

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE,)	
)	
Plaintiff and Respondent,)	
)	S079179
v.)	
)	
ROBERT ALLEN BACON,)	
)	Solano County
Defendant and Appellant.)	Super. Ct. No. F-C42606
_____)	

ORDER MODIFYING OPINION

THE COURT:

The opinion filed on October 21, 2010, and published at 50 Cal.4th 1082, is modified as follows:

At page 1118, delete the full paragraph at the bottom of the page and substitute the following:

Defendant objects to our concluding that his Arizona prior murder would be felony murder under California law because, he contends, the description of his crimes at his plea hearing shows the robbery was incidental to or an afterthought to the homicide. (See, e.g., *People v. Prince* (2007) 40 Cal.4th 1179, 1259 [For purposes of the felony-murder rule, the homicide “ ‘need not occur in the midst of the commission of the felony, so long as that felony is not merely incidental to, or an afterthought to, the killing.’ ”].) The record does not support defendant’s objection. Rather, as the transcript of the hearing at which defendant entered his

guilty plea establishes and defendant's own briefing concedes: (1) defendant decided to take Noble's wallet while Noble was sleeping; (2) Noble woke up and a fight ensued; (3) Noble was killed in the fight or died shortly thereafter as a result of it; and (4) defendant acquired Noble's wallet, later producing it for the police after his arrest. On these facts, the robbery of Noble was not " 'merely incidental to, or an afterthought to, [his] killing.' " (*Ibid.*)

This modification does not affect the judgment.