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MANDATING PARTIAL VERDICTS OF ACQUITTAL BASED ON DOUBLE JEOPARDY PRINCIPLES AND THE PRESUMPTION OF INNOCENCE: *PEOPLE V. ARANDA*, 437 P.3D 845 (CAL. 2019)

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TABLE OF CONTENTS

I. INTRODUCTION 1197
II. STATEMENT OF THE CASE 1199
III. BACKGROUND 1200
A. *Federal and State Constitutional Provisions* 1201
B. *The Stone Rule* 1202
C. *Blueford v. Arkansas* 1205
D. *Relevant California Penal Code Provisions* 1207
IV. THE COURT'S REASONING 1208
A. *The Majority Opinion* 1208
B. *The Dissenting Opinion* 1213
V. ANALYSIS AND IMPLICATIONS 1215
VI. CONCLUSION 1221

I. INTRODUCTION

The presumption that a defendant is innocent until proven guilty is one of the most fundamental aspects of the United States criminal justice system.[1] In an effort to maintain this presumption, legislators and judges have consistently implemented policies and procedures to protect the innocent from wrongful conviction.[2] In order to fully uphold the

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1. *See* Shima Baradaran, *Restoring the Presumption of Innocence*, 72 Ohio St. L.J. 723, 724 (2011).

2. *See, e.g.*, Green v. United States, 355 U.S. 184, 187–88 (1957) (explaining that defendants should not be subjected to repeated attempts of conviction regarding the same offense because that would enhance the possibility of being found guilty even though innocent); United States v. DiFrancesco, 449 U.S. 117, 136 (1980) (explaining that prohibiting repeated attempts of conviction of the same crime mitigates the risk of finding an innocent defendant guilty).

presumption of innocence, the courts must continually ensure that defendants' constitutional rights are protected as they are processed through the criminal justice system.

Under the Fifth Amendment of the United States Constitution, the Double Jeopardy Clause prohibits retrial against an individual for the same crime for which a conviction or acquittal is rendered.[3] In *People v. Aranda*, the California Supreme Court held that the state double jeopardy provision precluded the defendant from being tried again for the greater offense after a jury had deliberated and was solely deadlocked on the lesser charged offenses.[4] Because the jury had ruled out the greatest offense charged, the defendant argued the court should have accepted a partial verdict on it—leaving him only to face the lesser charged offenses the jury could not decide on in future proceedings. Prior to the holding in *Aranda*, the United States Supreme Court determined that the Fifth Amendment does not *require* the taking of a partial verdict of acquittal.[5] In order to avoid federal preemption, the majority in *Aranda* based its decision on the state double jeopardy clause while noting that state constitutions are not prohibited from being more protective than the Federal Constitution.[6] Therefore, the court mandated that courts in California are required to take partial verdicts under their own state constitution.[7]

This Comment argues that the holding in *Aranda* is more consistent with double jeopardy principles and the presumption of innocence than federal precedent because *Aranda* requires trial courts to render partial verdicts of acquittal when a jury unanimously agrees that a defendant is innocent on a particular charge.[8] The court in *Aranda* considered whether retrial is inconsistent with both the federal and state double jeopardy provisions, and the presumption of innocence, to forgo a partial verdict on the greater offense and permit a retrial on that charge since a jury has already determined the defendant's innocence.[9] The California Supreme Court addressed what happens when a jury unanimously concludes that a defendant is innocent on a greater offense, but cannot come to a unanimous decision regarding lesser included offenses.[10] Thus,

3. U.S. CONST. amend. V; Blueford v. Arkansas, 566 U.S. 599, 605 (2012); *Green*, 355 U.S. at 187.
4. 437 P.3d 845, 846–47 (Cal. 2019).
5. *Blueford*, 566 U.S. at 610.
6. *Aranda*, 437 P.3d at 850.
7. *Id.* at 846–47, 857.
8. *Id.* at 846–47.
9. *Id.* at 850–51, 861, 846.
10. *Id.* at 846–47.

any subsequent retrial should be limited to the lesser included offenses on which the jury was unable to come to a unanimous conclusion.

Part II of this Comment provides an overview of the factual history leading up to the decision in *Aranda*. Part III identifies and discusses the most relevant case law, constitutional provisions, and statutes relied upon in *Aranda* by the California Supreme Court. Part IV narrates the majority and dissenting opinions in *Aranda*. Finally, in Part V, I argue that the California Supreme Court's decision in *Aranda* was correct, despite that it differs from both federal court precedent and the majority opinion held by most states in the country.

II. STATEMENT OF THE CASE

On December 1, 2009, Brian Michael Aranda ("Aranda") received text messages from his girlfriend, referred to as Alexis C. ("Alexis").[11] In her messages, Alexis expressed that she was fearful of her father raping her, as he had done before.[12] When Aranda arrived at Alexis's home, he "found her asleep in bed with her father."[13] Aranda tried to help Alexis leave the home, but her father woke up and the two men began fighting.[14] The fight ended when Aranda stabbed Alexis's father with an ice pick, which he had brought with him to the home.[15]

Aranda was charged with one count of murder and the case proceeded to trial.[16] The jury received instructions from the court on first-degree murder, second-degree murder, and voluntary manslaughter.[17] The jurors were given "guilty" verdict forms for each of those three offenses and one single "not guilty" form.[18]

By the third day of deliberations, discussions among jurors became "hostile," and the jury foreperson reported that the jurors had "basically ruled out murder in the first degree" but were stuck between second-degree murder and voluntary manslaughter.[19] The following day, the jury was still divided: the foreperson reported that one person thought it was second-degree, two thought it was voluntary, and nine believed the

11. *Id.* at 847.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *See id.*
17. *Id.*
18. *Id.*
19. *Id.*

defendant was not guilty.[20] Defense counsel requested that the jury receive a "not guilty" verdict form for first-degree murder, but the prosecutor objected.[21] Ultimately, the court denied the defense's request because the judge thought if the forms were changed, the jurors might mistakenly conclude that the court was attempting to direct them.[22]

The jurors asked a few more questions about the jury instructions, and then the judge gave them the remainder of the day to deliberate; however, by the end of the day, they were "still at the same spot" and failed to agree unanimously on one charge.[23] The court declared a mistrial after determining that the jury was deadlocked.[24]

Subsequently, Aranda filed a motion to dismiss the first-degree murder allegation under a theory of double jeopardy.[25] He argued that it would be unconstitutional under the California state double jeopardy provision to permit a retrial for the first-degree murder charge[26] because the foreperson reported that no member of the jury was considering charging Aranda with first-degree murder, and instead the jurors were only deadlocked only on the lesser charges.[27] The court dismissed the first-degree murder charge, and the People[28] appealed.[29] The California Court of Appeal affirmed the trial court's decision, and the California Supreme Court granted petition for review.[30]

III. BACKGROUND

The overarching conflict present in the *Aranda* opinion exists between the California Supreme Court's reasoning and holding in *Stone*

20. *Id.* At this point, the prosecutor was convinced that the jury was "hopelessly deadlocked," but defense counsel argued that they were just "frustrated." *Id.*

21. *Id.*

22. *Id.* The exact language used by the court was: "I don't want to change horses in midstream. We sent it in a certain way, and to change anything makes it seem like we're directing them as to which way to think . . . ." *Id.* Notably, the trial court in *Blueford v. Arkansas* used similar language when rejecting the defense's request to submit a new partial verdict form: "[It would be] like changing horses in the middle of the stream." 566 U.S. 599, 604 (2012).

