

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JUDY DIANE VALOT,

Defendant and Appellant.

G027838

(Super. Ct. No. 98HF1241)

ORDER MODIFYING OPINION
AND DENYING PETITION FOR
REHEARING; NO CHANGE IN
JUDGMENT

It is ordered that the opinion filed herein on November 27, 2002, is hereby modified in the following particulars:

1. On page 2, delete the last three sentences of the first paragraph beginning with “Because we reverse on that ground . . .” and replace with the following:

We reject Valot’s ensuing argument that discharge of a juror without good cause precludes retrial on double jeopardy grounds. In our view, double jeopardy does not apply.

2. On page 8, delete the last sentence of footnote 1, which reads “Valot does not raise this as an issue . . .” and the following sentences are inserted in its place:

Valot raised this issue as grounds for reversal in a supplemental brief submitted after *Cleveland* was filed. Because we reverse for the erroneous discharge of Juror No. 5, we need not decide whether questioning by the attorneys constitutes an independent ground for reversal.

3. On page 17, add a new footnote 3 after the last sentence in the first full paragraph, to read as follows:

That exception has no application here.^{3/}

4. Place in new footnote 3 the following paragraphs:

Valot contends irrelevant and prejudicial evidence was erroneously admitted. According to Valot, there is insufficient evidence to support the conviction had the following evidence been excluded: (1) DNA evidence identifying the victim's blood found in the entryway of the victim's home, the garage, and his truck; (2) the discovery of the victim's guns in Valot's trailer; (3) testimony of Valot's neighbors they heard gunshots around the time of the victim's disappearance; and (4) a photograph of Valot holding a handgun in a firing position.

The court did not abuse its discretion in admitting this evidence. Valot never objected to the relevancy of the DNA evidence at trial, therefore, the claim is waived. In any event, evidence of the victim's blood found in the home he shared with the defendant was relevant to show his disappearance was caused by criminal conduct. Valot also waived any objection to the discovery of the victim's guns in Valot's trailer, including a loaded handgun. Because the victim kept his weapons in his Irvine home and always removed the ammunition before storing them, the evidence tended to connect Valot to the victim's disappearance and was properly admitted. Evidence of gunshots near the time of the victim's disappearance was

obviously relevant and the photograph depicting Valot's muscular forearms tended to rebut Valot's claim she was too small to lift the victim's body into her truck. Nor was the evidence unduly prejudicial under Evidence Code section 352.

5. On page 19, footnote 3 should be renumbered as footnote 4.

These modifications do not change the judgment.

The petition for rehearing is DENIED.

ARONSON, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

MOORE, J.