

CERTIFIED FOR PARTIAL PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER JAMES HEARN,

Defendant and Appellant.

F034832

(Super. Ct. No. 76841)

**MODIFICATION OF
OPINION ON DENIAL OF
REHEARING
[NO CHANGE IN
JUDGMENT]**

It is ordered that the opinion filed herein on February 4, 2002, be modified as follows:

On page 8, the second sentence of the third full paragraph should be modified to read as follows:

At that time Serafin stated that Chavez wanted to borrow money from someone in Ridgecrest named Chris or Jay, and Annette R. came along for the ride.

On page 9, under the heading **Other Testimony**, replace the entire paragraph with the following:

Evelyn Roesch, a relative of Barbara and Dolores Chavez and Jannette Serafin, testified that she had a conversation with appellant's brother Frederick Hearn. Detective Ortiz testified Roesch said that Frederick told

her that appellant told Frederick he was at the store the night of the shooting and had a gun but ran out of the store when he saw a gun, however Roesch denied the statement at trial. Frederick told Detective Ortiz that the information he (Frederick) had given to Roesch he received from his and appellant's father. At trial, Frederick and appellant's father both denied ever having implicated appellant. Frederick has a mental problem, and sometimes hears voices.

On page 13, the next to the last sentence in the second full paragraph beginning "Thus, the jury" should be modified to read as follows:

Thus, the jury was specifically instructed that Annette R.'s testimony should be viewed with caution.

On page 14, the first sentence of the last paragraph should be modified to read as follows:

Appellant admits that the prosecutor did not make any argument that appellant's alleged flight from the crime scene could be used to infer consciousness of guilt, but says it "was obvious" in any event.

On page 15, modify the third sentence of the first full paragraph beginning with "As appellant concedes" as follows:

As appellant concedes, the People did not argue that the evidence of flight showed appellant's consciousness of guilt.

On page 20, modify the first sentence of the first full paragraph to read:

Here, of course, the jury returned not a true finding on the gun use allegation and returned not true findings on the alleged overt acts that appellant "obtained a gun from Regina Eason to use in the robbery" and not true that appellant "entered the Village Liquor store in Ridgecrest."

And modify the first sentence of the second paragraph on page 20 beginning "We conclude" to read:

We conclude that, though the jury returned not true findings on the gun use allegation and the above listed overt acts, those findings do not necessitate the legal conclusion that appellant was not a major participant.

This modification does not change the judgment.
Appellant's Petition for Rehearing is denied.

Ardaiz, P.J.

WE CONCUR:

Harris, J.

Buckley, J.