partial verdict of acquittal when the jury has indicated it may have reached a unanimous decision

to acquit on the charged offense but is unable to reach a unanimous verdict as to a lesser included offense. That is the holding of the recent United States Supreme Court decision in *Blueford v. Arkansas* (2012) 566 U.S. , 132 S. Ct. 1307 [*Blueford*]. However, the *Stone* decision was California's announcement that it intended to provide *additional* Double Jeopardy protection to individuals prosecuted in its state courts based on the California's Constitution's double jeopardy clause.

If the California Supreme Court in *Stone* was basing its decision solely on its interpretation of the federal constitution (as the People contend), why would the Court even mention the independent state grounds basis provided by the California constitution?

> [W]e are mindful that the double jeopardy clause of the Fifth Amendment applies to the states through the general provisions of the Fourteenth Amendment. [citation omitted.] Thus the minimum standards of double jeopardy protection for criminal defendants, as enunciated by numerous United States Supreme Court decisions, are binding on this court. Of course, we remain free to delineate a higher level of protection under article I, section 15 (formerly § 13), of the California Constitution. [citations omitted.] (*Stone, supra*, at pp. 509-510. Underscoring added.)

If *Stone* was based exclusively on the protections provided by the federal constitution (as the People contend), why would this Court also refer to the "disarray in other states" on the issue of "implied partial verdicts of acquittal", rather than simply cite federal cases that discuss this legal concept as they interpret the Fifth Amendment?

> While cases in other states are in disarray on the issue of giving effect to implied partial verdicts of acquittal on a charged offense when the jury is deadlocked as to an uncharged lesser included offense [footnote 6], two California Court of Appeal decisions have applied the rule of *Griffin* to comparable factual situations (*Stone, supra,* at. p. 512.)

Other states, like California, are free to provide *added double jeopardy protections* to defendants in state court prosecutions. This is particularly true when states provide *statutory protections* to defendants prosecuted in state courts that do not exist in federal

courts. Indeed, in footnote 6 of the *Stone* decision, this Court referred to two states by name which provide *state statutory protections* to defendants in addition to those protections provided by the Fifth Amendment double jeopardy clause.[3]

Other states also recognize that a defendant has a right to a partial verdict of acquittal when the jury has indicated it may have reached a unanimous decision to acquit on the charged offense but is unable to reach a unanimous verdict as to a lesser included offense. An example is Florida's decision in *Avila v. State* (Fla.App. 2 Dist., 2012] 86 So.3d 511 (*Avila*). In deciding that case, the Florida court addressed the *Blueford* case when it was still pending in the United States Supreme Court:

> We also note that decisions from the United States Supreme Court concerning the double jeopardy clause are not necessarily binding on Florida courts. [Citation omitted.] Therefore, while the Supreme Court's ultimate decision in *Blueford* will be highly persuasive authority on the issue of partial verdicts, it will not necessarily be binding on Florida courts. (*Avila v. State* (Fla.App. 2 Dist., 2012] 86 So.3d 511, 514, fn. 3.)

Avila explained that both Florida and California provide defendants with the right to a partial verdict in these situations, whereas Arkansas law does not:

> [T]he Arkansas Supreme Court recognized a split of authority on the issue of whether "partial" verdicts of acquittal preclude further prosecution on the "acquitted" charges. The court explained: Jurisdictions are split on the issue of partial verdicts. But, the majority of jurisdictions have held that if a single charge includes multiple degrees of offenses, the trial court may not conduct a partial-verdict inquiry as to the offenses included within the charge. [Citations omitted.] The minority, on the other hand, has held that double jeopardy requires a partial verdict of acquittal as to the greater offenses if the jury is deadlocked only as to the lesser offenses. *See, e.g., Stone v. Superior Court* (1982) 31 Cal.3d 503. [Additional citations omitted.] The minority of jurisdictions that accept partial verdicts seem to focus on the fact that there can be no "manifest necessity" warranting the declaration of a mistrial where the circuit court makes no inquiry into the jury's deliberations as to the greater offenses. *People v. Anderson* (2009) 47

[3] New Mexico and New York.

Cal.4th 92; *Blueford*, 2011 Ark. At 10-11. *(Avila v. State* [Fla.App. 2 Dist., 2012] 86 So.3d 511, 515.)

