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CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. WILLIAM FRENCH ANDERSON, Defendant and Appellant.	B197737 (Los Angeles County Super. Ct. No. BA255257) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on July 26, 2012, be modified as follows:

1. On page 22, in the third full paragraph, second sentence, insert "on July 30, 2004," after "his home" so that the sentence reads: "After service of a search warrant at his home on July 30, 2004, ..."
2. On page 23, line 2, delete the word "statement" and insert the word "letter" so the sentence reads: "The trial court also determined the letter was . . . ."
3. On page 37, in the third full paragraph, delete: "The jury knew Anderson was arrested soon afterward. Thus, there was no evidentiary gap."

4. On page 49, line 8, commence a new paragraph after the words, "alter this result." and insert the following:

> In a petition for rehearing, Anderson asserts the analysis of this issue must be reconsidered in light of *People v. Villatoro* (2012) 54 Cal.4th 1152, filed four days after the opinion in this case. Anderson argues *Villatoro* calls into question the viability of *Reliford*. We disagree.
>
> *Villatoro* primarily addressed whether Evidence Code section 1108 permitted evidence of *charged* offenses to be offered to prove propensity to commit other charged offenses and concluded "nothing in the language of section 1108 restricts its application to uncharged offenses." (*People v. Villatoro, supra,* 54 Cal.4th at p. 1164.) *Villatoro* next considered the claim a modified version of CALCRIM No. 1191 given by the trial court failed to designate clearly what standard of proof applied to the charged offenses before the jury could draw a propensity inference. The modified instruction did not provide the charged offenses offered to prove propensity could be proved by a preponderance of the evidence. Instead, the trial court modified the instruction to state: " 'The People must still prove each element of every charge beyond a reasonable doubt and prove it beyond a reasonable doubt before you may consider one charge as proof of another charge.' " (*People v. Villatoro*, *supra*, at p. 1167.) *Villatoro* concluded there was no risk the jury would apply an impermissibly low standard of proof as "the instruction clearly told the jury that all offenses must be proven beyond a reasonable doubt, even those used to draw an inference of propensity." (*Id.* at p. 1168.)

> Anderson asserts the same modification should have been required here because the punching bag incident was a "component" of a charged offense, namely, the first act of sexual abuse in a continuous course of conduct alleged under Penal Code section 288.5. However, *Villatoro* is not similar to Anderson's case in that the propensity evidence offered here consisted of *uncharged* offenses. The fact the punching bag incident was the first act of abuse does not make it a "component" of the charged offense of continuous sexual abuse as Anderson asserts.

[There is no change in the judgment.]

Appellant's petition for rehearing is denied.