

**CERTIFIED FOR PARTIAL PUBLICATION**  
**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**  
**FOURTH APPELLATE DISTRICT**  
**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

OMAR MARES,

Defendant and Appellant.

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In re OMAR MARES,

on Habeas Corpus.

E039762

(Super.Ct.No. RIF121768)

**ORDER MODIFYING OPINION  
AND DENYING PETITION FOR  
REHEARING**

[NO CHANGE IN JUDGMENT]

E042136

**THE COURT**

The petition for rehearing is denied. The opinion filed in this matter on September 27, 2007, and modified on October 5, 2007, is further modified as follows:

1. On page 10, delete the second paragraph.
2. On page 10, delete the third paragraph.
3. On page 11, in the beginning of the first paragraph, delete the word “Moreover,” and capitalize “A”

4. On page 11, between the first and second full paragraphs, add the following paragraph:

As part of his habeas corpus writ petition, defendant attached a declaration from Dr. Tseday Aberra, a licensed clinical psychologist, stating “if he had been called to testify, it would have been [his] opinion that at the time of the offense [defendant] was suffering from Delusional Disorder and that the disorder would have prevented defendant from having the specific intent to commit the crimes charged.” Defendant now claims this evidence would have negated the specific intent element by showing he did not have the intent to defraud the car dealership and the bank. He also asserts that it was reasonably probable that the jury would have found he unreasonably believed that the money belonged to him.

5. On page 12, the following is to be added at the end of the first full paragraph:

Furthermore, defendant’s trial counsel filed a declaration as part of defendant’s habeas corpus writ petition stating that defendant “expressed a desire to exercise his right to testify in his behalf, and testified at trial that he did nothing wrong because the money in the account was his because the teller gave it to him.” Trial counsel stated she did not order a mental health evaluation because the facts showed planning and sophistication, contrary to any possible mental defense, and defendant’s intent to exercise his right to testify, limited her argument to reasonable deductions drawn from his

testimony. Defense counsel was hemmed in by defendant's own version that he could not have stolen the money because the teller told him the money belonged to him. Counsel cooperated as best she could by arguing in support of his version of the story that negated specific intent, rather than bring inconsistent evidence that would contradict his defense theory.

*(People v. Welch (1999) 20 Cal.4th 701, 755.)*

Except for this modification, the opinion remains unchanged. This modification does not effect a change in the judgment.

/s/ MILLER  
J.

We concur:

/s/ RAMIREZ  
P. J.

/s/ KING  
J.