

**IN THE SUPREME COURT OF CALIFORNIA**

THE PEOPLE,	)	
	)	
Plaintiff and Respondent,	)	
	)	S024642
v.	)	
	)	
MICHAEL RAY BURGNER,	)	
	)	Riverside County
Defendant and Appellant.	)	Super. Ct. No. CR 18088
_____	)	

**MODIFICATION OF OPINION**

**THE COURT:**

The opinion herein, appearing at 29 Cal.4th 833, is modified as follows:

1. In the first full paragraph on 29 Cal.4th at page 864 (which begins “In this case, defendant objected”), insert the following sentences before the last sentence in that paragraph (which begins “The court accepted the prosecutor’s stated reasons”): “Defendant objected that the prosecutor did not ask non-African-American jurors the same question regarding their reluctance to impose the death penalty on a defendant who continued to deny his guilt. In response, the prosecutor explained that he posed this question to Kenneth F. because of the juror’s response on the written questionnaire that he would have particular difficulty in voting for the death penalty under those circumstances.”

2. The last paragraph on 29 Cal.4th at pages 864 continuing through 865, beginning with “Defendant, citing cases from other jurisdictions” and ending with the citation “(*Ervin, supra*, 22 Cal.4th at p. 76.),” is deleted and replaced with the following: “Defendant maintains the justification was nonetheless pretextual in that the prosecutor allegedly failed to ask the same question of non-African-American jurors. But, after the trial court considered this and other arguments from both defendant and the prosecutor, it accepted the prosecutor’s nondiscriminatory justifications. The record reflects the trial court made a sincere and reasoned effort to evaluate the prosecutor’s justifications for excusing Kenneth F.; therefore, its conclusions are entitled to deference on appeal. (*Ervin, supra*, 22 Cal.4th at p. 75.)”

This modification does not affect the judgment.