The *Avila* court explained that the Arkansas supreme court noted in *Blueford* that it had previously rejected the theory of "partial" verdicts, and it found no compelling reason to change that decision. (*Avila v. State* [Fla.App. 2 Dist., 2012] 86 So.3d 511, 515.) In this regard, Arkansas (and federal) law differs from that of California and Florida in that Arkansas has chosen to not extend additional Double Jeopardy protections to individuals prosecuted in its state courts, whereas California and Florida have. This is why the United States Supreme Court wrote in *Blueford*:

> As permitted under Arkansas law, the jury's options in this case were limited to two: either convict on one of the offenses, or acquit on all. The instructions explained those options in plain terms, and the verdict forms likewise contemplated no other outcome. There were separate forms to convict on each of the possible offenses, but there was only one form to acquit, and it was to acquit on all of them. When the foreperson disclosed the jury's votes on capital and first-degree murder, the trial court did not abuse its discretion by refusing to add another option--that of acquitting on some offenses but not others. That, however, is precisely the relief Blueford seeks--relief the [federal] Double Jeopardy Clause does not afford him. (*Blueford v. Arkansas* (2012) 566 U.S. , 132 S. Ct. 1307. Underscoring added.)

Although neither Arkansas's state law nor the federal Double Jeopardy Clause provide a defendant the type of relief Blueford sought, article I, section 15 of California's constitution does afford a defendant this relief. Contrary to the People's assertion, *Blueford* did not overturn *Stone v. Superior Court* (1982) 31 Cal.3d 503 and its progeny. California provides the double jeopardy relief afforded by the federal constitution, but unlike Arkansas and federal courts, California affords greater relief to individuals accused in its state courts. The California Supreme Court made this clear in *Stone*:

> [W]e are mindful that the double jeopardy clause of the Fifth Amendment applies to the states through the general provisions of the Fourteenth Amendment. (citation omitted.) Thus, the minimum standards of double

> jeopardy protection for criminal defendants, as enunciated by numerous United States Supreme Court decisions, are binding on this court. Of course, we remain free to delineate a higher level of protection under article I, section 15 (formerly § 13), of the California Constitution. (Citations omitted.) (*Stone v. Superior Court* (1982) 31 Cal.3d 503, 510-511. Underscoring added.)

Certainly when deciding the *Stone* case, this Court was aware that the United States Supreme Court had not yet addressed this specific issue as to whether the Fifth Amendment provides for "implied partial verdicts of acquittal." With that in mind, it is apparent that this Court in *Stone* provided its own legal rationale, basing its holding in part on its interpretation of Fifth Amendment protections, but also that even if the United States Supreme Court were to subsequently disagree with *Stone*'s holding, the *Stone* rationale would remain valid because it is also based on independent state grounds.

2. SUBSEQUENT CALIFORNIA CASES CONFIRM THAT THE HOLDING IN *STONE* WAS BASED ON CALIFORNIA'S "INDEPENDENT STATE GROUNDS."

Fourteen years after *Stone*, this Court in *People v. Fields* (1996) 13 Cal.4th 289 reiterated that the double jeopardy clause exists within the Fifth Amendment of the United States Constitution as well as Article I, section 15 of the California Constitution, and that "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." (*Id.*, at p. 298.) Thereafter, this Court wrote that its inquiry in *Fields*, as it was in *Stone*, was guided by decisions interpreting the Fifth Amendment "as well as the decisions interpreting the California Constitution . . ." :

> 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. (*People v. Fields* (1996) 13 Cal.4th 289.)

More recently, in *People v. Batts* (2003) 30 Cal.4th 660, the California Supreme Court reiterated the fact that the California Constitution provides a higher level of double jeopardy protection in state court proceedings, and cited *Stone.*

If this Court in *Stone* did not base its holding in part on the California Constitution, then the "independent state grounds" language found in *Stone* would be mere *dicta.* It would seem unusual, however, for this Court in subsequent cases such as *Fields* and *Batts* to cite *Stone* for language therein that is mere *dicta* and was not necessary for the holding in *Stone.*

3. BECAUSE OF CALIFORNIA'S STATUTORY SCHEME, PROSECUTORS IN CALIFORNIA STATE COURTS WILL GAIN A UNILATERAL AND UNFAIR ADVANTAGE WITHOUT THE ADDED PROTECTIONS PROVIDED BY *STONE V. SUPERIOR COURT.*

It was the "statutory scheme in California" that created the issue presented in *Stone.* This Court framed the issue in *Stone* by stating the *statutory* options that a California prosecutor has in the way he/she charges a crime with lesser included offenses:

> Keeping these general principles [of double jeopardy] in view, we turn to the precise issue here - whether the double jeopardy clause requires formulation of a procedure for the receipt of partial verdicts in these circumstances. Under the statutory scheme in California, a prosecutor has the discretion to charge a lesser included offense and the greater offense in separate counts. (§954.) Alternatively, he may charge only the greater offense. (See §1159.) The latter is the usual practice. Thus, a charge of murder includes by implication a charge of the lesser degree of murder as well as voluntary and involuntary manslaughter. (§1159; [citations omitted.]).) (*Stone, supra,* at pp. 516-517. Underscoring added.)

