Filed 9/21/05

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Plaintiff and Respondent, v. MARY ELLEN SAMUELS, Defendant and Appellant.	)	S042278 Los Angeles County Super. Ct. No. PA002269 **MODIFICATION OF OPINION**

ORDER

THE COURT:

The opinion in this case, filed on June 26, 2005 and appearing at 36 Cal.4th 96, is modified as follows:

1. The paragraph spanning pages 120-121 is modified to read:

> "This case is distinguishable from *People v. Lawley* (2002) 27 Cal.4th 102, 151-154 [115 Cal.Rptr.2d 614, 38 P.3d 461], upon which defendant relies, for Bernstein's facially incriminating comments were in no way exculpatory, self-serving, or collateral. Defendant argues that Bernstein's assertion "that [defendant] had paid him" for the killing was either collateral to his statement against penal interest, or an attempt to shift blame. We disagree. This admission, volunteered to an acquaintance, was specifically disserving to Bernstein's interests in that it intimated he had participated in a contract killing – a particularly heinous type of murder – and in a conspiracy to commit murder. Under the totality of the circumstances presented here, we do not regard the reference to defendant incorporated within this admission as itself constituting a collateral assertion that should have been purged from Navarro's

recollection of Bernstein's precise comments to him. Instead, the reference was inextricably tied to and part of a specific statement against penal interest. (See *People v. Wilson* (1993) 17 Cal.App.4th 271, 277 [21 Cal.Rptr.2d 420].) Moreover, the differences between the trustworthiness of the statements involved in this case and those excluded in *People v. Lawley*, *supra*, 27 Cal.4th at pages 151-154 (in which we found no abuse of discretion in the trial court's exclusion, following an offer of proof, of proposed testimony recounting a prisoner's assertions that the Aryan Brotherhood was involved in a homicide he claimed to have committed) are palpable. In any event, even had the trial judge erred, any such error was harmless. (*People v. Watson*, *supra*, 46 Cal.2d at p. 836.)"

2. The paragraph spanning pages 135-136 is modified to read:

"Unlike the situation in *Prieto*, here the jury expressed confusion regarding CALJIC No. 8.84's meaning. However, we reject defendant's claim because the trial court's refusal to respond more fully to the jury's question did not constitute prejudicial error. In so holding, we follow *People v. Bonillas* (1989) 48 Cal.3d 757, 798 [257 Cal.Rptr. 895, 771 P.2d 844], and *People v. Silva* (1988) 45 Cal.3d 604, 641 [247 Cal.Rtpr. 573, 754 P.2d 1070], in which we observed no prejudicial error in refusals to respond to comparable jury requests for clarification as to the possibility of defendant's release from prison. Here, as there, '[t]he [court's] response left the jury in the same position as when the jury asked the question—i.e., uncertain of the answers. It is inconceivable that such uncertainty affected the jury's penalty verdict.' (*Silva*, at p. 641.)"

This modification does not affect the judgment.