23. *Aranda*, 437 P.3d at 847.

24. *Id.*

25. *Id.*

26. *Id.* Defense counsel also moved to bar retrial for second-degree murder and manslaughter, but the court did not dismiss those offenses. *Id.* at 847–48.

27. *See id.* at 847.

28. "People" refers to the State of California. *See People of the State*, BALLENTINE'S LAW DICTIONARY (3d ed. 1969).

29. *Aranda*, 437 P.3d at 847–48.

30. *Id.* at 848.

v. Superior Court[31] and the United States Supreme Court's reasoning and holding in *Blueford v. Arkansas*.[32] Broadly speaking, the United States Supreme Court articulated the majority rule for partial verdicts of acquittal that exists among the fifty states, while the California Supreme Court maintained a minority position.[33] The California Supreme Court supported its position by refuting the presumption that the United States Supreme Court's holding in relation to a federal constitutional provision was automatically determinative for comparable state constitutional provisions.[34] The specific constitutional provisions at issue in *Aranda* are the federal and California state double jeopardy clauses—which fundamentally state that an individual cannot be prosecuted twice for the same crime.[35]

This Part will begin by considering the double jeopardy provisions in both the Fifth Amendment of the United States Constitution[36] and article I, section 15 of the California Constitution.[37] As mentioned above, one of the main issues presented is whether a state court constitutional ruling may deviate from its federal counterpart. Section B will review relevant case law that the California Supreme Court relied on to make its decision in *Aranda*. Specifically, the defense in *Aranda* relied primarily on precedent from *Stone*,[38] and, in doing so, effectively rejected that the decision had been overruled by *Blueford*, as asserted by the People in its argument.[39] Finally, Section C will present relevant sections of the California Penal Code, which are cited both in *Stone* and in *Aranda* as support for their holdings.[40]

A. Federal and State Constitutional Provisions

The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution states: "No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb . . . ."[41] Article I, section 15 of the California Constitution provides that "[p]ersons may not twice

31. 646 P.2d 809 (Cal. 1982).
32. 566 U.S. 599 (2012).
33. *Aranda*, 437 P.3d at 858–59.
34. *Id.* at 850.
35. *Id.* at 848, 850; U.S. CONST. amend. V; CAL. CONST. art. I, § 15.
36. U.S. CONST. amend. V.
37. CAL. CONST. art. I, § 15; JOSEPH R. GRODIN, CALVIN R. MASSEY & RICHARD B. CUNNINGHAM, THE CALIFORNIA STATE CONSTITUTION: A REFERENCE GUIDE 54 (no. 11 1993).
38. *Aranda*, 437 P.3d 845, 847.
39. *See id.* at 849.
40. *Id.* at 852.
41. U.S. CONST. amend. V.

be put in jeopardy for the same offense . . . ."[42] The basis of the defendant's argument in *Aranda* was that Aranda was already tried for first-degree murder, and all of the jurors were deadlocked only on second-degree murder, voluntary manslaughter, and a not guilty verdict, which meant that first-degree murder was already ruled out as a potential verdict during the first trial.[43] Therefore, the defendant concluded that it was not constitutional to permit his retrial for first-degree murder.[44]

The states are bound by the Federal Double Jeopardy Clause through the application of the Fourteenth Amendment.[45] Any decisions rendered by the United States Supreme Court regarding the protections afforded by the Federal Double Jeopardy Clause will be binding on all states, including California.[46] Thus, the state courts are required, at a minimum, to incorporate all double jeopardy protections enunciated by the Supreme Court of the United States into their own state constitutional jurisprudence.[47] However, the states may, in their discretion, delineate a standard of protection that is greater than the minimum set out by the Supreme Court.[48]

This minimum standard set out by the Supreme Court of the United States states that federal and state double jeopardy provisions will be violated if there is a retrial without "manifest" or "legal" necessity.[49] If the jury fails to agree on a verdict, that will be sufficient to constitute "manifest" or "legal" necessity.[50] However, if a mistrial is granted unnecessarily, the double jeopardy provision will bar retrial.[51]

B. The Stone Rule

During trial, Aranda relied primarily on the California state court decision, *Stone v. Superior Court*, in asserting that his retrial was barred as to the first-degree murder charge.[52] *Stone* held that a trial court is constitutionally mandated to allow the jury "to render a partial verdict of

42. CAL. CONST. art. I, § 15.
43. *Aranda*, 437 P.3d at 847.
44. *See id.*
45. Stone v. Superior Ct., 646 P.2d 809, 814 (Cal. 1982).
46. *Id.*
47. *Id.*
48. *Id.*
49. People v. Carbajal, 298 P.3d 835, 842 (Cal. 2013) (quoting People v. Halvorsen, 165 P.3d 512, 544 (Cal. 2007)). The court in *Aranda* notes that the term "manifest" necessity is "federal terminology" and uses the term interchangeably with the term "legal" necessity throughout the opinion. *Aranda*, 437 P.3d at 848.
50. People v. Anderson, 211 P.3d 584, 591 (Cal. 2009).
51. People v. Hernandez, 64 P.3d 800, 804–05 (Cal. 2003).
52. *Aranda*, 437 P.3d at 847.

acquittal on a greater offense when the jury is deadlocked only on a lesser included offense."[53] If the court failed to permit a partial verdict in such cases, any subsequent mistrial would be without legal necessity.[54] *Stone* also acknowledged that although the Fourteenth Amendment mandates application of the Fifth Amendment Double Jeopardy Clause to the states, California is still "free to delineate a higher level of protection under article I, section 15 . . . of the California Constitution."[55]

The facts in *Stone* are comparable to those in *Aranda*. Stone was charged with murder, and the jury received six options in the verdict forms.[56] The jury could find the defendant guilty of first-degree murder or any of the three lesser included offenses, find he committed justifiable homicide, or acquit him of all charges.[57] The jury deliberated for seven days, and the foreman reported to the court that no one in the jury had voted for first- or second-degree murder, but that their votes were split between voluntary or involuntary manslaughter and justifiable homicide.[58] All jurors reported that they were deadlocked, but the court ordered them to deliberate for another day and half.[59] Still, the jury was unable to reach a unanimous decision.[60] The trial court declared a mistrial and the jury was discharged.[61]

The defendant filed a motion for dismissal on some or all of his charges, stating that the jurors had essentially acquitted him of murder since they were only divided on manslaughter and justifiable homicide.[62] The foreman's report validated this claim because it demonstrated that no one in the jury voted to convict the defendant of either first- or second-degree murder.[63] The defendant's assertion was that if he was retried for first- or second-degree murder, that would constitute a violation of his constitutional double jeopardy protection since the jurors from his first trial were only divided on the lesser included offenses.[64] The trial court denied the defendant's motion, so he applied for a writ of prohibition with the California Supreme Court.[65]

