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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. VERONICA PAZ, Defendant and Appellant.	G038184 (Super. Ct. No. 03CF3338) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, James A. Stotler, Judge. Reversed.

J. Courtney Shevelson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Robin Derman and Steve Oetting, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Veronica Paz and her boyfriend Brandan Perry were charged with murder by lying in wait. Perry was also charged with discharging a firearm that

caused death, and Paz was charged with being vicariously armed. Perry pleaded guilty to first degree murder, in exchange for a dismissal of the lying in wait and firearm allegations. The prosecution then dropped the firearm allegation against Paz. Following an eight-day trial, the jury convicted her of first degree murder and found the lying in wait allegation not true. On appeal, Paz contends the court misinstructed the jury in several respects, and these errors, both individually and collectively, warrant a reversal. The Attorney General concedes some instructional errors occurred. However, he maintains the jury was properly instructed for the most part, and the few errors that did occur were harmless. We find the court's instructional errors deprived Paz of a fair trial and reverse the judgment accordingly.

FACTS

Paz and Perry dated for several years, but their relationship was "on and off," and from time to time they dated other people. One of the people Paz saw was the victim Diego Gonzalez. They worked together at a grocery store, and one night in August 2003, they attended a party together. Perry also went to the party. When he saw Paz with Gonzalez, he confronted them and pushed Gonzalez. He and Gonzalez exchanged threats, and then one of Gonzalez's brothers pulled a gun. At that point, Perry angrily left the scene.

A few weeks later, Perry obtained a handgun, and he and Paz began to formulate a plan to kill Gonzalez. Perry's friend Tommy Medina was also privy to the scheme.[1] Paz said she knew of a secluded location on Hi Top Lane in Orange, where she and Gonzalez sometimes went to smoke marijuana. She suggested that would be a good place to kill Gonzalez.

In October 2003, Paz, Perry, Medina and Cody Conner drove to the desert and practiced shooting with Perry's gun. According to Perry, they also talked about

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1 Medina pleaded guilty to being an accessory after the fact.

burying Gonzalez in the desert, and Paz agreed that was a good idea. However, Medina and Conner testified there was no such talk during the trip.

Over the next few weeks, Perry's handgun became the subject of increasing bravado on his part, and Paz seemed anxious for him to kill Gonzalez. One evening, Perry pulled up next to Gonzalez while Gonzalez was sitting in his car. Perry flashed his gun and told Gonzalez he was not the only one that had a weapon, but did not pull the trigger. A few days later, on November 8, Perry heard that Preston Williams had been out with Paz and confronted him with his gun. Again, however, Perry backed down, and nothing came of the incident.

The following night, on November 9, 2003, Gonzalez called Paz to see if she wanted to get together. Paz agreed, but not for the reason Gonzalez expected, i.e., to have sex. Rather, Paz and Perry thought this would be a good time to carry out their murderous scheme. They planned to have Paz drive Gonzalez to Hi Top Lane and smoke marijuana with him. Then, while they were getting high, Perry would come up and shoot Gonzalez.

In many ways, the scheme went according to plan. Paz picked up Gonzalez at his house and drove him to Hi Top Lane, where they parked and smoked. Perry then approached them and pointed his gun at Gonzalez. Gonzalez grabbed for the weapon, but Perry was able to retain it and get Gonzalez out of the vehicle. As they were standing about 15 feet apart, Perry warned Gonzalez not to move. When Gonzalez stepped forward, Perry shot him in the head. Paz then told Perry to make sure he was dead, so he walked up to Gonzalez and shot him again at point-blank range. After that, as Robert Burns would have predicated, this well-laid plan went "agley."

Paz began wiping away her footprints and suggested they take Gonzalez to the desert. However, his body was too heavy for them to move. Perry then tried to light Gonzalez on fire, and when that didn't work, they went to get some gasoline. When they returned, Perry doused Gonzalez with the fuel and set him ablaze. The next day, he and

Medina returned to the area to get rid of the body. However, by that time, the police were there, so they turned around.

Over the next few days, Paz spoke to the police several times. Although she made no effort to hide her disdain for Gonzalez, she initially denied knowing anything about his murder. Eventually, though, she admitted driving Gonzalez to Hi Top Lane so Perry could confront him there. She also admitted that she knew Perry always carried a gun and that on the night of the killing, Perry, speaking of Gonzalez, said he was going to make sure "that motherfucker gets his." Paz insisted, however, she had no idea Perry was going to shoot Gonzalez; rather, she thought Perry was just going to beat him up. She steadfastly denied wanting Gonzalez dead.

