

THE PEOPLE.

Plaintiff and Respondent,

v.

ERNEST WAYNE ADDINGTON,

Defendant and Appellant.

G018047

(Super. Ct. No. 94SF0794)

OPINION

Appeal from a judgment of the Superior Court of Orange County, Arthur G.

Kocle. Judge. (Assigned by the Chairperson of the Judicial Council.) Reversed.

Kevin Barry McDermott for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Gary W. Schous, Senior Assistant Attorney General, Laura Whitcomb Halgren and Meagan J. Beale, Deputy Attorneys General, for Plaintiff and Respondent.

DISPOSITION

Defendant's conviction is reversed.

RYLAARSDAM, J.

WE CONCUR:

CROSBY, ACTING P.J.

WALLIN, J.

carrying to the range into the pavement below the car. When this individual kept on searching in the glove box, Ernie fired a second round, this time into the lower portion of the passenger door. Unintentionally, this round ricocheted upward and into this man's hip. Injured, this man ran into a nearby home. This home was never searched and the man's car revealed no weapons. The authorities responded by arresting Ernie for attempted murder and held him in custody on \$250,000 bail.

Adamant about his innocence and insisting upon his right to a speedy trial, Ernie retained the services of attorney Kevin Barry McDermott. McDermott followed along with Ernie's desires and set the matter for trial as soon as the law would allow. Once trial had commenced, it was clear to the jury that Ernie did not intend to harm this individual and was only trying to protect himself. However, because the authorities could not locate a weapon, the judge instructed the jury that they could consider the charge of assault with a deadly weapon even though Ernie objected to this instruction; he believed that the jury should decide only on the charge of attempted murder that the authorities had leveled against him. Ernie was acquitted on all of the charges except for assault with a deadly weapon.

Believing that the trial judge was wrong in his instruction to the jury, McDermott filed an emergency writ with the appellate court. This court granted the writ, barred the authorities from forcing Ernie to spend any more time in jail, and, ultimately, agreed that the trial judge was wrong. The assault with a deadly weapon charge was dismissed and Ernie was cleared of all charges.

McDermott has his practice in Tustin, California. He can be reached at his toll free number 800 723-6580 or at his e-mail address, [warlawyer@aol.com](mailto:warlawyer@aol.com). In addition to practicing in all of the state and Federal courts of California, McDermott is licensed to practice before the United States Supreme Court and the Court of Appeals for the Armed Forces.

ORANGE COUNTY

## Appeals Court Reverses Shooting Verdict

**Judiciary: Ruling affects jury's assault with deadly weapon finding for man who hurt Trabuco Canyon neighbor.**

Incident on Dec. 12, 1994. Ernest Wayne Addington, 44, went on trial for attempted murder and attempted voluntary manslaughter last spring after shooting Timothy Benson in the hip as Benson followed him in his car down a street in Trabuco Canyon.

It was later learned that Benson was under the influence of methamphetamine when the confrontation occurred. Addington's attorney, Kevin McDermott, argued that his client—a retired Marine—feared for his life when Benson came chasing after him and fired his gun in an effort to scare him off. In March 1995, a jury acquitted Addington of attempted murder and manslaughter charges but convicted him of assault with a deadly weapon. He was sentenced to one year in jail. He had been out on bail pending appeal.

McDermott argued that the jury should not have been instructed on assault with a deadly weapon because it was not something that "naturally flowed" from other charges.

The appellate court, in its Wednesday ruling, agreed and reversed the decision.

"They did the right thing," McDermott said.

By GREG HERNANDEZ  
TIMES STAFF WRITER

SANTA ANA—The 4th District Court of Appeal has unanimously reversed the 1995 conviction of a Gulf War veteran who nearly ran over a dog then shot a neighbor who chased him down after the

Ernest Addington had been looking forward to the holiday season. A Desert Storm veteran, he always enjoyed the quiet of home since returning from the Gulf. On a brisk morning in December, Ernie decided that he would visit the pistol range to sharpen up on his skills that had become rusty since he had retired from the Corps. However, he would never make it to the range that day and he would spend the next year and half clearing his name for an incident in which he was only defending himself.

In Ernie's rustic neighborhood in rural Orange County, there had been a nest of meth manufacturers, dealers and users that Ernie and others had been actively trying to put out of business. One of these individuals took it upon himself to confront Ernie and to provoke a fight. When the individual appeared to be reaching for a weapon in the glove box of his car, Ernie fired a warning shot from the pistol he was