

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

\_\_\_\_\_  
No. S271178  
\_\_\_\_\_

In re ) Court of Appeal of California Third  
Miguel Angel Cabrera, ) District No. C091962  
 )  
 ) Superior Court of California Siskiyou  
*On Habeas Corpus.* ) County  
 ) No.: MCYKCRBF20076242,  
 ) SCCRHCCR20189121  
 ) (Honorable Robert F. Kaster)  
 )  
 )  
 )  
\_\_\_\_\_ )

\_\_\_\_\_  
**Reply Brief On The Merits**  
\_\_\_\_\_

Andrew J. Marx (SBN #171237)  
Law Office of Andrew J. Marx  
P.O. Box 1225  
Mt. Shasta, CA 96067  
(530) 925-1291  
[andrewmarxlaw@gmail.com](mailto:andrewmarxlaw@gmail.com)

Attorney for Petitioner Miguel Angel Cabrera

## **TABLE OF CONTENTS**

<b>TABLE OF CONTENTS .....</b>	<b>2</b>
<b>TABLE OF AUTHORITIES.....</b>	<b>3</b>
<b>NEITHER RULES OF STATUTORY CONSTRUCTION NOR CASE AUTHORITY SUPPORTS THE PROPOSITION THAT SERIOUS BODILY INJURY IS A SUBSET OF GREAT BODILY INJURY BECAUSE EACH CONCEPT HAS A DIFFERENT STATUTORY DEFINITION .....</b>	<b>4</b>
<b>FINDING THE TRIAL COURT ERRED IN EQUATING THE SBI CONVICTION TO A GBI FINDING REQUIRES REVERSAL OF THE FINDING AND THAT THE 5-YEARS IMPOSED UNDER SECTION 667 (a) BE VACATED .....</b>	<b>7</b>
<b>CERTIFICATE OF COMPLIANCE.....</b>	<b>8</b>
<b>PROOF OF SERVICE BY MAIL &amp; ELECTRONICALLY.....</b>	<b>9</b>

## TABLE OF AUTHORITIES

### Cases

<i>People v. Odle</i> (1951) 37 Cal. 2d 52, 58, 230 P.2d 345, 349 .....	7
<i>People v. Santana</i> (2013) 56 Cal.4 <sup>th</sup> 999 .....	5
<i>People v. Taylor</i> (2004) 118 Cal.App 4 <sup>th</sup> 11 .....	5, 6
<i>People v. Thomas</i> (2019) 39 Cal.app.5 <sup>th</sup> 930, 933 .....	6

**NEITHER RULES OF STATUTORY CONSTRUCTION NOR  
CASE AUTHORITY SUPPORTS THE PROPOSITION THAT  
SERIOUS BODILY INJURY IS A SUBSET OF GREAT BODILY  
INJURY BECAUSE EACH CONCEPT HAS A DIFFERENT  
STATUTORY DEFINITION**

Rules of statutory construction cannot alter the legislature's decision to define SBI as "a serious impairment of physical condition" and GBI as "significant or substantial physical injury". When the legislature had an opportunity to reconcile the different definitions it decided to maintain a distinct definition for GBI by "changing the remaining definition of 'great bodily injury' from a 'serious impairment of physical condition' to 'a significant or substantial physical injury.'" (See, Answer, p. 34, citing *People v. Escobar v.* (1992) 3 Cal.4<sup>th</sup> at p. 747 (citing Assem. Amend. to Assem. Bill No. 476 (1977-1978 Reg. Sess.) Apr. 19, 1977.)

The doctrine of *ejusdem generis* contemplates use of the specific injury types that follow SBI's general language "serious impairment of physical condition" to clarify the class of injuries the legislature intended the general definition to encompass. However, to use the *ejusdem generis* analysis of SBI's statutory language to modify and equate SBI with the distinct, purposeful and plainly worded general definition of GBI is an unsupported extension of that

doctrine because there are no requisite specific injury examples associated with the GBI definition. If the GBI definition contained the same set of specific injuries as the SBI definition the *ejusdem generis* concept might support this novel analytical extension.

*People v. Santana* (2013), 56 Cal.4<sup>th</sup> 999 [301 P.3d 1157] (*Santana*), does not support the proposition that SBI “is a subset of” GBI (Answer Brief on the Merits (Answer), p. 39.) as a premise to substitute a SBI conviction for the factual GBI finding *Apprendi* requires for enhanced punishment. Though *Santana* involved an analysis of the interrelationship between SBI and GBI, the issue presented, insertion of SBI language into a mayhem jury instruction, did not require analysis of *Apprendi*’s requirement that facts leading to additional punishment must be found by a jury beyond a reasonable doubt.

Though *Santana* acknowledged the decisions that describe SBI and GBI as “ ‘essential[ly] equivalent’ ” [citations] the court also observed “the terms in fact ‘have separate and distinct statutory definitions’ ” that “may make a difference when evaluating jury instructions that provide different definitions of the two terms.”

(*Santana, supra*, 56 Cal.4<sup>th</sup> at pp. 1008-1009, citing *People v. Taylor* (2004) 118 Cal.App 4<sup>th</sup> 11, 25).

