

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO ALEXANDER ZEPEDA GARCIA
et al.,

Defendants and Appellants.

D049650

(Super. Ct. No. SCD169261)

ORDER MODIFYING OPINION

NO CHANGE IN JUDGMENT

THE COURT:

It is ordered that the opinion filed herein on November 14, 2008, be modified as follows:

On page 17, line 12 of the first full paragraph, the word "Teddy's" is changed to "Garcia's" so the sentence reads:

In light of this evidence of their gang mentality, the expert testimony about gang culture — particularly the testimony about the obligation of gang members to back up fellow gang members — was relevant to prove Ojito's intent to aid Garcia in avenging Garcia's beating.

Also on page 17, the last sentence of footnote seven is deleted so that the footnote reads:

In addition to the above-noted gang evidence, Ojito cites, as prejudicial, the prosecution's reference during rebuttal argument to portions of letters written by Ojito in which the letters "ALS" are crossed out where they appear in words such as "also." Ojito states these letters were admitted by stipulation.

On Page 34, lines 8 and 9 of the first full paragraph:

Brackets are placed around the letter "T" in the word "Tell" and around the word "Gretchen" on line 8. The word "that" is inserted after "[Gretchen]" and the word "somebody" is changed to "someone". On line 9, The word "anything" is replaced with the word "nothing". A space and an ellipsis are inserted after the word "that". The sentence now reads:

The statements, "[T]ell [Gretchen] that someone else wrote it, not us or me," and "Make sure you tell Gretchen we don't have nothing to do with that . . . ," are not factual assertions; they are requests or directions to make particular representations to a third person.

On Page 44, the last line of the disposition, the number "12202.53" is changed to "12022.53" so the sentence reads:

The superior court is directed to prepare and forward to the Department of Corrections and Rehabilitation an amended abstract of judgment for Geraldo Ojito specifying an enhancement under Penal Code section 12022, subdivision (a)(1), rather than Penal Code section 12022.53, subdivision (d).

There is no change in the judgment.

HALLER, Acting P. J.

Copies to: All parties