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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. RICHARD JOSEPH LOPEZ, Defendant and Appellant.	B250326 (Los Angeles County Super. Ct. No. YA083948)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark S. Arnold, Judge. Affirmed.

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Marilyn Weiss Alper, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Yun K. Lee and Douglas L. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

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An information, filed on September 6, 2012, charged Richard Joseph Lopez with the felony offense of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2, subd. (a)) and the misdemeanor crime of willful endangerment of the health of a child (Pen. Code, § 273a, subd. (b)). The information specially alleged that Lopez had a prior conviction for assault under Penal Code section 245, subdivision (a)(1), that qualified as a strike under the "Three Strikes" law (Pen. Code, §§ 667, subd. (b)-(i), 1170.12, subd. (a)-(d)) and had served one prior prison term within the meaning of Penal Code section 667.5, subdivision (b). A jury found Lopez guilty of both counts. Lopez admitted that he had a prior strike conviction and had served a prior prison term subjecting him to a Penal Code section 667.5, subdivision (b), enhancement. The court sentenced Lopez to state prison for five years, consisting of the mid-term of two years for the violation of Vehicle Code section 2800.2, subdivision (a), doubled pursuant to the Three Strikes law, plus one year for the prior prison term under Penal Code section 667.5, subdivision (b). The court imposed a concurrent county jail term of 180 days for the violation of Penal Code section 273a, subdivision (b), to be served in any facility. Lopez timely appealed, raising instructional, evidentiary, substantial evidence, judicial bias and sentencing issues. We reject Lopez's contentions and thus affirm the judgment.

DISCUSSION

1. *The Trial Court's Failure to Instruct Under CALCRIM No. 252 Does Not Require Reversal of the Judgment*

Both Lopez and the People agree that the trial court should have instructed the jury under CALCRIM No. 252 regarding specific intent, rather than CALCRIM No. 250 on general intent, because the Vehicle Code section 2800.2, subdivision (a), offense is a specific intent crime requiring the "intent to evade." The question is whether the court's failure to give CALCRIM No. 252 constitutes reversible error. Under the circumstances of this case, we conclude that it is not.

The distinction between general and specific intent here is of consequence only if the jury could have convicted Lopez of violating Vehicle Code section 2800.2,

subdivision (a), without concluding that he had the intent to evade the officers. (See *People v. Lyons* (1991) 235 Cal.App.3d 1456, 1460.) Although the trial court gave CALCRIM No. 250, the general intent instruction, not CALCRIM No. 252, the specific intent instruction, it instructed on the substantive elements of the crime under CALCRIM No. 2181. Through that instruction, the court told the jurors, among other things, that to convict Lopez of a violation of Vehicle Code section 2800.2, subdivision (a), the People had to prove that "[t]he defendant, who was also driving a motor vehicle, willfully fled from, or tried to elude, the officer, *intending to evade the officer*." (Italics added.) It directed the jury under CALCRIM No. 225 that "[t]he instruction for each crime explains the intent required." And it instructed the jury under CALCRIM No. 220 that, "Whenever I tell you the People must prove something, I mean they must prove it beyond a reasonable doubt . . . ." Based on these instructions, the jury knew that to convict Lopez of violating Vehicle Code section 2800.2, subdivision (a), it had to conclude beyond a reasonable doubt that Lopez had the specific intent to evade the officer. The other instructions, therefore, cured the failure to instruct under CALCRIM No. 252. (*Lyons*, at pp. 1460-1463 [failure to instruct on specific intent "patently harmless" when other substantive instructions told the jury the specific intent required for the offense].)

In addition, the facts of the case demonstrate that the failure to instruct on specific intent under CALCRIM No. 252 was not prejudicial. Lopez, while driving with his nephew and granddaughter in the car, noticed a police car attempting to pull him over with activated overhead lights and siren. He initially pulled to the side of the road as if he were preparing to stop. Two police officers exited their vehicle. When the officers were out of their vehicle, Lopez sped away, leading the officers on a pursuit that lasted two to three minutes and covered two-and-a-half to three miles. Lopez ultimately stopped for the police. At that time his nephew was no longer in the car. Lopez testified that his nephew had a gun in the car and that, because he believed his nephew might engage in a shootout with the police, thereby putting his granddaughter and others at risk, he "felt it was in everybody's best interests for [him] to give [his nephew] a chance to