53. *Stone*, 646 P.2d at 820.
54. *Id.*
55. *Id.* at 814 (citing Curry v. Superior Court, 470 P.2d 345, 350–51 (Cal. 1970)).
56. *Id.* at 812.
57. *Id.*
58. *Id.*
59. *Id.* at 812–13.
60. *Id.* at 813.
61. *Id.*
62. *Id.*
63. *Id.* at 812.
64. *Id.* at 813.
65. *Id.*

The California Supreme Court considered whether double jeopardy principles would forbid the defendant's retrial on the charges of first- and second-degree murder, since the jury effectively acquitted him on those charges after indicating that their deadlock was only on the lesser included offenses.[66] In reaching its holding that the defendant should not be retried for murder, the court factually distinguished *Stone* from other related state opinions.[67] The court concluded that *Stone* differed because the judge was specifically informed of the details on the jury's deadlock prior to declaring a mistrial, and because all twelve members of the jury were present when the foreman stated they had agreed to acquit the defendant on the murder charges.[68]

The court took its analysis a step further by considering whether the double jeopardy doctrine actually *required* trial courts to take a partial verdict where a jury unanimously favored acquittal on a charged offense but was unable to reach a consensus on a lesser, uncharged offense.[69] This was an issue of first impression that had not yet been addressed in prior state opinions.[70]

California statutes permit prosecutors to charge a lesser included offense and a greater offense in separate counts,[71] or to charge only the greater offense.[72] The court in *Stone* reasoned that it would be illogical to permit a partial verdict of acquittal under one section of the Penal Code but refuse a partial verdict under another provision in cases with the same or similar fact patterns.[73] Additionally, the United States Supreme

66. *Id.* at 814.

67. The court distinguished *People v. Griffin*, *People v. Doolittle*, and *Magee v. Superior Court*, because the trial judges in those cases had no opportunity to receive a partial verdict since the jurors did not indicate their divided positions on the charges until after the judge declared a mistrial and discharged the jury. *Id.* at 815–16. Also, in all three of those cases, the defendants were asking for a partial verdict of acquittal based on the statement of a single juror, and, in one case, there was actually a contradictory affidavit from a second juror. *Id.* at 816. In contrast, in *Stone*, the foreman declared in open court, in front of all twelve jurors and prior to their discharge, that the jury favored acquittal on both degrees of murder. *Id.* at 816–17.

68. *Id.* at 816–17.

69. *Id.* at 817.

70. *Id.*

71. CAL. PENAL CODE § 954 (West, Westlaw through Ch. 9 of 2021 Reg. Sess.).

72. *See* CAL. PENAL CODE § 1159 (West, Westlaw through Ch. 9 of 2021 Reg. Sess.).

73. *Stone*, 646 P.2d at 819. "[S]uch a rule would make [defendant's] 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." *Id.* To illustrate this point more clearly, consider a hypothetical where two cases have the exact same fact pattern, except in Case A, the defendant is charged in separate counts, but in Case B, the defendant is charged in a single count. Assume that both defendants are charged with first-degree murder and all lesser included offenses, and that both juries unanimously agree to acquit defendants of first-degree murder but remain

Court rejected this kind of distinction in *Green v. United States*, and held that a defendant cannot be retried for a greater offense after his conviction of a lesser included offense is reversed on appeal.[74]

Therefore, the *Stone* court held that "the trial court is constitutionally obligated to afford the jury an opportunity to render a partial verdict of acquittal on a greater offense when the jury is deadlocked only on an uncharged lesser included offense."[75] The court's conclusion for requiring partial verdicts of acquittal has been referred to as the "*Stone* rule" in subsequent opinions arising from the state of California.[76] Following *Stone*, the California Supreme Court clarified the *Stone* rule by explaining that juries are required to acquit a defendant of greater offenses prior to moving on and considering any of the lesser included offenses—known as the acquittal-first rule.[77]

C. Blueford v. Arkansas

The People in *Aranda* argued that *Stone* was overruled by *Blueford*,[78] therefore preventing its application to Aranda's case. In *Blueford*, the Supreme Court of the United States also considered whether partial verdicts of acquittal should be constitutionally mandated in cases where the jury is solely deadlocked on lesser charged offenses.[79] The Court rejected the argument that such acquittals should be mandatory and held that the Double Jeopardy Clause of the Fifth Amendment does not preclude a subsequent retrial on the same offenses.[80]

The facts in *Blueford* were similar to those in *Aranda* and *Stone*. The defendant was charged with capital murder in the State of Arkansas after his girlfriend's child suffered a head injury while under his watch.[81] The jury deliberated for a few hours, but sent out a foreperson to inform the court that they were unable to agree on a single charge.[82] The court asked the foreperson to report the jury's votes on each of the offenses,

deadlocked on the lesser included offenses. Under the California Penal Code provisions, the defendant in Case A would receive a partial acquittal for first-degree murder, and his retrial would only include the lesser included offenses. Contrast that with the defendant in Case B, who would be subjected to a retrial for first-degree murder, even after being unanimously acquitted of that crime by a jury in the prior trial.

74. 355 U.S. 184, 189–90 (1957).
75. *Stone*, 646 P.2d at 820.
76. *See, e.g.*, People v. Aranda, 437 P.3d 845, 849 (Cal. 2019).
77. *See Aranda*, 437 P.3d at 849.
78. *Id.*
79. Blueford v. Arkansas, 566 U.S. 599, 609 (2012).
80. *Id.* at 610.
81. *Id.* at 602.
82. *Id.* at 603.

and he reported that the jury agreed unanimously against a guilty verdict as to capital and first-degree murder,[83] but still were divided as to the lesser offenses.[84]

Unlike the holding in *Stone*, *Blueford* did not require the trial court to take a partial verdict of acquittal even where the jury unanimously agreed that a defendant was not guilty on greater offenses, but still deadlocked as to the lesser charges.[85] In reaching this holding, the Court held that the foreperson's report was "not a final resolution of anything," because the jury was free to go back and reconsider their opinions on the greater charged offense prior to giving an ultimate verdict.[86] Therefore, the Double Jeopardy Clause was not violated in the defendant's case.[87] Blueford tried to argue that there was no legal necessity for a retrial on the capital and first degree murder charges since the foreperson's report stated that the jury unanimously rejected his guilt on those charges.[88] The Supreme Court refused to accept his argument and held that he was not formally acquitted of any offense, effectively rejecting the foreperson's report as a formal acquittal on the greater charges.[89]

The dissent in *Blueford* expressed adamant disagreement with the majority by emphasizing that the prohibition against retrials after a defendant is acquitted is "the most fundamental rule in the history of double jeopardy jurisprudence."[90] Prohibiting retrials after acquittal prevents the government from subjecting a defendant to "abusive, harassing reprosecutions"[91] which might introduce "the possibility that he may be found guilty even though innocent."[92] The dissent believed that the foreperson's report should have been considered an acquittal under the double jeopardy provision because the jurors were specifically

83. *Id.* at 603–04.

