

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

MILDRED MURPHY,

Defendant and Appellant.

D040040

(Super. Ct. No. SCE-217093)

ORDER MODIFYING OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed and certified for publication on October 6, 2003, is modified as follows:

1. On page 3, the first full paragraph is deleted in its entirety and replaced by the following:

During the surveillance, Marlow observed Murphy greet a Hispanic male in front of her house. Murphy and the man walked around the side of the house and reappeared a few minutes later. It appeared to Marlow that Murphy and the man were exchanging something. Shortly thereafter, Santana and several other members of the team arrived at Murphy's residence. The team members were all wearing plain clothes, but also had on black bulletproof vests with the word "Sheriffs" on them, and hats marked with the words "Sheriff's

Narcotics." Marlow also observed a second, "totally separate person" near the garage of Murphy's residence. After Santana and the other members of the search team arrived, Marlow motioned to his partners on the team to alert them to this person's presence.

2. On page 3, the last paragraph, which begins on page 3 and continues to page 4, is deleted in its entirety and replaced with the following:

Santana and the other officers approached the person, who was later identified as Michael Thomaselli. At the time the officers approached him, Thomaselli was located around the corner of the garage. Santana noticed that Thomaselli's hand was clenched. Santana pointed a gun at Thomaselli and "[i]n a loud voice . . . [a]lmost yelling," said to him, "Sheriff's Department. Probation search. Get on the ground." The other members of the team were yelling, "Sheriff's Department," and they all had their guns drawn. It was later determined that Thomaselli was repairing a fence for Murphy and that he was holding some screws in his hand. At no time did any of the officers observe any interaction between Murphy and Thomaselli.

There is no change in the judgment.

BENKE, Acting P. J.