Liberal extension of statutory construction and the creative interpretation of *Santana* to find SBI is a factual subset of GBI also ignores the reality that juries have repeatedly found GBI not true though they also unanimously agreed a defendant inflicted SBI. (*Taylor, supra*, 118 Cal.App.4<sup>th</sup> at pp. 16, 25; *People v. Thomas* (2019) 39 Cal.app.5<sup>th</sup> 930, 933.)

One can infer Cabrera's jury found SBI because one of the listed examples in that definition, loss of consciousness, was arguably established at trial. However, the definition of GBI is both different and more subjective because of the general language chosen for that concept. The subjective definition of GBI purposefully retained by the legislature, combined with the inherently subjective process of jury deliberation, arguably comprise protections the legislature designed to ensure a GBI finding is afforded careful scrutiny based on the consequences of a potential serious felony/strike conviction. The legislature certainly had the capacity to equate the SBI and GBI definitions consistent with the "subset" proposition, that they

explicitly rejected this type of amendment is a clear indication of legislative intention to preserve a unique definition for GBI.

**FINDING THE TRIAL COURT ERRED IN EQUATING THE  
SBI CONVICTION TO A GBI FINDING REQUIRES  
REVERSAL OF THE FINDING AND THAT THE 5-YEARS  
IMPOSED UNDER SECTION 667 (a) BE VACATED**

The People declined retrial as contemplated by Penal Code section 1382 subdivision (a) (2) in favor of the assertion Cabrera be sentenced to the additional 5-years pursuant to 667, subdivision (a). Remand “to permit the People an opportunity to retry the prior serious felony” (Answer, p. 51) allegation is an unnecessary exercise of judicial power because the error resulted in an erroneous term of punishment correctable by reversing the GBI finding and vacating the consequent 5-year term. (*People v. Odle* (1951) 37 Cal. 2d 52, 58, 230 P.2d 345, 349 (“court may reduce the punishment in lieu of ordering a new trial, when there is error relating to the punishment imposed”).

Dated: April 4, 2022

Respectfully Submitted,

By: /s/Andrew J. Marx

Attorney for Petitioner  
Miguel Angel Cabrera

## **CERTIFICATE OF COMPLIANCE**

This brief is set using 14-pt Times New Roman. According to Microsoft Word, the computer program used to prepare this brief, this brief contains 716 words.

The undersigned certifies that this brief complies with the form requirements set by California Rules of Court.

Dated: April 3, 2022

By: /s/ Andrew J. Marx



**PROOF OF SERVICE BY MAIL & ELECTRONICALLY**

ANDREW MARX	Title of Case: In re Miguel Angel Cabrera
P.O. Box 1225	Attorney for: Petitioner
Mt. Shasta, Ca 96067	Supreme Court Case #: S271178
(530)925-1291	3 <sup>rd</sup> D.C.A. Case #:C091962
andrewmarxlaw@	Siskiyou County Superior Court
gmail.com	Case No.: MCYKCRBF20076242
S.B. #:171237	

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

I, the undersigned, declare that I am, and was at the time of the within-mentioned service by mail and electronic delivery of the papers herein referred to, over the age of eighteen, and not a party to the instant action. I am employed in the County of Siskiyou, which county the within-mentioned service by mail occurred. My business address is 2805 South Old Stage Road, Mt. Shasta, CA 96067. I served the following documents: Petitioner’s Reply Brief; by placing a true copy thereof in a separate envelope, or emailing an electronic copy by the end of the day, to each addressee on April 4, 2022, named hereafter, as follows:

(for delivery to Hon. Robert Kaster)	Office of the Siskiyou County
Siskiyou County Superior Court	District Attorney
411 Fourth Street	311 Fourth St., Rm. 204
Yreka CA 96097	Yreka CA 96097

Office of the Attorney General  
served via Truefiling to:  
[sacawtruefiling@doj.ca.gov](mailto:sacawtruefiling@doj.ca.gov)

I then sealed each envelope and with postage paid thereon, deposited into the United States mail at Mt. Shasta, California on April 4, 2022. I also mailed an unbound copy of this document to the Supreme Court on April 4, 2022. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 4, 2022.

/s/ Andrew Marx  
Andrew Marx

STATE OF CALIFORNIA  
Supreme Court of California

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
Supreme Court of California

Case Name: **CABRERA (MIGUEL ANGEL) ON  
H.C.**

Case Number: **S271178**

Lower Court Case Number: **C091962**

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: **andrewmarxlaw@gmail.com**
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	SCreplybrief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Eric Christoffersen DOJ Sacramento/Fresno AWT Crim 186094	Eric.Christoffersen@doj.ca.gov	e-Serve	4/4/2022 1:31:32 PM
Attorney Attorney General - Sacramento Office Kenneth N. Sokoler, Supervising Deputy Attorney General	sacawttruefiling@doj.ca.gov	e-Serve	4/4/2022 1:31:32 PM
Andrew Marx Law Office of Andrew J. Marx 171237	andrewmarxlaw@gmail.com	e-Serve	4/4/2022 1:31:32 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.

4/4/2022

Date

/s/ANDREW MARX

Signature

MARX, ANDREW (171237)

Last Name, First Name (PNum)

Law Office of Andrew J. Marx

Law Firm