84. *Id.*

85. *Id.* at 610. To clarify, trial courts are not constitutionally mandated to take a partial verdict of acquittal under the Double Jeopardy Clause of the Fifth Amendment. *Id.*

86. *Id.* at 606–07.

87. *Id.* at 610.

88. *Id.* at 609.

89. *Id.* at 608, 610. The Court also held that the trial court did not abuse its discretion when it refused to add the option of acquitting on some offenses but not on others. *Id.* at 610. The jury received separate forms to convict on each separate charge, but there was only one form for acquittal, and it was only to be used if the jury agreed to acquit the defendant on all charges. *Id.* The trial court did not want to add another form after the jury had already begun deliberations, because it would be "like changing horses in the middle of the stream," because the jury already received their instructions and verdict forms. *Id.* at 604.

90. *Id.* at 611 (Sotomayor, J., dissenting) (quoting United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977)).

91. *Id.*

92. United States v. DiFrancesco, 449 U.S. 117, 136 (1980).

instructed that they must unanimously vote to acquit the defendant of greater offenses before moving on to consider defendant's guilt as to the lesser included offenses.[93] Since the jury had already ruled out capital and first-degree murder in order to consider the lesser offenses, the foreperson's statement that the jury had unanimously acquitted the defendant on those charges should have been accepted as final.[94] The dissent concluded that the Double Jeopardy Clause should require a trial judge in acquittal-first jurisdictions to accept a partial verdict of acquittal before declaring a mistrial and that there was no "manifest necessity" for a mistrial under the circumstances in *Blueford*.[95]

D. Relevant California Penal Code Provisions

The court in *Stone* and the majority opinion in *Aranda* discussed two pertinent sections of the California Penal Code. In *Aranda*, the court refers to its interpretation of these provisions as a "fairness rationale" and maintains that its interpretation of the provisions supports the conclusion that partial verdicts of acquittal should be mandated.[96]

Under the California Penal Code, a prosecutor may charge a greater offense and all of its lesser offenses as separate counts.[97] Section 954 allows a defendant to be charged with "different statements of the same offense."[98] While a defendant may be convicted on any number of the offenses that he is charged with, he is prevented from receiving multiple convictions based on the included lesser offense charges.[99] Section 1160 states:

> [w]here two or more offenses are charged in any accusatory pleading, if the jury cannot agree upon a verdict as to all of them, they may render a verdict as to the charge or charges upon which they do agree, and the charges on which they do not agree may be tried again.[100]

93. *Id.* at 612–13.
94. *Id.* at 613–15.
95. *Id.* at 619, 621.
96. People v. Aranda, 437 P.3d 845, 852 (Cal. 2019).
97. *Id.*
98. CAL. PENAL CODE § 954 (West, Westlaw through Ch. 9 of 2021 Reg. Sess.); *Aranda*, 437 P.3d at 852.
99. People v. Montoya, 94 P.3d 1098, 1099–1100 (Cal. 2004).
100. *Aranda*, 437 P.3d at 852 (quoting CAL. PENAL CODE § 1160 (West, Westlaw through Ch. 9 of 2021 Reg. Sess.).

The court in *Stone* interpreted Section 1160 to mean that an acquittal verdict on a greater offense must be accepted, even where the jury failed to agree on a verdict for any of the lesser offenses.[101]

IV. THE COURT'S REASONING

In its April 4, 2019 decision, the Supreme Court of California affirmed the Court of Appeal's judgment that it was unconstitutional for Aranda to be retried for first-degree murder under the double jeopardy provision in its state constitution.[102] The court reached its holding after completing an analysis of the relevant constitutional provisions, federal and state precedent, and penal code provisions[103] identified above in Part III. The following two sections will examine the reasoning of the majority in *Aranda* and then address the dissenting opinion.

A. The Majority Opinion

The majority began by reviewing the *Stone* rule, which Aranda argued was controlling, as well as the holding in *Blueford*, which was advanced by the prosecution in order to assert that it had overruled *Stone*.[104] Next, the court resolved the purported tension between *Stone* and *Blueford* by explaining why the *Stone* rule is still valid in the state of California, despite the Supreme Court's holding in *Blueford*.[105] Finally, the court held that California trial courts are constitutionally obligated to accept partial verdicts of acquittal in cases where there is evidence the jury is solely deadlocked on the lesser charged offenses.[106]

The majority emphasized that despite the *Blueford* holding, which does not require the trial court to take partial verdicts of acquittal under the federal Double Jeopardy Clause, the *Stone* holding is not necessarily overruled.[107] Although partial verdicts of acquittal are not *required* under the Fifth Amendment, they are not forbidden, either.[108] *Blueford* was "silent" regarding whether states could make their own laws to require the taking of partial verdicts.[109]

101. Stone v. Superior Ct., 646 P.2d 809, 819 (Cal. 1982).
102. *See Aranda*, 437 P.3d at 857.
103. *Id.* at 848–54.
104. *Id.* at 848–50.
105. *Id.* at 850–56.
106. *See id.* at 856, 857.
107. *Id.* at 850.
108. *Id.*
109. *Id.*

To support its argument that *Stone* was overruled by federal law, the prosecution argued that *Stone* relied on the Federal Constitution in reaching its holding, therefore rendering it void under *Blueford*.[110] However, the majority disagreed and concluded that *Stone* relied on both the federal and state constitutional provisions in reaching its holding.[111] The court in *Stone* recognized that California could permit a higher level of protection under the state double jeopardy provision when it stated that the California Supreme Court was "free to delineate a higher level of protection under" its state constitution.[112] Furthermore, the majority in *Aranda* determined that "[a]t most, *Stone* did not differentiate between the federal and state double jeopardy" provisions; rather, it discussed both the federal and state clauses as if they were "coextensive."[113] Therefore, the court upheld the validity of the *Stone* rule.[114] This holding enforced the idea that the provisions in the California Constitution, or in any other state constitution, are independent and may be interpreted in a way that is "more protective of defendants' rights than" their federal counterparts.[115]

California included a double jeopardy provision in its constitution in 1849, which was "long before" the United States Supreme Court applied the Fifth Amendment to the states.[116] In 1974, California made constitutional revisions and added a section that stated "[r]ights guaranteed by this Constitution are not dependent on those guaranteed by the United States Constitution," confirming that California courts were permitted to adopt their own independent interpretations of the state constitution.[117] California courts have exercised this right in the past, specifically in relation to the state double jeopardy clause, which has been interpreted in a more protective manner than the Fifth Amendment's Double Jeopardy Clause.[118]

110. *Id.*
111. *Id.*
112. Stone v. Superior Ct., 646 P.2d 809, 814 (Cal. 1982).
113. *Aranda*, 437 P.3d at 850.
114. *Id.*
115. *See id.*
116. *Id.*
117. *Id.* at 850–51 (quoting CAL. CONST. art. I, § 24).
118. *Id.* at 851. For example, in *People v. Batts*, the California Supreme Court expanded on the federal standard when it held that double jeopardy principles do not just bar retrial in cases where a prosecutor committed misconduct, but also in cases where a prosecutor committed misconduct to thwart a "reasonable prospect of acquittal." 68 P.3d 357, 360–61 (Cal. 2003). Another example is in *People v. Henderson*, which held that a defendant was not permitted to receive a more serious punishment if he was retried following a successful appeal, which is a limitation that is not required under the Federal Double Jeopardy Clause. 386 P.2d 677, 685–86 (Cal. 1963). Finally, *Cardenas v. Superior Court ex rel. Los Angeles County* deviated from federal authority when it held that retrial was barred if the

