

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT,
DIVISION THREE

People v. Richee

No. G062770 · No. G062770 · Decided May 20, 2025

SUMMARY

The California Court of Appeal held that the trial court improperly instructed the jury on natural-and-probable-consequences theories of murder and attempted murder and failed to instruct on the elements of a drive-by special-circumstance allegation. The instructional error required reversal of the attempted-murder convictions but was harmless beyond a reasonable doubt as to the murder convictions and special-circumstance findings. The court also rejected Andre Richee’s evidentiary challenge and remanded for further proceedings.

CASE DETAILS

COURT	California Court of Appeal, Fourth Appellate District, Division Three
WRITING FOR THE COURT	O’Leary, P. J.; Motoike, J.; Moore, J.
JURISDICTION	California Court of Appeal, Fourth Appellate District, Division Three
DECIDED	May 20, 2025
DOCKET	G062770
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed from Riverside County Superior Court judgments convicting them of first degree murder, attempted murder, and related special-circumstance findings. The Court of Appeal affirmed the murder convictions, reversed the attempted-murder convictions, vacated the sentences, and remanded for further proceedings.
STANDARD OF REVIEW	Instructional-error claims are reviewed de novo, considering the challenged instruction in the context of the instructions as a whole and the trial record. Constitutional instructional errors involving legally invalid theories or omitted elements are reviewed for harmlessness beyond a reasonable doubt when the error does not vitiate all of the jury’s findings. Evidentiary rulings are reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published

PARTIES

Andre Dimitri Richee, Lee Albert Mooring v. The People

TOPICS

jury instructions

lesser included offense instructions

criminal procedure

harmless error

preservation of error

PRACTICE AREAS

criminal procedure

jury instructions

appellate procedure

evidence

constitutional law

QUESTIONS PRESENTED

1. Whether the trial court prejudicially erred by instructing the jury that defendants could be convicted of murder and attempted murder under the natural and probable consequences doctrine.
2. Whether the natural-and-probable-consequences instructional error was harmless beyond a reasonable doubt as to the murder convictions and the attempted-murder convictions.
3. Whether the trial court prejudicially erred by failing to instruct the jury on the elements of the drive-by special circumstance under Penal Code section 190.2, subdivision (a)(21).
4. Whether the omission of the drive-by-special-circumstance elements required automatic reversal or was harmless beyond a reasonable doubt.
5. Whether the trial court abused its discretion by admitting Richee's girlfriend's testimony recounting his statement that he had done it.

HOLDINGS

1. The trial court erred by instructing the jury under CALCRIM No. 417 that defendants could be convicted of murder or attempted murder when those offenses were natural and probable consequences of a conspiracy's common plan. California legislation eliminated the natural and probable consequences theory for murder and attempted murder, and valid liability theories require the defendant's own legally sufficient mental state and participation in the charged offense.
2. The instructional error was not harmless beyond a reasonable doubt as to the attempted-murder convictions, which must be reversed.
3. The instructional error was harmless beyond a reasonable doubt as to the murder convictions, which were affirmed.
4. The trial court erred by failing to instruct the jury on the elements of the drive-by special circumstance under Penal Code section 190.2, subdivision (a)(21).
5. The omission of the drive-by-special-circumstance elements was subject to harmless-error review and was harmless beyond a reasonable doubt.
6. The trial court did not abuse its discretion by admitting evidence that Richee's girlfriend told investigators Richee said, 'That he did it.' The evidence was admissible as a party admission, relevant, and sufficiently reliable.

