

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM LOUIS THOMA,

Defendant and Appellant.

2d Crim. No. B170355
(Super. Ct. No. 2003008254)
(Ventura County)
MODIFICATION OF OPINION
ON REHEARING
[No Change in Judgment]

THE COURT:

It is ordered that the opinion on rehearing filed April 19, 2005, be modified as follows:

Delete the last full paragraph on page 8 and the first full paragraph on page 9 and insert in their place the following:

Appellant contends that the admission of hearsay evidence to prove the prior conviction violated his Sixth and Fourteenth Amendment rights because he was denied the opportunity to confront and cross-examine witnesses against him. Appellant relies on *Crawford v. Washington* (2004) 541 U.S. 36 (158 L.Ed.2d 177, 124 S.Ct. 1354). In *Crawford* the United States Supreme Court held that testimonial hearsay statements are admissible under the Sixth Amendment Confrontation Clause only if the declarant is unavailable and the defendant has had a prior opportunity to cross-examine the declarant. (*Id.*, at p. 203, 124 S. Ct. at p. 1374.)

The People contend that appellant waived the confrontation issue because he failed to object on that ground in the trial court. But *Crawford* was decided after appellant's trial on the prior conviction. "[T]he failure to object was excusable, since governing law at the time of the [trial] afforded scant grounds for objection. [Citations.]" (*People v. Johnson* (2004) 121 Cal.App.4th 1409, 1411, fn. 2; see also *People v. Turner* (1990) 50 Cal.3d 668, 703 ["Though evidentiary challenges are usually waived unless timely raised in the trial court, this is not so when the pertinent law later changed so unforeseeably that it is unreasonable to expect trial counsel to have anticipated the change."].) Accordingly, we consider the confrontation issue on its merits.

[No change in judgment.]

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