The majority continued its analysis by referring to another case which was also decided by the California Supreme Court,[119] *People v. Hanson*.[120] *Hanson* distinguished prior case law and stated that the California Supreme Court did not intend for its state double jeopardy principles to be completely reevaluated whenever there was an evident divergence in federal double jeopardy principles.[121] The court used this reasoning in *Hanson* to diffuse the apparent tension between *Blueford* and *Stone*, concluding that "nothing in the reasoning of *Blueford* . . . suggests we should now abandon our long-established precedent."[122]

After the court concluded that it was free to interpret the state double jeopardy clause more protectively than its federal counterpart, the court analyzed applicable California statutory provisions.[123] The *Stone* rule was created because the court determined that a defendant's double jeopardy right would be infringed upon if a retrial was permitted for an offense on which he had already been "factually acquitted."[124] *Stone* arrived at this conclusion by relying on a "fairness rationale," which was derived from relevant portions of the California Penal Code, specifically sections 954 and 1160.[125] In its interpretation, *Stone* held that in cases where the charged counts involve included offenses, the court must accept an acquittal verdict on a greater offense even if the jury was unable to agree on any of the separately uncharged lesser offenses.[126]

It is true that section 1160 does not explicitly state that the court must accept a partial verdict of acquittal on a greater offense in cases where all the offenses are included under a single count.[127] However, as articulated in *Stone* under the fairness rationale, it would be counterintuitive to require the courts to take partial verdicts in cases where the prosecutor separately charged all included offenses, but then not require them to do the same in cases where the prosecutor charged the defendant under a single count.[128] This would mean that the defendant's fate would rest on a procedural "formality" that exists within

court declared a mistrial without a defendant's consent, regardless of whether or not it was declared for the defendant's own benefit. 363 P.2d 889, 891 (Cal. 1961).

119. *Aranda*, 437 P.3d at 851.

120. 1 P.3d 650 (Cal. 2000).

121. *See id.* at 656; *Aranda*, 437 P.3d at 851.

122. *See Aranda*, 437 P.3d at 852.

123. *Id.*

124. *Id.* (quoting Stone v. Superior Ct., 646 P.2d 809, 819 (Cal. 1982)).

125. *Id.*

126. *Stone*, 646 P.2d at 820.

127. CAL. PENAL CODE § 1160 (West, Westlaw through Ch. 9 of 2021 Reg. Sess.); *Aranda*, 437 P.3d at 852.

128. *Stone*, 646 P.2d at 819.

the state statutory provisions.[129] This is inconsistent because "[i]t is well established [in the state of California] . . . that the prosecutor's method of charging a defendant does not affect a defendant's double jeopardy rights."[130] Thus, under the *Stone* rule, partial verdicts of acquittals are constitutionally obligated and are not dependent on the method in which the prosecutor chooses to charge the case.[131]

The prosecution argued that the "fairness rationale" was just a "legal fiction" because prosecutors very rarely, if ever, charge separate counts in murder cases.[132] However, the majority refused to accept this argument because it "misse[d] the mark" as "the law is to the contrary."[133] The double jeopardy provision does not permit a defendant to plead guilty to a lesser included offense in order to avoid prosecution of the greater included offenses, because that would thwart the prosecutor's objective in charging defendant with those greater offenses.[134] Additionally, even if a defendant pleads guilty to a lesser offense, double jeopardy principles do not preclude continuing prosecution on the greater charged offenses.[135]

The majority also concluded that the *Stone* rule is still valid because it "further[s] the interest of promoting clarity in jury verdicts."[136] An "anomaly" existed in California's criminal procedure, and the requirement set forth in *Stone* that the courts take partial verdicts effectively eliminated that inconsistency.[137] Further, requiring courts to take partial verdicts is consistent with other provisions in the California Penal Code, because California statutes "reflect[] a general legislative preference for giving effect to unanimous jury verdicts"[138] and "a strong preference for the acceptance of acquittals."[139] While there are several California statutes that explicate the methods of taking convictions, there is no requirement that an acquittal be in any particular form.

129. *Id.*
130. People v. Fields, 914 P.2d 832, 842 (Cal. 1996).
131. *Aranda*, 437 P.3d at 853.
132. *Id.* at 852–53.
133. *Id.* at 853.
134. *Id.*
135. Ohio v. Johnson, 467 U.S. 493, 500–02 (1984).
136. *Aranda*, 437 P.3d at 854.
137. *Id.* at 854–55.
138. *Id.*; *see* CAL. PENAL CODE § 1164(b) (West, Westlaw through Ch. 9 of 2021 Reg. Sess.) ("No jury shall be discharged until the court has verified on the record that the jury has either reached a verdict or has formally declared its inability to reach a verdict on all issues before it."); CAL. PENAL CODE § 1160 (West, Westlaw through Ch. 9 of 2021 Reg. Sess.) (allowing the jury to declare in open court whether or not a unanimous verdict has been reached, and if the jury agrees only on some counts, allowing the court to accept the verdicts that are agreed upon).
139. *Aranda*, 437 P.3d at 855.

Therefore, the *Stone* rule provides a clearer, more formal method of obtaining jury acquittals.

Once the California Supreme Court concluded that partial verdicts of acquittal were supported by relevant statutory provisions, it proceeded to distinguish *Blueford*.[140] In *Blueford*, the United States Supreme Court raised two additional issues regarding partial verdicts of acquittal that the majority in *Aranda* dismissed: (1) the foreperson's report as a "formal resolution" of the issues and (2) the fear that the court is engaging with the jury in a coercive manner, thus affecting the final verdict.[141]

In *Blueford*, the Court held a foreperson's report cannot be considered "a final resolution of anything" because jury deliberations are permitted to continue after the report is given, thus depriving the report of the finality necessary to uphold the partial acquittal.[142] *Aranda* resolved the apparent tension that existed between its holding and that of *Blueford* by clarifying that under the *Stone* rule, jurors would be given additional verdict forms which would allow them to unanimously rule on partial acquittals in support of the foreperson's report.[143] Therefore, the jury actually would reach a final resolution on the issues, at least on the issues which were resolved unanimously.[144]

Also, in Aranda's case, the foreperson repeatedly stated that the jury agreed the defendant was not guilty of first-degree murder, and that deliberations had moved onto the lesser included offenses, yet the court chose to discharge the jury anyway.[145] Under § 1164(b) of the California Penal Code, "[n]o jury shall be discharged until the court has verified on the record that the jury has either reached a verdict or has formally declared its inability to reach a verdict on all issues before it, including, but not limited to, the degree of the crime or crimes charged."[146] The trial court here failed to verify that a verdict for partial acquittal had been reached on the charge of first degree murder.[147] Thus, the trial court's decision to discharge the jury was "premature and unsupported by legal necessity," as the foreperson's report could have been accepted as a partial verdict of acquittal through a verdict form.[148] In future cases with similar fact patterns that arise out of the State of California, when a foreperson or member of the jury alerts the court that one of the issues

