

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

NICHOLAS HAYES RAE,

Defendant and Appellant.

A095637

(Napa County
Super. Ct. No. CR102579)

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

THE COURT:

The opinion filed September 19, 2002 is modified as follows: In Section IV, on page 19, the sentence that reads “Like the court in *Manis* we consider defendant’s argument here ‘frivolous in the factual context of this case, and we reject it’” is deleted. The following sentence is inserted in its place: “Like the court in *Manis*, we reject the consent argument.”

Respondent’s petition for rehearing filed October 2, 2002 is denied.

The modification does not affect the judgment.

Dated: _____

Jones, P.J.