Hence, it stands to reason that this Court would address the "anomaly" created by California's "statutory scheme" by applying California state, as well as federal, law. The

Stone decision was an effort by this Court to ensure that a defendant prosecuted in state court would not be deprived of a valuable Constitutional right, based on either the federal or the state Constitution, merely because of a prosecutor's unilateral decision on how to charge the defendant for a crime that includes lesser included offenses.

This Court explained that as long as the California legislature allows prosecutors this option in charging a defendant, a rule of procedure is needed to ensure the defendant is treated the same in situations when a jury acquits on the greater charged offense but "hangs" on a lesser included offense, regardless of how the prosecutor elects to charge the defendant.

> 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. In addition to seriously infringing on the defendant's double jeopardy interest in avoiding retrial for offenses on which he has been factually acquitted, such a rule would make his substantive rights turn on the formality of whether he was charged in separate counts with the greater offense and the lesser included offense, or was charged in a single count with only the greater offense. (*Stone*, *supra*, at pp. 517-518. Underscoring added.)

The holding in *Blueford v. Arkansas* (2012) 566 U.S. ___ [132 S.Ct. 2044, 182 L.Ed.2d 937] would appear to allow this anomaly to happen in California based on California's statutory scheme . . . unless a rule is formulated to prevent it from occurring. That rule is enunciated in *Stone*. It would not be right nor fair to hold otherwise.

//

//

CONCLUSION

For each of the above reasons, defendant respectfully urges this Court to affirm the holding of *Stone v. Superior Court* as valid California law regarding partial verdicts of acquittal. Stone was decided over 30 years ago. It is not only well established law, but both CALJIC and CALCRIM instructions have been used during these years whenever the prosecution charges an accused with an offense that includes lesser included offenses. Because California's statutory scheme allows the prosecution to unilaterally decide how to charge a defendant (i.e., whether lesser included offenses are or are not charged as separate counts) and what verdict forms to provide to the jury (thereby potentially depriving a defendant of an acquittal of the greater charged offense), California law based on independent state grounds should be available to protect against this statutory anomaly and allow partial verdicts of acquittal in appropriate cases.

Respectfully submitted,
BLUMENTHAL LAW OFFICES

By: Virginia M. Blumenthal
Attorneys for Defendant Aranda

CERTIFICATION OF WORD COUNT

The text of the **RESPONDENT'S BRIEF ON THE MERITS** consists of 5,217 words as counted by the Microsoft Word Program used to generate the said RESPONDENT'S BRIEF.

Executed on April 4, 2014.

Respectfully submitted,

BLUMENTHAL LAW OFFICES

Virginia M. Blumenthal

PROOF OF SERVICE BY MAIL

Case No S214116

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 proceedings; that my business address is 3993 Market Street, Riverside, California 92501.

That on April 4, 2014, I served a copy of the

RESPONDENT'S BRIEF ON THE MERITS

by depositing a copy enclosed in a sealed envelope with postage thereon fully prepaid in a United States Postal Service mailbox, and addressed to the following recipients:

COURT OF APPEAL
Fourth District, Division Two
3389 Twelfth Street
Riverside, CA 92501

KELLY CATLETT, ESQ.
Riverside County District Attorney's Office
3960 Orange Street
Riverside, CA 92501

HON. HELIOS J. HERNANDEZ
Riverside County Superior Court
Hall of Justice
4100 Main Street
Riverside, CA 92501

HON. MICHELE S. LEVINE
Riverside County Superior Court
Hall of Justice
4100 Main Street
Riverside, CA 92501

ATTORNEY GENERAL'S OFFICE
110 West "A" Street, Suite 1100
San Diego, CA 92101

APPELLATE DEFENDER'S INC.
555 West Beech Street, Suite 300
San Diego, CA 92101

I declare the above to be true and correct under penalty of pejury.

Executed on April 4, 2014 at Riverside, California.

Declarant