separate, diffuse the situation by evading." So he put his car in gear and "took off." He saw other traffic on the streets as he drove with the police car behind him, but the officers were initially "right on top of [him]," and "[he] couldn't see the situation unfolding in a favorable way unless [he] gave [his nephew] some room to either get away with at least get the gun out of the picture." He continued to drive away from the officers even after his nephew had thrown the gun from his vehicle. This evidence unequivocally demonstrates that Lopez intended to evade the officers. (*People v. Dollar* (1991) 228 Cal.App.3d 1335, 1344 ["strength of the facts against [defendant]" demonstrates beyond a reasonable doubt that conflicting instructions on general and specific intent were not prejudicial].)

2. *The Trial Court Did Not Err By Rejecting Lopez's Request for a Duress Instruction*

The trial court instructed the jury on the defense of necessity under CALCRIM No. 3403 based on his testimony that he fled from the officers because he was concerned about what his nephew might do with the gun and was worried about the safety of his granddaughter. Lopez requested instruction under CALCRIM No. 3402 on the defense of duress, contending that the facts supported that defense as well. The court found the evidence did not support the defense of duress and thus did not give the requested instruction. According to the court, "[t]here is no express threat to [Lopez]. There is no implied threat to [Lopez] to commit these crimes. He made the decision to commit these crimes based on his perception of the situation. There is insubstantial evidence of duress but . . . I think that there is enough evidence of necessity such that the instruction should be given." Lopez contends that the failure to instruct on the defense of duress is error. We disagree.

"[A] defendant has a right to have the trial court, on its own initiative, give a jury instruction on any affirmative defense for which the record contains substantial evidence [citation]—evidence sufficient for a reasonable jury to find in favor of the defendant [citation]—unless the defense is inconsistent with the defendant's theory of the case. [citation]. In determining whether the evidence is sufficient to warrant a jury instruction,

the trial court does not determine the credibility of the defense evidence, but only whether 'there was evidence which, if believed by the jury, was sufficient to raise a reasonable doubt . . . .' [Citations.]" (*People v. Salas* (2006) 37 Cal.4th 967, 982-983.)

"Penal Code section 26 declares duress to be a perfect defense against criminal charges when the person charged 'committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused.'" (*People v. Vieira* (2005) 35 Cal.4th 264, 289-290.) "'The common characteristic of all the decisions upholding [a duress defense] lies in the immediacy and imminency of the threatened action: each represents the situation of a present and active aggressor threatening immediate danger; none depict a phantasmagoria of future harm.' [Citations.]" (*Id.* at p. 290.) "Duress is an effective defense only when the actor responds to an immediate and imminent danger. '[A] fear of *future* harm to one's life does not relieve one of responsibility for the crimes he commits.' [Citations.] The person being threatened has no time to formulate what is a reasonable and viable course of conduct nor to formulate criminal intent. 'The unlawful acts of the person under duress are attributed to the coercing party who supplies the requisite mens rea . . . .' [Citation.] Thus, duress negates an element of the crime charged—the intent or capacity to commit the crime—and the defendant need raise only a reasonable doubt that he acted in the exercise of his free will. [Citation.]" (*People v. Heath* (1989) 207 Cal.App.3d 892, 900.)

In comparing the defenses of duress and necessity, "'[c]ommon law historically distinguished between the defenses of duress and necessity. Duress was said to excuse criminal conduct where the actor was under an unlawful threat of imminent death or serious bodily injury, which threat caused the actor to engage in conduct violating the literal terms of the criminal law. While the defense of duress covered the situation where the coercion had its source in the actions of other human beings, the defense of necessity, or choice of evils, traditionally covered the situation where physical forces beyond the actor's control rendered illegal conduct the lesser of two evils. Thus, where A destroyed a dike because B threatened to kill him if he did not, A would argue that he acted under

duress, whereas if A destroyed the dike in order to protect more valuable property from flooding, A could claim a defense of necessity.' [Citation.]" (*People v. Heath*, *supra*, 207 Cal.App.3d at pp. 899-900.)

