

IN THE SUPREME COURT OF CALIFORNIA

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|---------------------------|---|-------------------------|
| THE PEOPLE, |) | |
| |) | S046816 |
| Plaintiff and Respondent, |) | |
| |) | |
| v. |) | Ventura County |
| |) | Super. Ct. No. CR 33105 |
| MARK SCOTT THORNTON, |) | |
| |) | |
| Defendant and Appellant. |) | |
| _____ |) | |

MODIFICATION OF OPINION

THE COURT:

The opinion herein, filed on June 28, 2007, and appearing at 41 Cal.4th 391, is modified as follows:

1. In 41 Cal.4th at page 465, at the end of part 6.b.i., a new paragraph is added, reading as follows:

“We also reject defendant’s contention that the court prejudicially erred in failing to instruct the jury that where it was presented with multiple offenses arising from the same course of conduct it could consider such multiple offenses only if they involved separate acts and distinct violations of law making the conduct more blameworthy. Defendant relies in this respect on *People v. Melton* (1988) 44 Cal.3d 713, 765-767, which suggested a similar principle in an arguably analogous context. But neither *Melton* nor any other authority we are aware of supports the existence of a sua sponte duty to give such an instruction. Nor would

any error in failing to so instruct have been prejudicial under any standard of prejudice. No reasonable possibility exists that the jury was moved to a sentence of death by the number of offenses listed in aggravation as opposed to defendant's violent conduct itself, which the jury heard described. (See *id.* at p. 768 [concluding "the possibility of actual prejudice seems remote"].)

2. In 41 Cal.4th at page 401, the last sentence on the page, which reads, "Minutes later defendant became involved in a road rage incident with another driver, which culminated in defendant shooting out the other driver's window," is modified to read: "Minutes later defendant became involved in a road rage incident with another driver, which culminated in defendant firing a shot out of his car window."

3. In 41 Cal.4th at page 408, the first sentence of the third full paragraph, which reads, "Defendant was unmanageable in kindergarten and had to repeat the school year," is modified to read: "Defendant was called unmanageable in kindergarten and had to repeat the school year for academic reasons."

4. In 41 Cal.4th at page 411, the sixth sentence of the first full paragraph on that page, which reads, "Defendant had no discernible learning disability," is modified to read: "Defendant had no specific discernible learning disability."

This modification does not affect the judgment.