In closing argument, the prosecutor asserted Gonzalez was murdered in the first degree. The murder component was satisfied, he said, because Perry specifically intended to kill Gonzalez. And there were two independent reasons why the murder was of the first degree: 1) Perry acted with premeditation, and 2) the murder was committed by lying in wait. The prosecutor argued Paz was guilty of first degree murder under aiding and abetting and conspiracy principles, including the natural and probable consequences doctrine.

The jury convicted Paz of first degree murder and found the special circumstance allegation of lying in wait not true. Thereupon, the court sentenced Paz to 25 years to life in prison.

I

Paz contends the court's jury instructions were materially flawed because they allowed the jury to convict her of first degree murder solely on the basis that Perry acted with premeditation. The Attorney General argues this contention is "ludicrous," considering the instructions as a whole, but it is not clear to us. Rather, we agree with Paz that the court instructed the jury on a legally incorrect theory of first degree murder.

Because we cannot determine from the record whether the jury relied on this incorrect theory, Paz's conviction cannot stand.

The trial court instructed the jury on first degree murder pursuant to CALCRIM Nos. 520 and 521. CALCRIM No. 520 states the prosecution must prove "the defendant" acted with malice aforethought in order to be guilty of murder. And CALCRIM No. 521 provides that a murder is in the first degree if "the defendant" acted with premeditation or murdered while lying in wait. However, because Paz was not the actual killer, the trial court substituted "the perpetrator" for "the defendant" at many places throughout these instructions. As given, the instructions stated:

"The defendant is charged with murder. To prove that the defendant is guilty of this crime, the People must prove that: [¶] 1. *The perpetrator* committed an act that caused the death of another person; and [¶] 2. When *the perpetrator* acted, he or she had a state of mind called malice aforethought. [¶] . . . [¶] *The perpetrator* acted with express malice if he or she unlawfully intended to kill. [Malice further explained.] . . .

"If you decide that the defendant has committed murder, you must decide whether it is murder in the first or second degree. [¶] The defendant has been prosecuted for first degree murder under two theories: [¶] 1. The murder was willful, deliberate, and premeditated. [¶] 2. The murder was committed while lying in wait or immediately thereafter. [¶] . . . [¶] You may not find the defendant guilty of first degree murder unless all of you agree that the People have proved that the defendant committed murder. But all of you need not . . . agree on the same theory. [¶] A. *The perpetrator* is guilty of first degree murder if the People have proved that he or she acted willfully, deliberately, and with premeditation. [Premeditation explained.] [¶] B. *The perpetrator* is guilty of first degree murder if the People have proved that the perpetrator murdered while lying in wait or immediately thereafter." (Italics added to show where the court substituted *perpetrator* for *defendant*.)

So worded, the court's instructions allowed the jury to convict Paz of first degree murder if *the perpetrator* acted with malice and *the perpetrator* acted with premeditation or murdered while lying in wait. During deliberations, the jury sent the court a note asking who the perpetrator was, and the court told them it was Perry. Taken together then, the court's instructions permitted the jury to convict Paz of first degree murder if it found Perry committed that offense.

The Attorney General does not dispute this. Nor does he dispute that it would have been improper for the jury to convict Paz of first degree murder based solely on the fact Perry committed that offense. However, he maintains that in light of everything the jurors were told, it is not reasonably likely they actually convicted Paz on this basis. (See *People v. Rogers* (2006) 39 Cal.4th 826, 873; *People v. Musselwhite* (1998) 17 Cal.4th 1216, 1248; and *People v. Andrade* (2000) 85 Cal.App.4th 579, 585, which explain that in considering a claim of instructional error, a reviewing court must look at the entire record to determine whether there is a reasonable likelihood the jury understood the challenged instructions in a way that violated the defendant's rights.)

The Attorney General puts forth several arguments in support of this position. First, he contends, "The jury would never have interpreted the instructions as allowing it to find [Paz] guilty without the need to consider any of the theories of derivative liability with which the court instructed. To do so would not only have been nonsensical, as it would have resulted in everyone in the world being guilty as well, but it would also have rendered superfluous the instructions on vicarious liability as an aider and abettor or co-conspirator."

