AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Northern California

May 22, 2024

Honorable Chief Justice Patricia Guerrero
and Honorable Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *People v. Superior Court of Santa Clara County (John Kevin Woodward)*, No. S284711
Amicus Letter in Support of Petition for Review

Dear Chief Justice Patricia Guerrero and Associate Justices of the Court:

The American Civil Liberties Union Foundation of Northern California respectfully submits this letter in support of the petition for review in *People v. Superior Court of Santa Clara County (John Kevin Woodward)*, No. S284711. The petition raises an issue of statewide importance—namely, what constitutes an acquittal for purposes of double jeopardy.

Although the trial court dismissed petitioner John Woodward's case under Penal Code section 1385 expressly for "insufficiency of evidence," the Court of Appeal held that this dismissal did not constitute an acquittal barring retrial under federal and state double-jeopardy protections. (*People v. Super. Ct. of Santa Clara Cnty.* (2024) 100 Cal.App.5th 679, 709-710 (*Woodward*).) The decision below rests solely on this Court's decision in *People v. Hatch* (2000) 22 Cal.4th 260 (*Hatch*), which held that a dismissal in furtherance of justice under section 1385 "should not be construed as an acquittal for legal insufficiency unless the record clearly indicates the trial court applied the substantial evidence standard." (*Id.* at p. 273.) Notably, *Hatch* created a presumption *against* acquittal in the section 1385 context: To find an acquittal, this Court held, the record must clearly indicate that "the court viewed the evidence in the light most favorable to the prosecution and concluded that no reasonable trier of fact could find guilt beyond a reasonable doubt." (*Ibid.*)

As Justice Lie urged in her concurrence below, this Court must "reexamine the continuing vitality of *Hatch*'s narrow definition of an acquittal." (*Woodward*, *supra*, 100 Cal.App.5th at p. 716 (Lie, J., concurring).) *Hatch*'s understanding of acquittal and its presumption in favor of retrial conflict with more recent United States Supreme Court decisions, which define acquittal broadly to focus on whether the determination was based on culpability rather than requiring any application of the

substantial-evidence standard. This Court should follow this binding precedent and join other state high courts in recognizing that *any* dismissal relating to the ultimate factual question of guilt or innocence constitutes an acquittal for purposes of double jeopardy.

This Court's review is warranted for additional reasons. *First*, although the California Constitution guarantees separate and distinct double-jeopardy protections from the federal Constitution, neither *Hatch* nor the decision below gave our state's constitutional guarantee any independent significance. But this Court has often "construed the state double jeopardy clause to be more protective than its federal counterpart." (*People v. Aranda* (2019) 6 Cal.5th 1077, 1087 (*Aranda*).) This Court should explain how, as a matter of state constitutional law, *Hatch*'s rule can be squared with this jurisprudence. *Second*, even if this Court were to uphold *Hatch*, this case demonstrates that trial courts lack direction on how to comply with its requirement that the record must clearly indicate that the trial court applied the substantial-evidence standard. This Court should therefore grant review to clarify how *Hatch*'s rule should be applied moving forward.

I. Statement of interest.

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, non-profit organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU of Northern California is a regional affiliate of the national ACLU. For decades, the ACLU of Northern California has advocated to advance the civil rights of all Californians, and in particular, the rights of the accused. Since its founding, the ACLU of Northern California has appeared in numerous cases involving the rights of criminal defendants before this Court, both as counsel representing parties and as *amicus curiae*.

II. Federal and state double jeopardy protections safeguard individuals from the harms of retrial and prosecutorial advantage.