140. *Id.*
141. *Id.*; Blueford v. Arkansas, 566 U.S. 599, 606, 609–10 (2012).
142. *Blueford*, 566 U.S. at 606.
143. *See Aranda*, 437 P.3d at 856.
144. *See id.*
145. *Id.* at 856.
146. CAL. PENAL CODE § 1164(b) (West, Westlaw through Ch. 9 of 2021 Reg. Sess.).
147. *Aranda*, 437 P.3d at 857.
148. *Id.* at 856.

has been unanimously resolved, the court is now required to act and "facilitate receipt of partial verdicts."[149]

The second issue expressed in *Blueford* was that allowing trial courts to attempt to break an impasse, or a deadlock, might be seen as coercive intervention by the court and as improper interference with the jury's function.[150] Historically, trial courts have never been required to try to break a deadlock prior to granting a mistrial.[151] However, the only situations which would be covered by the *Stone* rule would be ones in which the jury unanimously agreed to acquit the defendant of a greater offense; thus, the impasse would only exist as to the lesser included offenses.[152] The lesser offenses would still be retried, and the trial court would not intervene as to the lesser offenses in accepting a partial acquittal for a greater offense on which the jury had already unanimously chosen to acquit.[153]

The majority also responded to the coercion issue by noting that under *Stone*, coercion would not be a possibility.[154] The court would not inquire about the possibility of a partial verdict of acquittal unless they had a reason to do so, as in the example stated previously where a jury foreperson indicated deadlock only as to the lesser offenses after a unanimous decision to acquit the defendant of the greater offense.[155] In that specific circumstance, the majority rejects the People's argument that a court inquiry would be coercive; rather, it would simply be a way for the court to clarify whether the jury had reached a final decision on one of the issues.[156]

To conclude, the majority held that Aranda could not be retried for first-degree murder because he was entitled to a partial verdict of acquittal.[157] However, Aranda would be retried only on the issues on which the jury remained deadlocked—second-degree murder and voluntary manslaughter.[158]

B. The Dissenting Opinion

In his dissenting opinion, Justice Chin argued that Aranda should be retried for first-degree murder because the first jury was unable to reach

149. *Id.*
150. *Id.* at 855.
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.* at 856.
155. *Id.*
156. *Id.*
157. *Id.* at 857.
158. *Id.*

a unanimous verdict.[159] Justice Chin acknowledges that *Blueford* is not binding and that the California Supreme Court is free to interpret its own constitutional double jeopardy provision in a manner that is more protective of defendants.[160] However, he did not believe that the court should deviate from federal precedent under the facts of this case.[161] The dissent pointed out that *Stone* treated the federal and California state double jeopardy provisions as coextensive, so, under that logic, *Blueford* should have replaced the *Stone* rule.[162]

The dissent also disagreed with the majority by contending that statements of a jury foreperson should not be considered a formal jury verdict.[163] In support of this argument, the dissent maintained that it would be too risky to accept a foreperson's report as final because of the potential for jury coercion.[164] This court has previously noted that "deadlocked juries are particularly susceptible to coercion," and Justice Chin believed that even a mere inquiry from the judge might have a negative impact on the jury's function.[165] Also, the dissent argued that under California statutory law, the jury technically did not reach a formal verdict, so it would be wrong to conclude that the jury had completed its deliberations, even though the foreperson previously announced the jury's unanimous decision that Aranda was not guilty of first-degree murder.[166]

Finally, the dissent asserted that because the court has prohibited partial verdicts of conviction, partial verdicts of acquittal should likewise be prohibited, or at the very least, not required.[167] In making its argument, the dissent rejected the majority's statutory "fairness rationale" and argued that the California Penal Code is not relevant to answering the question presented in this case because it does not permit nor require either partial verdicts of acquittal or partial verdicts of conviction.[168] Furthermore, "[n]o cogent reasons exist to depart from" the Supreme Court's holding in *Blueford*, especially because most states follow the *Blueford* holding.[169] *Stone* was and continues to be the minority rule in the United States.[170]

159. *Id.* (Chin, J., dissenting).
160. *Id.* at 859.
161. *Id.* at 858.
162. *Id.*
163. *Id.*
164. *Id.* at 863.
165. *Id.* (citing Commonwealth v. Roth, 776 N.E.2d 437, 447–48 (Mass. 2002)).
166. *Id.* at 862.
167. *Id.* at 858.
168. *Id.* at 859–60.
169. *Id.* at 860–61.
170. *See id.*

V. ANALYSIS AND IMPLICATIONS

The majority opinion of the California Supreme Court in *Aranda* is more consistent with the presumption of innocence than federal precedent because the double jeopardy principles furthered in the holding expand protections of defendants' rights.[171] Although *Aranda* successfully distinguished *Blueford* from *Stone* in order to uphold its mandate under state constitutional law,[172] this Comment argues that *Aranda*'s holding should apply to the Federal Constitution as well, effectively rejecting the holding in *Blueford*. First, this Part will briefly discuss how the "innocent until proven guilty" presumption has historically remained a fundamental aspect of our criminal justice system. Next, that presumption will be discussed in relation to the double jeopardy provision. This Part will conclude by questioning the majority holding in *Blueford*, discussing alternatives that *Blueford* could have considered, and suggesting that the findings in *Aranda* and the *Blueford* dissent would have been more consistent with the fundamental values that exist in our criminal justice system today.

The "innocent until proven guilty" presumption is one of the most well-known expressions embedded in American criminal law.[173] Due process and the innocence presumption were initially a part of English common law and were eventually incorporated by the American states after we claimed our independence and began developing our own common law.[174] Later, the innocence presumption was formally implemented in America through the Due Process Clause of the United States Constitution.[175] To this day, the presumption lives on through our criminal procedure by requiring the prosecution to meet the burden of establishing a defendant's guilt "beyond a reasonable doubt."[176]

The double jeopardy doctrine is a procedural safeguard that exists to ensure that no defendant is tried twice before a jury for the same crime in the same sovereign.[177] In other words, if a defendant is acquitted by a

171. *See* Jalem Peguero, Note, *A Second Shot at Proving Murder: Sacrificing Double Jeopardy for Rigid Formalism in* Blueford v. Arkansas, 4 CAL. L. REV. CIR. 107, 109–110 (2013).

172. *Aranda*, 437 P.3d at 855.

173. *See, e.g.*, Nelson v. Colorado, 137 S. Ct. 1249, 1255–56 (2017); Bell v. Wolfish, 441 U.S. 520, 533 (1979); Coffin v. United States, 156 U.S. 432, 453, 459–60 (1895); Baradaran, *supra* note 1, at 724.

174. *See* Baradaran, *supra* note 1, at 727.

175. *Id.* at 724, 727.

176. *Id.* at 724.