However, the court's instructions did not pertain to everyone in the world. The court specifically instructed, "*The defendant* is charged with murder. To prove that *the defendant* is guilty of this crime, the People must prove that: [¶] 1. The perpetrator committed an act that caused the death of another person; and [¶] 2. When the perpetrator acted, he or she had a state of mind called malice aforethought." (Italics added.) The

court also told the jurors, "If you decide that *the defendant* has committed murder, you must decide whether it is murder of the first or second degree." It then described the two theories of first degree murder that "*the defendant* has been prosecuted for," namely premeditation and lying in wait. (Italics added.) By their terms, these instructions properly focused the jury on the issue of the defendant's, i.e., Paz's, culpability. The instructions were not so open-ended as to suggest anyone else, let alone "the rest of the world," was on trial in this case.

The Attorney General is correct that the jury would not have had to bother with the instructions on aiding and abetting and conspiracy had it opted to convict Paz based on the court's erroneous murder instructions. In that sense, the instructions on derivative liability may have been superfluous. However, the jury was told that some of the instructions it was provided with may not apply. That gave the jurors the prerogative of adopting some instructions over others. That is not uncommon when a case is tried on multiple theories of liability.

The trick is to try to ascertain how the jury actually went about convicting Paz. The Attorney General assumes the jury would have been wise enough to know the court's instructions on aiding and abetting and conspiracy would trump the erroneous instructions on murder. In other words, the jury would have been able to look at the various legal theories of culpability and pick the ones that were correct. Jurors are presumed to be intelligent people who are capable of understanding and following the trial court's instructions. (*People v. Mickey* (1991) 54 Cal.3d 612, 689, fn. 17.) But "'[j]urors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law . . . . When, therefore, jurors have been left with the option of relying upon a legally inadequate theory, there is no reason to think that their own intelligence and expertise will save them from that error.' [Citation.]" (*People v. Guiton* (1993) 4 Cal.4th 1116, 1125, quoting *Griffin v. United States* (1991) 502 U.S. 46, 59.) In this case, not even the judge or the attorneys were able to detect the

legal error that was created by virtue of the substitution of wording in the murder instructions, so it would be beyond presumptuous to conclude that the jury was able to do so.

The Attorney General also argues that "[h]ad the jury interpreted the instructions [to require only that Perry committed murder], it would have convicted [Paz] immediately upon receiving the court's response to the jury note. After all, Perry admitted that he murdered Gonzalez, and that he had deliberated and premeditated that murder." Instead, the jury deliberated for two more days, which the Attorney General views as proof that "the jury did not interpret the instructions in such a nonsensical manner." We might see it the same way if Paz had not been charged with the special circumstance allegation of lying in wait. That allegation complicated matters in that it required the jury to make a separate determination on whether Paz had the intent to kill. (See *People v. Stevens* (2007) 41 Cal.4th 182, 202, fn. 11 ["first degree murder by lying in wait does not require an intent to kill while the special circumstance based on that theory does"].) It is quite possible the jury convicted Paz of first degree murder on the incorrect theory that Perry murdered Gonzalez and then spent the rest of its time deciding whether Paz had the requisite intent to satisfy the lying in wait allegation. That makes the length of deliberations of little value in determining what effect the erroneous murder instructions had on the jury's verdict.

Lastly, the Attorney General argues that "the prosecutor thoroughly explained the need to find [Paz] either directly responsible or vicariously liable as an aider and abettor or co-conspirator." The prosecutor did cover the issue of Paz's liability under aiding and abetting and conspiracy principles. But that did not cure the error because nothing he said contradicted the court's faulty instructions which permitted the jury to convict Paz of first degree murder solely on the basis that Perry murdered Gonzalez with premeditation. In fact, the prosecutor made *Perry's* intent a central theme of his closing argument. At one point, he even told the jury, "This is a murder in the first

degree case because . . . we had the premeditation and deliberation by *Brandan Perry*." (Italics added.) In so arguing, the prosecutor inadvertently exacerbated the court's erroneous instructions that Paz could be convicted of first degree murder simply because Perry murdered Gonzalez with premeditation.

That was a legally erroneous theory of liability, notwithstanding the other theories that were presented to the jury, and notwithstanding the strong evidence of Paz's complicity in Gonzalez's murder. Even though there was substantial evidence to support the prosecution's theories of the case, the court's core instructions on murder were legally flawed on a fundamental level. And we know from the jury's question that it was focused on these very instructions. Under these circumstances, we cannot easily dismiss the court's instructional error, even though the People had a strong case.