Under both the federal and California Constitutions, the Double Jeopardy Clause protects individuals from being "twice put in jeopardy" for the same offense. (U.S. Const., 5th & 14th Amends.; see Cal. Const., art. I, § 15.) The Clause was adopted out of concern that permitting a citizen to be tried twice for the same offense "would arm Government with a potent instrument of oppression." (*U.S. v. Martin Linen Supply Co.* (1977) 430 U.S. 564, 569.) It was also "designed to protect an individual from being subjected to the hazards of trial." (*Green v. U.S.* (1957) 355 U.S. 184, 187 (*Green*).) Repeated attempts to convict an individual may subject them to "embarrassment, expense and ordeal," and compel them to live in "a continuing state

of anxiety and insecurity.*"* (*Id.* at p. 187.) By limiting the government to a single criminal proceeding despite its interest in the enforcement of criminal laws, double jeopardy protections reflect "society's awareness of the heavy personal strain which a criminal trial represents for the individual defendant." (*U.S. v. Jorn* (1971) 400 U.S. 470, 479.)

The Double Jeopardy Clause forbids a second trial "for the purpose of affording the prosecution another opportunity to supply evidence which it failed to muster in the first proceeding." (*Burks v. U.S.* (1978) 437 U.S. 1, 11.) This prohibition, "lying at the core of the Clause's protections, prevents the State from honing its trial strategies and perfecting its evidence through successive attempts at conviction.*"* (*Tibbs v. Florida* (1982) 457 U.S. 31, 41.) Permitting a second trial after an acquittal "would present an unacceptably high risk that the Government, with its vastly superior resources, might wear down the defendant so that 'even though innocent he may be found guilty.' " (*U.S. v. Scott* (1978) 437 U.S. 82, 91 (*Scott*), quoting *Green*, *supra*, 355 U.S. at p. 188.) California court decisions interpreting the state constitutional guarantee echo these principles, "recogniz[ing] the defendant's interest in avoiding both the stress of repeated prosecutions and the enhanced risk of erroneous conviction." (*People v. Fields* (1996) 13 Cal.4th 289, 298.)

Mr. Woodward's case illustrates these concerns. Mr. Woodward has already been exposed to the hazards and strain of two trials, in which the prosecution was unable to " 'utilize the evidence to prove' [Mr. Woodward's] guilt beyond a reasonable doubt" due to the lack of "substantive quality of the evidence" in proving the prosecution's case. (*Woodward*, *supra*, 100 Cal.App.5th at p. 688 [quoting trial court's written decision].) Now, 26 years later, the prosecution is attempting to try Mr. Woodward's case for a third time based on evidence it failed to present in the prior proceedings. Upholding the Court of Appeal's reasoning would mean that defendants like Mr. Woodward must live in a continuing state of anxiety and insecurity even decades after being acquitted—multiple times—of an offense. This Court's review is necessary to ensure that Mr. Woodward is not wrongfully subjected to the harms of a third trial in order to allow the prosecution yet another attempt at conviction. That result would contravene the very principles and protections at the heart of our constitutional double jeopardy guarantees.

III. The United States Supreme Court and other state high courts have adopted a definition of acquittal much broader than the narrow interpretation set out in *Hatch*.

We agree with petitioner and Justice Lie that *Hatch*'s narrow definition of acquittal conflicts with subsequent United States Supreme Court decisions. (See Pet. at pp. 15-22, 24-27; *Woodward*, *supra*, 100 Cal.App.5th at pp. 713-714 (Lie, J., concurring).) For this reason alone, this Court should grant review.

The United States Supreme Court has "emphasized that what constitutes an 'acquittal' is not to be controlled by the form of the judge's action." (*U.S. v. Martin Linen Supply Co.* (1977) 430 U.S. 564, 571.) Rather, it must be determined "whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged." (*Ibid.*) Therefore, the label of a trial court's action as a "dismissal" rather than an "acquittal" is immaterial and may constitute an acquittal if the trial court "acted on its view that the prosecution had failed to prove its case." (*Evans v. Michigan* (2013) 568 U.S. 313, 325 (*Evans*); see also *Martinez v. Illinois* (2014) 572 U.S. 833, 841 ["That is a textbook acquittal: a finding that the State's evidence cannot support a conviction."].)