177. *See* Robert Sheppard, Comment, *Double Jeopardy Views: Why in Light of* Blueford v. Arkansas *States Should Mandate Partial Verdicts in Acquit-First Transition Instruction Cases*, 83 MISS. L.J. 373, 375–76, 382 (2014).

jury, he cannot be retried for the same crime and then be convicted. This safeguard can be construed as an extension of the innocence presumption, because if a defendant is acquitted once for a crime, he is presumed innocent, and his guilt can never be questioned again in relation to that same crime.[178]

Aranda and *Blueford* respectively articulate the minority and majority approaches in considering whether partial verdicts of acquittal should be constitutionally mandated under double jeopardy principles.[179] However, as discussed above in Part IV, *Blueford* does not preempt *Aranda* because states are permitted to provide greater protections under their state constitutions, as long as those protections are still consistent with the Federal Constitution.[180] To further support that point, *Blueford* notably does not apply its ruling to the states, thus leaving the door open for states to make their own decisions regarding the taking of partial verdicts of acquittal.[181]

Even though *Aranda* does not technically conflict with *Blueford*, and even though it is representative of the minority view in the United States,[182] it arguably arrives at the correct conclusion because it is consistent with double jeopardy principles and with the "innocent until proven guilty" maxim.[183] The dissent in *Blueford* notes that the prohibition against retrials after a defendant is acquitted is "the most fundamental rule in the history of double jeopardy jurisprudence."[184] This prohibition against retrial prevents the government from subjecting a defendant to "abusive, harassing reprosecutions"[185] which might

178. *See* Ben Osborn, Note, *Let's Call the Poll Thing off: Partial Verdict Forms as a More Reliable Way to Enforce the Double Jeopardy Clause When Juries Deadlock on Counts with Lesser Included Offenses*, 48 N.M. L. REV. 522, 527–28 (2018). The Double Jeopardy Provision also guards against malicious prosecution, government persecution through endless trials, and helps to promote finality of judgments. *Id.*

179. People v. Aranda, 437 P.3d 845, 847–48, 858–60 (Cal. 2019); Blueford v. Arkansas, 566 U.S. 599, 609–10 (2012).

180. *Aranda*, 437 P.3d at 850; Stone v. Superior Ct., 646 P.2d 809, 814 (Cal. 1982).

181. *Aranda*, 437 P.3d at 850; *see* Sheppard, *supra* note 177, at 377.

182. *Aranda*, 437 P.3d at 862 (Chin, J., dissenting). Other states that follow the minority view include Connecticut, Alaska, New Hampshire, and New Mexico. All four of those states are acquittal-first jurisdictions, and they mandate a partial verdict of acquittal before declaring a mistrial where the jury is deadlocked on lesser charged offenses. *E.g.*, State v. Tate, 773 A.2d 308, 323–24 (Conn. 2001); Whiteaker v. State, 808 P.2d 270, 278 (Alaska Ct. App. 1991); State v. Pugliese, 422 A.2d 1319, 1320–21 (N.H. 1980); State v. Castrillo, 566 P.2d 1146, 1149 (N.M. 1977).

183. *See Aranda*, 437 P.3d at 860–61.

184. Blueford v. Arkansas, 566 U.S. 599, 611 (Sotomayor, J., dissenting) (quoting United States v. Martin Linen Supply Co., 430 U.S. 564, 571 (1977)).

185. *Blueford*, 566 U.S. at 611.

increase the possibility that an innocent defendant is found guilty.[186] Although not stated explicitly in the *Blueford* dissent, it follows that this "fundamental rule" against retrial exists in order to uphold the presumption of innocence principle. If a defendant may be retried for the same crime after a jury effectively acquits him of a particular offense, that increases the possibility that an innocent person will be found guilty of a crime that he did not commit.

In both *Blueford* and *Aranda*, the juries considered the offenses in order, beginning with capital and first-degree murder, respectively.[187] Both juries only proceeded onto the lesser offenses after unanimously concluding that the defendants were acquitted of the greater offenses.[188] Additionally, in both cases, there was a foreperson's report that stated that the jury unanimously agreed to acquit defendants of the greater offenses and was deadlocked only on the lesser included offenses.[189] In these specific situations, where the jury essentially acquits a defendant of the greater offense,[190] retrial should be forbidden under the Federal Double Jeopardy Provision, which states that "[n]o person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb."[191] If a defendant is unanimously acquitted of first-degree murder by a jury, he should not be subject to retrial for the same crime just because the jury was deadlocked solely on the lesser charged offenses. Permitting a retrial on a greater offense after a jury unanimously agreed to acquit runs afoul of the innocence presumption and functions more like a guilty presumption by retrying defendant twice for the same crime.

The majority in *Blueford* reached its holding in part because it refused to accept the foreperson's report as a "final resolution" and rejected that double jeopardy principles mandated the acceptance of partial verdicts in cases where the jury members were only given the decision to fully acquit or convict on one charge.[192] In response to uncertainty over the finality of the foreperson's report, the dissent in *Blueford* notes that the report actually could have been considered final because the jury specifically received instructions to consider the crimes

186. United States v. DiFrancesco, 449 U.S. 117, 136 (1980).

187. *Blueford*, 566 U.S. at 612–13 (Sotomayor, J., dissenting); *Aranda*, 437 P.3d at 847.

188. *Blueford*, 566 U.S. at 612–13 (Sotomayor, J., dissenting); *Aranda*, 437 P.3d at 847.

189. *Blueford*, 566 U.S. at 603–04; *Aranda*, 437 P.3d at 847.

190. For example, in *Blueford v. Arkansas*, where the dissent noted that "the jury unmistakably announced acquittal," 566 U.S. 599, 615 (2012) (Sotomayor, J., dissenting), or in *Stone v. Superior Court*, where "[t]he facts demonstrate overwhelmingly that the jury, having evaluated for one entire week all the evidence the prosecution was able to muster, unanimously concluded that the prosecution had not introduced sufficient evidence to convince them to convict the defendant of murder." 646 P.2d 809, 814 (Cal. 1982).

191. U.S. CONST. amend. V.

192. *Blueford*, 566 U.S. at 606, 610.

in order of degree and only move on to consideration of a lesser degree after the jurors unanimously agreed to acquit.[193] The jury was solely deadlocked on the manslaughter charge; logically, this means that the jury effectively, if not formally, acquitted defendant of capital murder and first-degree murder as per the judge's instructions.[194] Instead of upholding the defendant's constitutionally protected rights, the majority chose to apply rigid formalism and improperly subject the defendant to a second trial on the murder charges.[195]

The dissent in *Blueford* correctly asserted that once the foreperson's report was announced in open court, "it became entitled to full double jeopardy protection."[196] This assertion is supported both by logic and by the presumption of innocence. Where a jury openly states that a defendant has been unanimously acquitted of a greater offense, the trial court should be required to accept that as a partial verdict. It would be inconsistent with the double jeopardy provision to refuse to accept the foreperson's statement as final, because then the defendant would be retried for crimes he had already functionally been acquitted of. Again, decisions like *Blueford* suggest that the criminal justice system functions more on the presumption of guilt rather than on the presumption of innocence, and in doing so, it denies defendants the constitutional protections that they are entitled to.