Indeed, when, as here, the jury is instructed on alternate theories of liability, some of which are legally correct and others which are not, a reversal is required unless there is a basis in the record to conclude the jury actually based its verdict on a legally correct theory. (*People v. Guiton*, *supra*, 4 Cal.4th at p. 1129; see, e.g., *People v. Lewis* (2008) 43 Cal.4th 415, 464 [if any of the prosecution's theories of first degree murder is legally invalid, reversal is required unless the record affirmatively shows the jury based its verdict on a legally valid theory].) We can discern nothing in the record to suggest the jury based its verdict on a legally correct theory. For that reason alone, Paz's conviction must be reversed.

II

The court also gave a legally erroneous instruction on the issue of premeditation. Over defense objection, the court told the jurors, "If you find the defendant guilty of murder as an aider and abettor as I have defined it to you, in order for the premeditation and deliberation allegation to be true, it is not required that the defendant personally premeditate and deliberate the murder as long as the actual perpetrator of the murder acted with premeditation and deliberation."

As the Attorney General concedes, this instruction was erroneous because when a defendant is tried for first degree premeditated murder under an aiding and abetting theory, the prosecution must show either that the defendant shared the premeditative mindset of the perpetrator, or that premeditated murder was a foreseeable consequence of a target offense. (See *People v. McCoy* (2001) 25 Cal.4th 1111, 1117-1118; *People v. Woods* (1992) 8 Cal.App.4th 1570, 1583-1584; compare *People v. Lee* (2003) 31 Cal.4th 613 [based on specific language of attempted murder statute, defendant need not personally premeditate to be subject to increased punishment for *attempted* premeditated murder].) As the subject instruction failed to convey either of these requirements to the jury, it was erroneous.

The Attorney General urges us to find this error harmless under the standard of review set forth in *Chapman v. California* (1967) 386 U.S. 18. *Chapman* teaches that "before a federal constitutional error can be held harmless, the court must be able to declare a belief that it was harmless beyond a reasonable doubt." (*Id*. at p. 24.) However, that standard does not apply when, as here, the court's instructions allow the jury to convict the defendant on an incorrect legal theory. In that situation, the error is reviewed pursuant to the dictates of *People v. Guiton, supra,* 4 Cal.4th 1116.

"*Guiton* . . . instructs that if a jury is presented with multiple theories supporting conviction on a single charge and on review one theory is found legally defective, that is, the theory does not present a legally sufficient basis for conviction, reversal is required unless substantial reasons exist to find that the verdict was based on a legally valid theory. This is so since it is not presumed a jury will perceive the legal inadequacy of a theory and reject it as a basis for conviction. [Citation.]" (*People v. Llamas* (1997) 51 Cal.App.4th 1729, 1740.)

Here, the jury was presented with two theories of first degree murder, premeditation and lying in wait. But, as explained above in section I, the premeditation theory was legally flawed because the court's instructions permitted a finding of first

degree murder based solely on a finding that Perry premeditated. Given that "the jury was misinstructed concerning an element of [first degree murder] . . . [w]e cannot presume the jury would have perceived this legal defect and based its verdict solely on the remaining theory of guilt." (*People v. Llamas, supra,* 51 Cal.App.4th at p. 1741.) Instead, we must reverse the jury's decision fixing the degree of murder as in the first degree, unless the record affirmatively shows the jury based its decision on the remaining theory of lying in wait. (*People v. Guiton, supra,* 4 Cal.4th at p. 1129; *People v. Lewis, supra,* 43 Cal.4th at p. 464.) There being no such evidence in the record, the jury's decision fixing the degree of murder as first would have to be reversed, were we not already reversing Paz's conviction for the reasons set forth in section I of this opinion.

III

Lastly, Paz takes aim at the court's instructions on conspiracy. While not all of his arguments are on the mark, it does appear that the court's conspiracy instructions were materially flawed in some respects.[2]

The primary instruction under attack is CALCRIM No. 416, which sets forth the requirements for an uncharged conspiracy. Pursuant to that instruction, the court told the jury, "The People have presented evidence of a conspiracy to commit murder. A member of a conspiracy is criminally responsible for the acts or statements of any other member of the conspiracy done to help accomplish the goal of the conspiracy. [¶] To prove that the defendant was a member of a conspiracy to commit murder in this case, the People must prove that: [¶] 1. The defendant intended to agree and did agree with Brandan Perry to commit murder; [¶] 2. At the time of the agreement, the defendant and Brandan Perry intended that one of them would commit murder; [¶] 3. The defendant

[2] Given that Paz's conviction must be reversed on other grounds, our discussion of the conspiracy instructions is offered to provide guidance to the trial court, should the prosecution exercise its prerogative to retry Paz.

or Brandan Perry or both of them committed at least one overt act to accomplish murder; and [¶] 4. At least one of these acts was committed in California.

