

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,
 Plaintiff and Respondent,
 v.
 NEAL FIU,
 Defendant and Appellant.

A112738

(Contra Costa County
 Super. Ct. No. 05-041756-8)

ORDER DENYING REHEARING
 AND MODIFYING OPINION
 [NO CHANGE IN JUDGMENT]

THE COURT:

Appellant’s petition for rehearing is denied. The opinion filed July 28, 2008, is modified as follows:

1. In the last paragraph on page 8 of the filed opinion, delete the two sentences following the words “his beating.” including footnote No. 14, replacing them with “When the victim attempted to flee, they chased him around the corner from defendant’s residence, where they caught him and administered the beating.”¹⁴

¹⁴ In an attempt to clarify the location where the victim was left after the first beating, in response to defendant’s petition for rehearing, we ordered the record augmented with the crime scene diagram (People’s Exhibit No. 9) and the crime scene photographs (People’s Exhibit No. 8a-8rr). (Cal. Rules of Court, rule 8.155, subd. (1)(A).) The victim was apparently first attacked near the corner of Maine Avenue and South 15th Street; he was knocked down after he went around the corner. At least one witness testified that the victim was knocked down twice in this area. That witness also indicated that the victim was in a different location when the second attack, joined in by Johnson, occurred. The victim’s body was located on Maine Avenue, just around the corner from defendant’s residence on South 15th Street, in a grass parking strip. From the backyard of defendant’s residence, one can see out to Maine Avenue.

They left the victim lying unconscious on the ground, around the corner from defendant's house.¹⁵

Renumber subsequent footnotes appropriately.

2. In the second paragraph on page 9, delete the third sentence starting with "Once defendant and the young gang members," ending with "inflicted," and replace it with "Once defendant and the young gang members beat the victim severely, rendering him unconscious and leaving him lying outside, around the corner from defendant's residence, it was not unforeseeable that he might die due to their actions or the type of injuries they inflicted."
3. In the second paragraph on page 27, in the sentence starting "He left the victim," delete the words "in front of" and replace them with "on the ground around the corner from."

The above modification does not effect any change in the judgment.

Dated: _____

_____ P.J.

¹⁵Again, the accounts of the young gang members differed. In sum, it appears that the victim was beaten until he lost consciousness; however, he may have regained consciousness before the second beating in which Johnson participated.