The holding in *Aranda* also supported the notion that the Supreme Court incorrectly decided *Blueford* and suggested an additional procedural safeguard to refute the main points that *Blueford* presented. Although *Aranda* drew its conclusion mostly from California state law in order to avoid a conflict with *Blueford*, a significant percentage of its dicta can be applied to the Federal Double Jeopardy Provision as well as to the state provision. *Aranda* specifically considered the *Blueford* majority's argument that a foreperson's report is not a "final resolution of the issue" and directly addressed that concern with a proposed resolution.[197] The court in *Aranda* noted that this final resolution issue could be avoided completely by providing the jury with an additional acquittal form in the event that there is a deadlock on only the lesser charged offenses, as per the *Stone* rule.[198] If the jury is given an additional form in the beginning, then a foreperson's report can be memorialized and a defendant may be

193. *Id.* at 613 (Sotomayor, J., dissenting). This instruction is common in an acquittal-first jurisdiction, where jurors are required to acquit of greater offenses prior to considering lesser included offenses. *See id.* at 614.

194. *Id.* at 613–14.

195. Peguero, *supra* note 171, at 117–18.

196. *Blueford*, 566 U.S. at 616 (Sotomayor, J., dissenting).

197. *Aranda*, 437 P.3d at 855.

198. *Id.*

acquitted of greater offenses, regardless of whether the jury remains deadlocked on the lesser charged offenses.[199] Providing the jury with additional verdict forms is consistent with the presumption of innocence because it allows a jury to methodically eliminate specific charged offenses after unanimously concluding that a defendant is not guilty. This method is also appropriate because it operates in a manner that is consistent with existing criminal procedure.

The *Blueford* majority's second concern regarding the mandate of partial verdicts of acquittal stemmed from the Court's reluctance to require a trial court to "break[] the impasse," particularly where state law limited the jury instructions to conviction on one offense or acquittal of all.[200] *Aranda* directly addressed and dismissed the *Blueford* majority's concern regarding the fact that the Supreme Court had never before ordered a state trial court to "break[] an impasse" due to a hung jury.[201] Requiring a trial court to "[a]ccept[] unanimous, final verdict" on a greater offense is not at all related to breaking a deadlock because the deadlock would exist only as to the lesser charged offenses, which may still be retried.[202]

Notably, the *Blueford* majority's argument about breaking the impasse is implicitly grounded in federalism, and, in a way, the Court's choice to defer to state law paved the way for the California Supreme Court to reject *Blueford* in *Aranda*.[203] However, the majority's implicit federalism argument deflected an actual consideration of the constitutional issue that the Court was asked to consider. The dissent in *Blueford* claimed that the majority's "hands-off approach" to the double jeopardy issue in this case "dilute[d]" prior Court holdings "beyond recognition."[204] Specifically, this approach contradicted prior cases where the Supreme Court demanded that trial judges exercise extreme care prior to discharging juries by requiring judges to refrain from acting "irrationally," "irresponsibly," or "precipitately."[205]

It is difficult to accept that the trial court in *Blueford* took extreme care where it was willing to dismiss a jury on a mere formalistic matter without first considering any alternatives, such as providing the jury with additional verdict forms to make the acquittal more "formal" or by balancing the formalism issue with defendant's constitutionally obligated protections. Another alternative for a trial judge would be to

199. *Id.*
200. *Blueford*, 566 U.S. at 609–10.
201. *Aranda*, 437 P.3d at 855.
202. *Id.*
203. *See Blueford*, 566 U.S. at 609–10; *Aranda*, 437 P.3d at 855.
204. 566 U.S. at 620 (Sotomayor, J., dissenting).
205. *Id.* (quoting Arizona v. Washington, 434 U.S. 497, 514–15 (1978)).

simply ask the jury once again if they had acquitted the defendant of murder, and then record the jury's response as an on-the-record statement in order to comply with formalistic requirements.[206] Failure by a trial court judge to take such a "modest step" should constitute an abuse of discretion[207] because the judge would be acting irrationally by choosing to value formalism over a defendant's constitutional rights. The presumption of innocence also compels the judge to make an inquiry regarding the finality of an acquittal, because if a judge fails to confirm a unanimous jury decision, he is operating under a presumption of guilt by allowing the defendant to be retried.

Jury coercion is another concern that judges must consider,[208] and while it is certainly important to factor in, the potential for coercion, where avoidable, should not override a defendant's constitutional rights and his fundamental right to the presumption of innocence. It would be better practice for judges to balance the constitutional issues with the potential for coercion where applicable. However, in cases where the jury has already come to its unanimous conclusion on an issue, a simple question from the judge regarding the finality of a decision is unlikely to be coercive,[209] so the pertinent constitutional issues at stake cannot and should not be ignored.

Both the *Blueford* dissent and the majority in *Aranda* articulate compelling points and counterarguments which cast significant doubt on the majority opinion in *Blueford*. The *Blueford* majority neatly side-stepped the constitutional issue presented to the Court and failed to consider the numerous alternative possibilities suggested by the California Supreme Court or by the *Blueford* dissent.[210] The Supreme Court's failure to address this issue in a constructive manner will continue to have an adverse effect on future defendants in criminal trials by failing to uphold the presumption of innocence that they are entitled to.

Regardless of whether a defendant is fully acquitted, partial acquittals should be accepted as valid under the Fifth Amendment of the United States Constitution, especially in acquittal-first jurisdictions, which already mandate that a jury must first unanimously acquit a defendant of a greater offense prior to considering the lesser included offenses. Refusal to accept partial acquittals in situations where the jury

206. *Id.* at 621.

207. *Id.*

208. *See* Arizona v. Washington, 434 U.S. 497, 509–10 (1978). Indeed, it is better to declare a mistrial than to coerce the jury into reaching a verdict. *Id.*

209. *Aranda*, 437 P.3d at 856.

210. *See id.* at 855–56; Blueford v. Arkansas, 566 U.S. 599, 621 (Sotomayor, J., dissenting).

clearly and unanimously acquits a defendant of a greater offense operates as a rejection of the innocence presumption and fails to uphold the principle of double jeopardy under both federal and state constitutional law.

VI. CONCLUSION

Partial verdicts of acquittal are consistent with the presumption of innocence, which is a fundamental value that exists in the United States criminal justice system. Refusal to uphold the presumption of innocence in a criminal trial by rejecting a partial verdict also constitutes a double jeopardy violation because a defendant may not be retried for an offense he was already acquitted of. Therefore, partial verdicts of acquittal should be constitutionally mandated under the double jeopardy provision of the United States Constitution. The majority opinion in *Aranda* concluded that states are not precluded from providing defendants with more protections under their state constitutions, regardless of what the Supreme Court rules as to the Federal Constitution. Therefore, even though *Aranda* represents the minority position among the states, there is hope that other jurisdictions will follow by example and implement partial verdicts of acquittal into their criminal jurisprudence through their own state constitutions, and perhaps there is even hope that *Blueford* will eventually be overturned so this position can be implemented federally, or, at the very least, in acquittal-first jurisdictions.