The Supreme Court has defined an acquittal broadly for purposes of double jeopardy: It "encompass[es] *any* ruling that the prosecution's proof is insufficient to establish criminal liability for an offense." (*Evans, supra*, 568 U.S. at p. 318, italics added.) Therefore, acquittals "include[] 'a ruling by the court that the evidence is insufficient to convict,' a 'factual finding [that] necessarily establish[es] the criminal defendant's lack of criminal culpability,' and any other 'rulin[g] which relate[s] to the ultimate question of guilt or innocence.' " (*Id.* at p. 319, quoting *Scott*, *supra*, 437 U.S. at p. 91, 98 & fn. 11.)

Hatch's rule cannot be reconciled with this broad understanding of acquittals. This Court held in *Hatch* that double jeopardy "precludes retrial" *only* "if a court determines the evidence at trial was insufficient to support a conviction as a matter of law." (22 Cal.4th at p. 271.) And it specifically stated that a court's dismissal based "on a reweighing of evidence does *not* bar retrial." (*Id.* at p. 272, original italics.) As a result, *Hatch* allows for a retrial in circumstances that the United States Supreme Court has held qualify as an acquittal. This Court must intervene to resolve that overt conflict.

Other state high courts have properly followed the United States Supreme Court's lead in broadly defining an acquittal. The Hawai'i Supreme Court, for example, has adopted the high court's test for an acquittal as any "ruling of the judge, whatever its label, [that] actually represents a resolution in the defendant's favor, correct or not, of some or all of the factual elements of the offense charged." (*State v. Poohina* (Hawai'i 2002) 40 P.3d 907, 911.) Under this test, in other words, a judge's decision to dismiss constitutes an acquittal so long as it is "based on findings related to the factual guilt of the defendant." (*State v. Clemente* (Hawaii Ct.App. 2012) 290 P.3d 519, 523, citing *State v. Markowski* (Hawai'i Ct.App. 1998) 967 P.2d 674, 681.) The Minnesota Supreme Court has similarly relied on the United States Supreme Court's broad definition of acquittal: "when a district court finds that there is insufficient evidence on one or more elements of a criminal offense, then the court has acquitted the defendant of that offense 'because such a finding involves a factual

determination about the defendant's guilt or innocence.' " (*State v. Pass* (Minn. 2013) 832 N.W.2d 836, 840, quoting *State v. Sahr* (Minn. 2012) 812 N.W.2d 83, 90)

The rule this Court formulated in *Hatch* clashes with the United States Supreme Court's double-jeopardy jurisprudence and stands apart from those adopted by other state high courts. Thus, for the reasons set out above and in the petition, we urge this Court to reconsider its narrow standard for acquittal under *Hatch*.

IV. Double jeopardy protections should be interpreted more broadly under the California Constitution than the federal Constitution.

Although Mr. Woodward argued that both his state and federal constitutional protections against double jeopardy were violated by the prosecution's refiling of his charges, the decision below makes no distinction between these protections. That is another basis for this Court to grant review.

States must provide citizens with "at least as much protection against double jeopardy as is provided under the Fifth Amendment of the United States Constitution" and are not forbidden from providing citizens "a *greater* degree of such protection." (*Curry v. Super. Ct.* (1970) 2 Cal.3d 707, 716, original italics.) Because the California Constitution "is a document of independent force and effect" rights under the Constitution can "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." (*People v. Fields* (1996) 13 Cal.4th 289, 298.)

This Court has used this authority to construe the state Double Jeopardy Clause as more protective than the federal clause on multiple occasions. (See, e.g., *Aranda*, *supra*, 6 Cal.5th 1077 [requiring state courts to accept partial verdict of acquittal, in contrast to contrary federal rule]; *People v. Batts* (2003) 30 Cal.4th 660 [adding additional condition of prosecutorial misconduct which bars retrial to federal standard]; *People v. Henderson* (1963) 60 Cal.2d 482 [creating limitation on severity of punishment on retrial of successful appeal not required under federal clause]; *Cardenas v. Super. Ct.* (1961) 56 Cal.2d 273 [declining to follow United States Supreme Court authority barring retrial if mistrial declared without defendant's consent].) Yet, in *Hatch*, this Court simply treated the federal and state double-jeopardy guarantees the same; it employed no independent state constitutional analysis. (See *Hatch*, *supra,* 22 Cal.4th at p. 271.) That is difficult to square with cases like *Aranda*, which suggest that the state double-jeopardy guarantee should be interpreted to more broadly protect the rights of the criminally accused. Review of this petition would allow the Court to explain whether and how *Hatch*'s rule can be sustained as a matter of state constitutional law, in addition to the federal constitutional questions discussed above and in the petition.