KEY QUOTATIONS

“The trial court’s mishandling of the jury instructions undermined appellants’ rights to a jury trial.” (2)

“Where a jury is instructed on alternate theories of liability, one legally valid and one legally invalid, a federal constitutional error has occurred.” (13)

“The trial court’s failure to instruct on these elements—even after the jury submitted questions showing it was completely in the dark about them—is baffling. It is also a “very serious constitutional error.”” (22)

“Appellants’ convictions for attempted murder are reversed. Their convictions for murder are affirmed. Their sentences are vacated, and the matter is remanded.” (31)

FACTUAL BACKGROUND

On September 7, 2020, a white sedan approached a group gathered in an alley, asked whether they belonged to a gang, left, and returned with its headlights off. Occupants fired at the group from the vehicle, killing Daniel Gonzalez and injuring A.P. and D.M.; police recovered 16 nine-millimeter casings. Surveillance footage placed Richee and Mooring in a matching white car shortly before the shooting, and post-shooting evidence included Richee's girlfriend's report that he said he had done it and evidence that bleach had been poured over clothing. The prosecution primarily relied on identity and argued that coconspirators were equally responsible for the crimes.

PROCEDURAL HISTORY

The Riverside County District Attorney charged Richee and Mooring jointly with murder and two counts of willful, deliberate, and premeditated attempted murder, along with a drive-by special circumstance and firearm-related allegations. After a joint jury trial, the jury returned murder and attempted-murder convictions and true findings on the drive-by special circumstance; it deadlocked on Richee's personal firearm-discharge enhancement. The superior court imposed life-without-parole sentences and additional prison terms. On appeal, defendants challenged jury instructions and Richee separately challenged admission of his girlfriend's account of his statement.

DISPOSITION

other

REMAND INSTRUCTIONS

Attempted-murder convictions are reversed; murder convictions are affirmed; sentences are vacated; and the matter is remanded. The People have 60 days after issuance of the remittitur to decide whether to retry defendants for attempted murder and related allegations or lesser included offenses. After any retrial or decision not to retry, the superior court must resentence defendants, impose any remaining victim restitution jointly and severally, prepare an amended abstract of judgment, and forward a certified copy to the California Department of Corrections and Rehabilitation.

CASES CITED

- People v. Hernandez (2010) 183 Cal.App.4th 1327, 1331
- People v. Mil (2012) 53 Cal.4th 400, 409
- People v. Gomez (2018) 6 Cal.5th 243, 312
- People v. Posey (2004) 32 Cal.4th 193, 218
- People v. Mitchell (2019) 7 Cal.5th 561, 579
- People v. Ramos (2008) 163 Cal.App.4th 1082, 1088
- People v. Thomas (2012) 53 Cal.4th 771, 814
- People v. Superior Court (Decker) (2007) 41 Cal.4th 1, 7
- People v. Luparello (1986) 187 Cal.App.3d 410, 437, 439
- People v. Delgadillo (2022) 14 Cal.5th 216, 223, fn. 3
- People v. Gallegos (2024) 105 Cal.App.5th 434, 440-441
- People v. Perez (2022) 78 Cal.App.5th 192, 204
- People v. Das (2023) 96 Cal.App.5th 954, 960
- People v. Curiel (2023) 15 Cal.5th 433, 462-463
- People v. Valdez (2012) 55 Cal.4th 82, 150
- People v. Juarez (2016) 62 Cal.4th 1164, 1169
- People v. Souza (2012) 54 Cal.4th 90, 120
- In re Lopez (2023) 14 Cal.5th 562, 580, 584-585
- People v. Morales (2024) 102 Cal.App.5th 1120, 1131
- People v. Johnson (2013) 57 Cal.4th 250, 264
- People v. Merritt (2017) 2 Cal.5th 819, 824, 829, 832
- Sullivan v. Louisiana (1993) 508 U.S. 275, 281
- People v. Cummings (1993) 4 Cal.4th 1233
- People v. Yates (2018) 25 Cal.App.5th 474, 484
- People ex rel. Harris v. Black Hawk Tobacco, Inc. (2011) 197 Cal.App.4th 1561, 1567
- People v. Riccardi (2012) 54 Cal.4th 758, 832
- People v. Villasenor (2015) 242 Cal.App.4th 42, 69-70