"To decide whether the defendant and Brandan Perry intended to commit murder, please refer to the separate instructions that I will give you on that crime. [¶] The People must prove that the members of the alleged conspiracy had an agreement and intent to commit murder. The People do not have to prove that any of the members of the alleged conspiracy actually met or came to a detailed or formal agreement to commit that crime. [¶] An agreement may be inferred from conduct if you conclude that members of the alleged conspiracy acted with a common purpose to commit the crime. . . ."

Relying on *People v. Owens* (1994) 27 Cal.App.4th 1155, Paz argues the first sentence of this instruction improperly implied the prosecution had, in fact, proven the existence of a conspiracy to commit murder.[3] In *Owens*, the trial court instructed the jury the People had introduced evidence "tending to prove" the elements of the charged offense. (*Id*. at p. 1158.) On appeal, the *Owens* court condemned this verbiage, believing it effectively affirmed the prosecution's proof and suggested the charged offense had been established beyond a reasonable doubt. (*Id*. at pp. 1158-1159.)

The opening sentence of CALCRIM No. 416 does not intimate as much. While it acknowledges the existence of conspiracy evidence, it does not imply the prosecution has met its burden of proving the elements of a conspiracy beyond a reasonable doubt. Moreover, the body of the instruction uses the word "alleged" in describing the subject conspiracy. This reinforces the notion that it is up to the jury to decide whether a conspiracy has been proven. Considering CALCRIM No. 416 in its entirety, we do not believe it "improperly tipped the scale in the prosecution's direction," as Paz contends.

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[3] The Attorney General asserts Paz waived this argument by failing to challenge the instruction in the trial court. However, as Paz points out, even in the absence of an objection, we may review instructional claims, such as this one, that bear on the substantial rights of a defendant. (Pen. Code, § 1259.)

Paz also asserts the court erred in failing to instruct that a conspiracy to commit murder requires proof of a specific intent to kill. This is a valid point. As set forth above, the jury was instructed that to prove Paz conspired to commit murder, the People had to show she "intended to agree and did agree with Brandan Perry to commit murder." The court then referred the jurors to the instructions on murder to determine whether Paz and Perry intended to commit that offense. Those instructions explained that murder requires malice and that there are two kinds of malice, express and implied. Express malice was defined as the intention to unlawfully kill, and implied malice as the intentional commission of an act which is naturally dangerous to human life and is undertaken with both knowledge of, and conscious disregard for, such danger.

These instructions allowed the jury to find Paz conspired to commit murder based on the theory of implied malice. However, in *People v. Swain* (1996) 12 Cal.4th 593, the California Supreme Court determined that a conspiracy to commit murder cannot be based on implied malice because implied malice is imputed after a killing has resulted from an act that is dangerous to human life, whereas conspiracy liability stems from the very agreement to commit a crime. (*Id*. at p. 603.)

The Attorney General recognizes as much. However, he claims the jury could not have found that Paz conspired to commit murder based on the theory of implied malice because, in addition to the above instructions, the jury was instructed on the concurrence requirement for the crime of murder. Specifically, the jury was told that to be guilty of murder, "a person must not only intentionally commit the prohibited act . . . , but must do so with a specific intent or mental state. [¶] The act and the intent or mental state required are explained in the instruction[s] for [murder]." (See CALCRIM No. 251.)

Based on this instruction, the Attorney General posits "the jury could not have found [Paz] guilty under a theory of conspiracy to commit murder without finding that she had the intent to commit murder — that is, express malice." That would be true

if the concurrence instruction spoke only in terms of specific intent, because that would have focused the jury on the concept of express malice. (See *People v. Swain, supra*, 12 Cal.4th at p. 600 [equating the specific intent to kill with express malice].) However, the concurrence instruction alludes to "specific intent *or* mental state" (italics added) as those terms are explained in the murder instructions. And as described in section I above, those instructions talk about both the specific intent to kill, express malice, *and* the mental state required for implied malice. So, contrary to the Attorney General's position, the concurrence instruction did not cure the problem created by the court's other instructions. Instead, it actually enhanced the danger that the jury would find Paz responsible for conspiracy to commit murder on the theory of implied malice.