Lopez contends that the trial court erred by failing to instruct on the defense of duress based on the "evidence that he started to pull over once he saw the police car, but fled only when [his nephew] created an immediate and imminent danger of physical harm to [him] and [his] four-year[-]old granddaughter." Lopez's contention that the evidence demonstrated an immediate and imminent danger of physical harm so as to support a duress instruction is incorrect. Based on Lopez's own testimony, the nephew did not directly or indirectly threaten Lopez or his granddaughter. By the same token, the nephew did not directly or indirectly demand, or even ask, that Lopez flee from the police. On the contrary, the nephew suggested that he put the gun in the center console of the car. But Lopez rejected that request, instead deciding to flee from the officers. Thus, the nephew's statement that he was not "going to go out like this" cannot be construed as a direct or implied threat for Lopez to flee from the officers. Moreover, Lopez continued to drive away from the police even after the gun was thrown from the vehicle. Under these circumstances, no instruction on duress was warranted. (See *People v. Saavedra* (2007) 156 Cal.App.4th 561, 567 [facts supported a necessity instruction based on evidence that defendant chose one alternative over another but did not warrant a duress instruction because "no facts show[ed] an express or implied demand by [the defendant's] attackers that he [commit the crime]"]; *People v. Steele* (1988) 206 Cal.App.3d 703, 707 [duress instruction properly refused when no evidence showed alleged threats were accompanied by an implied demand that defendant commit the crime].)

3. *Substantial Evidence Proves the Element of Distinctive Uniform for a Conviction Under Vehicle Code Section 2800.2, Subdivision (a)*

In reviewing challenges to the sufficiency of the evidence, we "consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The

test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt. [Citations.]" (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted.) Substantial evidence is that which is "reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt." (*People v. Johnson* (1980) 26 Cal.3d 557, 578.)

Lopez contends that the evidence is insufficient to support the element of Vehicle Code section 2800.2, subdivision (a), incorporated through Vehicle Code section 2800.1, that the "peace officer is wearing a distinctive uniform." (Veh. Code, § 2800.1, subd. (a)(4).) But Officer Marcus Menzies testified that he was in uniform on patrol in a marked black and white police car when the pursuit with Lopez occurred. Lopez saw Officer Menzies and his partner when Lopez appeared to pull over at first and the officers exited the patrol car. Although Officer Menzies did not describe his uniform, an inference reasonably can be drawn from the evidence, based on his testimony that he was in uniform and driving a marked black and white police car while on patrol, that his uniform was distinctive as a police officer's uniform. Officer Menzies testimony was uncontradicted; Lopez in his testimony did not suggest that the uniform was anything other than a distinctive police officer uniform and in fact stated that he knew a police car was attempting to pull him over and fled because he was concerned his nephew, who had a gun, might engage in a shootout with the police. Substantial evidence thus supports the distinctive uniform element. (See *People v. Mathews* (1998) 64 Cal.App.4th 485, 490 ["law enforcement officer's 'distinctive uniform' is the clothing prescribed for or adopted by a law enforcement agency which serves to identify or distinguish members of its force"].)

4. *Instructing Under CALCRIM No. 2181 for the Vehicle Code Section 2800.2, Subdivision (a), Charge Sufficiently Covered the Elements of a Distinctively Marked Vehicle and a Distinctive Uniform*

As noted, the trial court instructed under CALCRIM No. 2181 regarding the elements of Vehicle Code section 2800.2, subdivision (a), telling the jury, among other things, that the People had to prove that "[t]he peace officer's vehicle was distinctively

marked" and "[t]he peace officer was wearing a distinctive uniform." The court elaborated, under CALCRIM No. 2181, that: (1) "A vehicle is *distinctively marked* if it has features that are reasonably noticeable to other drivers, including a red lamp, siren, and at least one other feature that makes it look different from vehicles that are not used for law enforcement purposes"; and (2) "A *distinctive uniform* means clothing adopted by a law enforcement agency to identify or distinguish members of its force. The uniform does not have to be complete or of any particular level of formality. However, a badge, without more, is not enough."

