

CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT,  
DIVISION EIGHT

People v. Orozco

Orozco · No. B329413 · Decided September 10, 2025

SUMMARY

The California Court of Appeal affirmed Daniel Orozco’s convictions for murder and attempted murder but reversed his conviction for conspiracy to commit murder. The court held that the conspiracy charge was improperly added because the preliminary-hearing evidence, excluding a suppressed confession, did not establish an agreement to commit murder. The court rejected Orozco’s ineffective-assistance, prosecutorial-misstatement, cumulative-error, and sentencing-notice arguments, and remanded for further proceedings.

CASE DETAILS

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| COURT                 | California Court of Appeal, Second Appellate District, Division Eight                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| WRITING FOR THE COURT | Wiley, J.; Stratton, P. J.; Viramontes, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| JURISDICTION          | California Court of Appeal, Second Appellate District, Division Eight                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| DECIDED               | September 10, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| DOCKET                | B329413                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| PROCEDURAL POSTURE    | Appeal from a judgment of conviction in the Los Angeles County Superior Court. The Court of Appeal affirmed the murder and attempted murder convictions, reversed the conspiracy conviction, and remanded.                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| STANDARD OF REVIEW    | The court stated that the conspiracy-count amendment was error under any standard. It reviewed ineffective-assistance claims under the requirement that counsel's performance be deficient and prejudicial, with deficient performance ordinarily reviewable on direct appeal only when the record shows no rational tactical purpose, counsel was asked for a reason and failed to provide one, or no satisfactory explanation could exist. The court assumed prosecutorial-misstatement error and concluded it was harmless under any standard of review. The pleading and sentencing claim was forfeited for lack of a timely objection. |
| PRECEDENTIAL VALUE    | Published and certified for publication                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

## TOPICS

criminal procedure

appellate procedure

ineffective assistance

sentencing

preservation of error

## PRACTICE AREAS

criminal law

criminal procedure

appellate practice

## QUESTIONS PRESENTED

1. Whether the superior court could add a conspiracy-to-commit-murder count to the information immediately before trial when the preliminary-hearing evidence, after suppression of a codefendant's confession, did not establish the conspiracy.
2. Whether trial counsel rendered ineffective assistance by introducing the suppressed confession at trial.
3. Whether the prosecutor misstated the law of premeditation and deliberation during argument and, if so, whether the error affected the verdict.
4. Whether cumulative error required reversal.
5. Whether the omission of a willful, deliberate, and premeditated allegation from the attempted-murder count rendered Orozco's life sentence unauthorized despite his failure to object.

## HOLDINGS

1. The trial court erred by allowing the prosecution to add the conspiracy-to-commit-murder count because the evidence presented at the preliminary hearing, with the suppressed confession excluded, did not support the required element of an agreement to kill.
2. Trial counsel was not ineffective because introducing the confession was a rational tactical decision to support the only viable intoxication defense in light of overwhelming evidence of guilt.
3. Even assuming the prosecutor misstated the law by using rapid-decision examples to explain premeditation and deliberation, the assumed error could not have affected the verdict.
4. Cumulative error did not require reversal because the conspiracy-count amendment was the only error identified by the court.
5. Orozco forfeited the challenge to his seven-years-to-life attempted-murder sentence because he had adequate notice of the prosecution's theory and potential sentence but failed to object to the pleading defect.

## KEY QUOTATIONS

*"This element required evidence Orozco agreed to kill someone."* (p. 5)

*"This evidence does not show Orozco agreed that someone in his group of four would kill a human being on the night in question."* (p. 6)

*“It is effective assistance of counsel to take a long shot when it is your only shot.”* (p. 9)

*“Houston held defendants forfeit this claim of an unauthorized sentence when they receive “adequate notice” of the sentence they face.”* (p. 14)

## FACTUAL BACKGROUND

Orozco and three other men drove into rival gang territory in Orozco's car, where a shooter using Orozco's gun wounded Kevin Garcia and later killed Bryan Mares. Police quickly located the group, the car, the gun, ammunition, and related evidence, and Orozco's phone data placed him at the shooting locations. A codefendant confessed after officers delayed Miranda warnings, but the magistrate suppressed that confession at the preliminary hearing. At trial, Orozco's attorney introduced the suppressed confession as support for an intoxication defense.

## PROCEDURAL HISTORY

At the preliminary hearing, the magistrate suppressed a codefendant's confession because Miranda warnings were delayed, but held Orozco to answer for murder and attempted murder. Shortly before trial, the superior court granted the prosecution's motion to amend the information to add conspiracy to commit murder. A jury convicted Orozco of murder, attempted murder, and conspiracy; the superior court imposed an aggregate sentence of 22 years to life. On appeal, the court reversed the conspiracy conviction and affirmed the remaining convictions and sentence challenged on appeal.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion after reversal of the conspiracy conviction. The murder and attempted-murder convictions remain affirmed.

## CASES CITED

- Miranda v. Arizona (1966) 384 U.S. 436
- People v. Calhoun (2019) 38 Cal.App.5th 275, 303
- Jones v. Superior Court (1971) 4 Cal.3d 660, 666-667
- People v. Ware (2022) 14 Cal.5th 151, 168
- People v. Johnsen (2021) 10 Cal.5th 1116, 1165
- People v. Mai (2013) 57 Cal.4th 986, 1009
- People v. Houston (2012) 54 Cal.4th 1186, 1225-1229
- People v. Anderson (2020) 9 Cal.5th 946, 962-964
- People v. Perez (2017) 18 Cal.App.5th 598

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