V. Trial courts cannot satisfy both *Hatch* and the requirements of section 1385.

Even if this Court is inclined to reaffirm *Hatch*, we agree with petitioner that review is still warranted to provide guidance on how trial courts should meet the requirements of section 1385 without creating ambiguity in the record about whether the dismissal was for legal insufficiency of evidence, and thus constitutes an acquittal. (See Pet. at pp. 34-37.)

Here, the Court of Appeal pointed to "language pertaining to the 'weight' of the evidence, the likelihood of new evidence at trial, the possibility of harassment, and the effect on public safety if the charges are dismissed" in the trial court's orders as "clear indication to the contrary" that the dismissal was based solely on insufficient evidence. (*Woodward*, *supra*, 100 Cal.App.5th at pp. 708-709.) The decision below further stated that "the variety of considerations that factored into the 1996 dismissal order, including the trial court's examination of factors not relevant to a dismissal for legal insufficiency of the evidence, inject ambiguity into the record." (*Id.* at p. 709.) The court concludes that "these 'ambiguities' . . . 'make it impossible for us to conclude that the court intended to dismiss for lack of sufficient evidence as a matter of law.' " (*Ibid.*, quoting *Hatch*, *supra*, 22 Cal. 4th at p. 274.)

However, section 1385 *requires* courts to evaluate these considerations to show the dismissal was in "furtherance of justice." (See Pen. Code, § 1385, subd. (a).) As this Court has made clear, section 1385 "requires consideration both of the constitutional rights of the defendant, and the interests of society represented by the People, in determining whether there should be a dismissal." (*People v. Orin* (1975) 13 Cal.3d 937, 945, italics omitted.) Courts must keep the "scales of justice . . . in balance" in weighing these considerations. (*People v. Winters* (1959) 171 Cal.App.2d Supp. 876, 887.) Because courts have recognized society's interest in "the fair prosecution of crimes that have been properly alleged" a dismissal which "arbitrarily cuts off those rights without a showing of detriment to the defendant is an abuse of discretion." (*People v. Super. Ct. (Romero)* (1996) 13 Cal.4th 497, 502.)

Ironically, while the decision below refused to give any weight to the trial court's explicit use of the term "insufficient evidence" to determine if the dismissal constituted an acquittal, it seems to have given a tremendous amount of weight to the language concerning the balancing test the trial court was required to undertake under section 1385. That blindered approach is in direct tension with *Hatch*, where this Court stated that it did not "intend to impose rigid limitations on the language trial courts may use to dismiss for legal insufficiency of the evidence pursuant to section 1385." (*Hatch*, *supra*, 22 Cal.4th at p. 273.)

In sum, as explained, this Court should reconsider whether *Hatch* remains good law. But if the Court determines *Hatch* is consistent with state and federal double-jeopardy jurisprudence, it should nonetheless grant review to ensure *Hatch* does not in fact impose "rigid limitations" on trial courts in meeting section 1385's requirements where the court's dismissal is based on an insufficiency of evidence.

Respectfully submitted,

/s/Briana Cravanas
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PROOF OF SERVICE

I, Sara Cooksey, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is scooksey@aclunc.org. On May 22, 2024, I served the attached:

Amicus Letter in Support of Petition for Review in *People v. Superior Court of Santa Clara County, No. S284711*

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

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BY MAIL: I mailed a copy of the document identified above to the following case participants by depositing the sealed envelope with the U.S. Postal Service, with the postage fully prepaid:

Clerk of the Superior Court Santa Clara County
For: Hon. Shella Deen
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Trial Court, Case No. C2200594

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 22, 2024, in Fresno, CA.

Sara Cooksey

Sara Cooksey, Declarant