Lopez contends that this CALCRIM instruction is incorrect because it does not fully define "distinctively marked" and "distinctive uniform." Lopez relies on *People v. Hudson* (2006) 38 Cal.4th 1002, 1006 (*Hudson*), in which the Supreme Court held that "a peace officer's vehicle is distinctively marked if its outward appearance during the pursuit exhibits, in addition to a red light and a siren, one or more features that are reasonably visible to other drivers and distinguish it from vehicles not used for law enforcement so as to give reasonable notice to the person being pursued that the pursuit is by the police." The Court further held "that a trial court must, on its own initiative, instruct the jury that the statutory phrase 'distinctively marked' requires that, in addition to the red light and siren, the peace officer's vehicle must have features that distinguish it from vehicles not used for law enforcement . . . ." (*Ibid*.) CALCRIM No. 2181 was revised after *Hudson* and incorporates the Court's holding by instructing that "distinctively marked" requires that the features be reasonably noticeable to other drivers and that the features include a red lamp, a siren and in addition one other feature that makes it look different from other vehicles not used for law enforcement purposes.

Using *Hudson*, Lopez maintains that CALCRIM No. 2181 is flawed because it allows a jury to find "distinctively marked" based only on a red light and siren. Lopez fails to recognize that CALCRIM No. 2181 was revised after *Hudson* and that the jury was instructed with the revised version. The words of the revised instruction expressly require for "distinctively marked" "at least one other feature." The instruction, therefore, does not permit a jury to rely only on a red light and siren. Lopez additionally maintains,

relying again on *Hudson*, that CALCRIM No. 2181 is also flawed because it does not say that "distinctive uniform" requires "something on it which is visible and setting it apart from other uniforms, and clearly identifying the wearer as a police officer." *Hudson* addressed only the "distinctively marked" requirement. Regardless, the instruction mandates "clothing adopted by a law enforcement agency to identify or distinguish members of its force." Based on this phrase, CALCRIM No. 2181 requires that the uniform set itself apart from other uniforms and clearly identify the wearer as a police officer. As to Lopez's claim that the distinction must be visible, "there is no requirement in the statute that the person eluding capture actually see that the police officer is wearing a distinctive uniform." (*People v. Estrella* (1995) 31 Cal.App.4th 716, 724.)

5. *The Trial Court Did Not Abuse Its Discretion By Allowing Lopez To Be Impeached With Some of His Prior Convictions*

"Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of impeachment or enhancement of sentence in any criminal proceeding." (Cal. Const., art. I, § 28, subd. (f)(4); see also Evid. Code, § 788.) Although this provision suggests admission of prior felony convictions without limitation, such admission is subject to the trial court's discretion under Evidence Code section 352. (*People v. Clark* (2011) 52 Cal.4th 856, 931-932; see Cal. Const, art. I, § 28, subd. (f)(2).) "When determining whether to admit a prior conviction for impeachment purposes, the court should consider, among other factors, whether it reflects on the witness's honesty or veracity, whether it is near or remote in time, whether it is for the same or similar conduct as the charged offense, and what effect its admission would have on the defendant's decision to testify. [Citations.]" (*Clark*, at p. 931.) "'[T]he trial courts have broad discretion to admit or exclude prior convictions for impeachment purposes . . . . The discretion is as broad as necessary to deal with the great variety of factual situations in which the issue arises, and in most instances the appellate courts will uphold its exercise whether the conviction is admitted or excluded.' [Citation.]" (*People v. Hinton* (2006) 37 Cal.4th 839, 887; see also *Clark*, at p. 932 [based on broad discretion to admit or exclude impeachment

evidence, "reviewing court ordinarily will uphold the trial court's exercise of discretion"].)

Lopez moved in limine for the trial court to prevent the People from impeaching him with his prior felony convictions in the event he chose to testify at trial. The court, after reviewing Lopez's criminal history and hearing arguments from counsel, granted Lopez's motion in part, allowing impeachment if Lopez testified at trial only with what it considered his recent felony convictions involving moral turpitude: (1) possession of methamphetamine for sale under two Health and Safety Code provisions in 1995; (2) manufacturing methamphetamine and possession of methamphetamine for sale in 1998; and (3) felonious assault and two counts of battery against a police officer with injuries in 2003. For purposes of the felonious assault in 2003, the conviction was for battery by a prisoner on a non-confined person under Penal Code section 4501.5, but the court sanitized the conviction so that the jury would not learn that the offense had been committed while Lopez was in state prison.

