

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Colusa)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE KELLY MUNOZ,

Defendant and Appellant.

C058521

(Super. Ct. No. CR48644)

**ORDER MODIFYING OPINION
[NO CHANGE IN JUDGMENT]**

THE COURT:

Respondent's request to modify this court's opinion is granted. It is ordered that the opinion filed herein on October 13, 2009, be modified as follows:

On page 14, in the unpublished portion of the typewritten opinion, delete the entire paragraph beginning "We have searched defendant's supplemental brief in vain for any contention" and replace it with the following paragraph: "In his application for leave to file a supplemental opening brief, defendant had indicated he would argue that his trial counsel had been ineffective for having failed to request a jury instruction on the lesser included offense. However, the supplemental brief

ultimately filed by defendant contains no such argument. We thus have no occasion to consider it."

This modification makes no change in the judgment.

BY THE COURT:

SIMS, Acting P. J.

RAYE, J.

CANTIL-SAKAUYE, J.