

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
LARRY SEIJAS,  
  
Defendant and Appellant.

B160209  
(Los Angeles County  
Super. Ct. No. SA043730)

ORDER MODIFYING OPINION AND  
DENYING REHEARING  
[no change in the judgment]

The petition for rehearing is denied and the opinion in this case filed February 24, 2004 is modified as follows:

(1) On page 10, lines 7-9, strike the sentence beginning with the word Furthermore and insert the following: In any event we need not decide the scope of section 148 in this case. Here the prosecutor repeatedly assured the trial court the People had no intention of prosecuting Jonathan for the murder or for giving the police false information about the murder. Given these recurrent representations to the court, Jonathan could not have reasonably feared prosecution for falsely identifying Ellis as the killer.

Footnote 20 follows this revised text.

(2) An page 10, footnote 21, delete the citation to *Ohio v. Roberts* and insert: *Pointer v. Texas* (1965) 380 U.S. 400, 406.

(3) On page 11, delete the citation in footnote 23 and insert the following: *Ohio v. Roberts* (1980) 448 U.S. 56, 64; (overruled on other grounds, *Crawford v. Washington* (2004) \_\_\_ U.S. \_\_\_\_ [(2004 WL 413301)]).

(4) On page 11, delete the text in footnote 24 and insert the following: *Crawford v. Washington, supra*, \_\_\_ U.S. at page \_\_\_\_ [2004 WL 413301 at \*14-19].

(5) On page 11, lines 6-8, delete the sentence beginning These “indicia of reliability” and insert: The only “indiciu[m] of reliability” when the statement is “testimonial” in nature is cross-examination.

(6) On page 11, delete the citation in footnote 26 and insert the following: *Crawford v. Washington, supra*, \_\_\_ U.S. at page \_\_\_\_ [2004 WL 413301 at page \*19] (overruling *Ohio v Roberts, supra*, on this point).

(7) On page 11, line 15 insert a period after the word defendant followed by footnote 27. Delete the remaining portion of the sentence beginning with the elipses and ending with the word unavailable.

(8) On page 12, in footnote 27 delete the words “elipses added.”

(9) On page 12, line 11 following footnote 30 insert the following new text: In *Crawford v. Washington*, the court reiterated the importance of the witness’s unavailability to confrontation clause analysis. “Our cases have thus remained faithful to the Framers’ understanding: Testimonial statements of witnesses absent from trial have been admitted *only where the defendant is unavailable . . .*”<sup>31</sup> Insert new footnote 31 as follows: *Crawford v. Washington, supra*, \_\_\_ U.S. at page \_\_\_\_ [2004 WL 413301 at page \*13, italics added.

(10) All footnotes following the new footnote number 31 are renumbered accordingly.

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<sup>31</sup> *Crawford v. Washington, supra*, \_\_\_ U.S. at page \_\_\_\_ [2004 WL 413301 at page \*13, italics added.

This modification does not constitute a change in the judgment.

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JOHNSON, Acting P.J.

WOODS, J.

ZELON, J.