

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

STEVEN YOUNT,

Plaintiff and Appellant,

v.

CITY OF SACRAMENTO et al.,

Defendants and Respondents.

C046869

(Super. Ct. No. 01AS04272)

ORDER MODIFYING OPINION AND
DENYING REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed in this case on November 9, 2005, be modified as follows:

1. On page 5 of the opinion, in the third sentence of the final full paragraph, change the phrase "Officers Davis and Hatfield" to "the officers" so that the sentence reads:

Finally, the officers forcibly extricated Yount from the back seat.

*Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part IV of the Discussion, which is not affected by this modification.

2. On pages 18 and 19 of the opinion, in footnote 4, delete the last sentence of the footnote, which reads: "But because there is no way of knowing which discrete acts of obstruction the jurors relied on in reaching a finding of guilt, we do not see the validity of the purported distinction." so that the footnote now reads in its entirety:

Smith II also distinguished *Susag* on the ground that there the plaintiff's section 148 conviction was obtained through a jury verdict rather than a plea. The court reasoned that, unlike a guilty plea, the jury verdict necessarily determined the lawfulness of the officers' conduct throughout the entire course of events. (*Smith II, supra*, 394 F.3d at p. 699, fn. 5.)

3. On page 27 of the opinion, delete footnote 9, which begins: "The City's assertion at oral argument" in its entirety and renumber the subsequent footnotes in the opinion accordingly.

This modification does not change the judgment.

The petition for rehearing filed by respondent City of Sacramento is denied.

BY THE COURT:

BLEASE, Acting P. J.

MORRISON, J.

BUTZ, J.