

**IN THE SUPREME COURT OF CALIFORNIA**

THE PEOPLE,	)	
	)	
Plaintiff and Respondent,	)	
	)	S033436
v.	)	
	)	
ALBERT LEWIS and	)	
ANTHONY CEDRIC OLIVER,	)	
	)	Los Angeles County
Defendants and Appellants.	)	Super. Ct. No. BA001542
_____	)	

**BY THE COURT:**

**MODIFICATION OF OPINION**

The opinion in this case, filed August 24, 2006, and appearing at 39 Cal.4th 970, is modified as follows:

(1) The fifth sentence of the third full paragraph on page 983 is modified to read as follows: “The shooter’s use of gloves would explain the lack of additional palm prints on the gun.”

(2) The last full paragraph on page 1036 is modified to read as follows: “As for Oliver’s argument that denial of the continuance denied him the right to effective assistance of counsel, it appears that, even assuming counsel’s performance was constitutionally deficient, Oliver presented all witnesses available to him. He does not indicate what additional evidence, if any, he would have presented on his own

behalf had counsel behaved differently. There was no reasonable probability of an adverse effect on the outcome. (*Strickland v. Washington, supra*, 466 U.S. at pp. 668, 687-688, 694.)”

(3) At page 1067 the first full paragraph is deleted, and the following paragraph is inserted: “The trial court instructed the jury with a modification of the 1989 version of CALJIC No. 8.84.1, to which counsel did not object. The modified language included: “You are to be guided by the previous instructions given in the first phase of this case which are applicable and pertinent to the determination of penalty. However, you are to completely disregard any instructions given in the first phase which had prohibited you from considering pity or sympathy for a defendant.” The trial court did not err in failing to instruct on which guilt phase instructions continued to apply at the penalty phase. (*People v. Sanders* (1995) 11 Cal.4th 475, 561.)”

(4) At page 1068 the third paragraph is deleted, and the following paragraph is inserted: “Any delay in appointing counsel, processing the appeal, and executing sentence was necessary to carefully review the judgment and protect Oliver’s rights, and is not unconstitutional. (*People v. Holt* (1997) 15 Cal.4th 619, 709.)”

This modification does not affect the judgment.