

CERTIFIED FOR PARTIAL PUBLICATION
IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOHN ANTHONY MORALES,

Defendant and Appellant.

E032037

(Super.Ct.No. RIF086449)

ORDER MODIFYING OPINION

[NO CHANGE IN JUDGMENT]

The opinion filed in this matter on October 27, 2003 is modified as follows:

In the paragraph beginning on page 30 and ending on page 31, the words “first trial” are replaced by “previous trial.” Accordingly, the paragraph as modified reads:

According to Manes, the return had been prepared by an accountant named Pinkston. Pinkston testified that she had had nothing to do with it and that her signature on it was forged. At the defendant’s previous trial, Pinkston walked into the courtroom, and Manes was asked if he recognized her; he said he did not. That trial ended with a hung jury. When the case was retried, Manes testified that, when Pinkston walked into the courtroom at the previous trial, he recognized her and identified her. (*U.S. v. LaPage, supra*, 231 F.3d at p. 490.) Defense counsel attempted to impeach Manes by introducing the transcript of the previous trial; however, it did not reflect *whom* in the courtroom Manes had failed to recognize. (*Id.* at p. 490 and 490, fn. 5.) In his closing argument, the prosecutor argued that Manes was credible. (*Id.* at p. 490.) On rebuttal, he finally admitted that Manes actually had not recognized Pinkston; he argued, however, that Manes had simply misremembered recognizing her and, moreover, had admitted that he was not sure. (*Id.* at pp. 490-491 and 491, fn. 6.) The jury found LaPage guilty of making false statements to a bank to obtain a loan. (*Id.* at p. 489.)

Except for this modification, the opinion remains unchanged. This modification does not effect a change in the judgment.

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RICHLI
J.

We concur:

HOLLENHORST
Acting P.J.

WARD
J.