The Attorney General also points out that under the court's murder instructions, the intent to kill was included as a necessary element of first degree premeditated murder. (See CALCRIM No. 521.) However, as we have explained, the jury was improperly allowed to convict Paz of first degree premeditated murder based on the fact that *the perpetrator, i.e., Perry*, acted with premeditation. Since the jury did not have to find that Paz acted with premeditation, it doesn't matter that the intent to kill was encompassed in the court's instructions on premeditation. We cannot assume the jury found that Paz harbored the intent to kill for purposes of conspiracy liability based on a murder instruction that focused on the perpetrator Perry.

Alternatively, the Attorney General argues the jury would have been able to figure out that the mental state for implied malice is incompatible with the intent required for a murder conspiracy. But it is quite evident from the *Swain* decision that this is a nuanced point of law. And, of course, the jurors did not have the *Swain* decision available to them during their deliberations. We cannot presume the jury was able to ascertain on its own what the *Swain* court took great lengths to explain in its opinion. (See *People v. Swain, supra*, 12 Cal.4th at pp. 599-607.)

Still, the Attorney General argues the inclusion of this improper theory of conspiracy liability was harmless because the prosecution did not rely on the theory of implied malice in closing argument. Instead, the prosecutor focused on the specific intent to kill, which is express malice. True, but the prosecutor argued Perry was the one who possessed such intent, not Paz. And although the specific intent to kill was a requirement for the special circumstance of lying in wait, the jury found that allegation not true. On this record, we cannot say beyond a reasonable doubt that the erroneous reference to implied murder in the court's conspiracy instructions did not contribute to the jury's verdict. Therefore, we cannot characterize the error as harmless. (See *People v. Swain, supra,* 12 Cal.4th at p. 607.)

Lastly, Paz contends the court failed to provide complete instructions on the natural and probable consequences theory of conspiracy. Once again, we agree.

After instructing on the requirements for a conspiracy to commit murder, the trial court told the jury: "A member of a conspiracy is criminally responsible for the crimes that he or she conspires to commit . . . [and] for any act of any member of the conspiracy [which] is done to further the conspiracy [if] that act is a natural and probable consequence of the common plan or design of the conspiracy." (See CALCRIM No. 417.) The court further explained that in order to demonstrate Paz's guilt of murder under the natural and probable consequences doctrine of conspiracy law, the People must prove she conspired to commit one of the following crimes, brandishing a firearm, assault with a deadly weapon or assault with force likely to cause great bodily injury. The court went on to define each of these target offenses, but it did not tell the jury what was required to find that Paz conspired to commit them. Nor did it provide any instructions on the general requirements for conspiracy.

The Attorney General does not see this as a problem because in giving CALCRIM No. 416, the court instructed the jury on what was required to find that Paz conspired to commit murder. According to the Attorney General, "[i]n order to

determine whether the requirements of a conspiracy were satisfied [for the target offenses], the jury would naturally have turned to CALCRIM No. 416, simply substituting the target offense for the word 'murder.'"

Again, this seems like a stretch. The jurors in this case were never told, nor was it ever suggested to them, the instructions on conspiracy to commit murder had anything to do with the requirements for a conspiracy to commit any of the target offenses. To say that the jurors would have somehow figured out that the basic conspiracy requirements for the charged and target offenses were one in the same seems to us to impute too much legal knowledge to the jurors. Despite their presumed ability to understand and correlate instructions, we must remember that juries are comprised of laypersons unschooled in the finer points of the law. (See *People v. Consuegra* (1994) 26 Cal.App.4th 1726, 1732.) Due to the length and complexity of the instructions in this case, we cannot assume the jury interpreted the court's conspiracy instructions in the manner suggested by the Attorney General.

In the end, we are unable to conclude the jury's verdict rests on a proper understanding of the legal principles applicable in this case. The instructional errors invited the jury to convict Paz on improper legal theories and without regard to her personal culpability, thus undermining her right to a fair trial. Therefore, her conviction cannot stand.

DISPOSITION

The judgment is reversed.

BEDSWORTH, J.

WE CONCUR:

SILLS, P. J.

IKOLA, J.