

CERTIFIED FOR PARTIAL PUBLICATION

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

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSÉ L. SOLÓRZANO,

Defendant and Appellant.

F049842

(Super. Ct. No. BF100489A)

**MODIFICATION OF OPINION
[NO CHANGE IN JUDGMENT]**

THE COURT:

It is ordered that the opinion herein filed on July 27, 2007, be modified as follows:

On page 10, delete all of footnote 5 and insert the following in its place: “⁵ The Bench Notes to CALCRIM No. 376 cite *People v. Clark* (1953) 122 Cal.App.2d 342, 346, and *People v. Smith* (1950) 98 Cal.App.2d 723, 730 as authority for that proposition. (Bench Note to CALCRIM No. 376 (2006-2007) p. 168; but see *People v. Najera* (2006) 135 Cal.App.4th 1125, 1130, review granted April 26, 2006, S141654).”

This modification does not effect a change in the judgment.

Gomes, J.

WE CONCUR:

Wiseman, Acting P.J.

Hill, J.