

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JORGE A. PANTOJA,

Defendant and Appellant.

A101223

(Humboldt County
Super. Ct. No. CR 013978)

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

BY THE COURT:

As a result of a clerical error, the order modifying opinion and denying rehearing, filed on October 6, 2004, inadvertently omitted paragraph 4 set forth below. Accordingly, this corrected order is filed nunc pro tunc as of October 6, 2004.

It is ordered that the opinion filed herein on September 7, 2004, be modified in the following particulars:

1. On page 13, the second sentence of the first full paragraph is modified to read as follows:

We therefore must reverse defendant's conviction if it is "reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

2. At the end of the second full paragraph on page 14, after the sentence ending "before defendant stabbed Montero," add as footnote 5 the following footnote:

⁵ In his petition for rehearing, the Attorney General emphasizes other evidence that he argues tended to show premeditation. However, none of that evidence is sufficient to render the erroneous admission of the declaration harmless."

3. On page 15, starting on line 10, delete the following sentence, including the footnote:

Finally, the jury apparently deliberated for three days before reaching a verdict,⁵ which indicates a substantial probability that the improperly admitted evidence was crucial in reaching a verdict in a close case. (See *People v. Cardenas* (1982) 31 Cal.3d 897, 907.)

4. On page 15, the last sentence of the first paragraph is modified to read as follows:

While there unquestionably was evidence that supported the prosecution's theory of premeditated murder, it is reasonably probable that the jury would have made a finding more favorable to the defendant absent admission of the declaration contained in the application for the restraining order.

There is no change in the judgment.

Respondent's petition for rehearing is denied.

⁵ Although the record is not entirely clear in this regard (see reporter's transcript at pages 989, 1041-1043), the Attorney General does not dispute defendant's statement in his opening brief that deliberations lasted for three days.

Superior Court of Humboldt County, No. CR013978, John T. Feeney, Judge.

COUNSEL

J. Frank McCabe, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gerald A. Engler, Senior Assistant Attorney General, Stan Helfman, Sharon G. Birenbaum, Deputy Attorneys General, for Plaintiff and Respondent.

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