

No. S272627

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

RODNEY TAUREAN LEWIS,
Defendant and Appellant.

Fourth Appellate District, Division Three, Case No. G060049
Santa Clara County Superior Court, Case No. B1366626
The Honorable Vincent J. Chiarello, Judge

**RESPONSE TO APPELLANT'S MOTION TO DEFER BRIEFING
AND DECISION**

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July 13, 2022

On July 11, 2022, appellant moved to defer briefing and decision (“Mot.”). He contends that “the harmless error analysis in this case will be governed by the Court’s decision” in *In re Lopez*, review granted January 20, 2020, S258912. (Mot. 5, style altered.) *Lopez* presents the following two issues: “(1) Does a true finding on a gang-killing special circumstance (Pen. Code, § 190.2, subd. (a)(22)) render *Chiu* error (*People v. Chiu* (2014) 59 Cal.4th 155) harmless?” and “(2) To what extent or in what manner, if any, may a reviewing court consider the evidence in favor of a legally valid theory in assessing whether it is clear beyond a reasonable doubt that the jury based its verdict on the valid theory, when the record contains indications that the jury considered the invalid theory? (See *People v. Aledamat* (2019) 8 Cal.5th 1.)” *Lopez* is fully briefed.

Respondent takes no position on appellant’s motion and defers to the Court’s management of its docket. However, respondent notes that this case does not present a single issue involving whether any instructional error was harmless. The issues also include “[w]hether the instructions as a whole correctly conveyed the quantum of force required for kidnapping for rape when an adult victim is incapable of consenting to the movement” and whether “substantial evidence supported the force element of kidnapping so that retrial is not barred under the double jeopardy clause.” As to the issue of error, respondent has not conceded that there was instructional error. (OBM 33-36.) Appellant suggests otherwise, asserting that respondent “agrees ‘that it was improper for the trial court to instruct the

jury it could find that appellant asported Doe by force “or deception” but contends any error was harmless.” (Mot. 5-6.) Respondent agrees that it was improper to use the “or deception” language in the instruction (see OBM 29) but maintains that the instructions as a whole were not erroneous (see OBM 32). And with respect to the issue of retrial, respondent explained in the opening brief that retrial is not barred under the double jeopardy clause. (OBM 44.)

Respectfully submitted,

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July 13, 2022

DECLARATION OF ELECTRONIC SERVICE

Case Name: *People v. R. Lewis*

No.: **S272627**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically

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Criminal Division - Hall of Justice
Attention: Criminal Clerk's Office
sccappeals@scscourt.org

Sixth Appellate District
Court of Appeal of the State of
California
Sixth.District@jud.ca.gov

The Honorable Jeffrey F. Rosen
District Attorney
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Sixth District Appellate Program
Attn: Executive Director
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 13, 2022, at San Francisco, California.

J. Espinosa
Declarant

/s/ **J. Espinosa**
Signature

SF2022400366

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v.
LEWIS**

Case Number: **S272627**

Lower Court Case Number: **G060049**

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Date

/s/Arthur P. Beever

Signature

Beever, Arthur P. (242040)

Last Name, First Name (PNum)

California Dept of Justice, Office of the Attorney General

Law Firm