Lopez does not contest these prior convictions or that they involved moral turpitude. But he contends that the trial court abused its discretion by allowing him to be impeached with them because "[t]he convictions were stale, not relevant, overly prejudicial and created substantial danger of undue prejudice, confused the issues, misled the jury and caused undue consumption of time." We disagree. Although the drug offenses occurred in 1995 and 1998, Lopez was in prison for a good portion of time between those crimes and the current ones such that any remoteness did not compromise probative value. (*People v. Mendoza* (2000) 78 Cal.App.4th 918, 925-926 ["Even a fairly remote prior conviction is admissible if the defendant has not led a legally blameless life since the time of the remote prior"].) Fleeing from police, as in this case, and assaultive conduct against police, as in the 2003 case, both involved the police but are not similar crimes. Moreover, nothing about admission of the prior convictions led to confusion of issues, misleading the jury or an undue consumption of time. The prior conviction testimony was quite limited: Lopez's prior convictions were elicited on direct examination in only a few questions by his counsel and Lopez's answers; and several

short questions were asked and answered on cross-examination regarding the prior convictions. The court instructed the jury that it could use the fact of a prior conviction only in evaluating the credibility of a witness's testimony. Thus, the jury knew the limited purpose of the prior convictions.[1]

6. *The Trial Court Did Not Abuse Its Discretion By Declining To Strike Lopez's Prior Strike Conviction*

Penal Code section 1385, subdivision (a), authorizes a trial court to exercise its discretion to dismiss a defendant's prior serious or violent felony conviction. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) The court's discretion, however, is limited. (*Id*. at p. 530.) "[T]he court in question must consider whether, in light of the nature and circumstances of [the defendant's] present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes] scheme's spirit, in whole or in part . . . ." (*People v. Williams* (1998) 17 Cal.4th 148, 161.) Absent an affirmative disclosure on the record to the contrary, we presume a court considered all pertinent factors in determining whether to dismiss a prior serious or violent felony conviction. (*People v. Myers* (1999) 69 Cal.App.4th 305, 310.)

Lopez contends that the trial court abused its discretion by declining to strike his 1982 prior strike conviction for assault under section 245, subdivision (a)(1), "given the age and nature of the prior, [his] background and prospects, the nature of the crimes, and the length of the sentence that was added as a result of the prior." Again, we disagree.

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[1] Lopez also asserts that the admission of his prior convictions violated his due process rights and led to cruel and unusual punishment because he ultimately was convicted and sentenced under the Three Strikes law, resulting in the doubling of his sentence from two to four years. The trial court limited the introduction of prior convictions, sanitized one of the convictions and instructed the jury as to the limited use of the convictions. Under these circumstances, Lopez's due process rights were not implicated. In addition, the doubling of a two-year sentence to four years under the Three Strikes law is not cruel and unusual punishment. (See *People v. Mantanez* (2002) 98 Cal.App.4th 354, 359 ["It is not cruel and unusual punishment to enhance the penalty for a crime because the defendant is a recidivist"].)

In deciding whether to strike the prior strike conviction, the trial court stated that "the strike prior is old. No question about it. Had there been no criminal conduct between then and now I would likely grant the motion to dismiss the strike. However, in reviewing the court file and [Lopez's] record after being convicted of the felonious assault[,] which is the strike, in 1984 he was convicted of Penal Code section 529.3; in 1985 he was convicted of Penal Code section 148.9; in 1993 he was convicted of Penal Code section 242; in 1995 he was convicted of Health and Safety Code section 11351 and 11378; in 1998 he was convicted of Health and Safety Code section 11379.6[, subdivision (a),] and again Health and Safety Code [section] 11378. In 2003 he was convicted of Penal Code section 4501.5 and two counts of Penal Code section 243[, subdivision (c)(2)]. In 2011 he was convicted of Vehicle Code section 14601, and he was on probation for that same offense when the present crime occurred. Plus the current offense, although thing[s] turned out well, no one was injured. The potential for injury was tremendous. Thank goodness his little granddaughter was not hurt. So based on his criminal history and the current offense, I cannot make a finding that he falls outside the spirit of the Three Strikes law."

The trial court, therefore, acknowledged the age of the prior, but found in light of Lopez's criminal history and the nature of the current offense that he did not fall outside the spirit of the Three Strikes law The court imposed the midterm of two years, which doubled under the Three Strikes law, resulted in a four-year sentence for the Vehicle Code section 2800.2, subdivision (a), violation. The doubling of the midterm based on the prior strike conviction was well within the court's discretion given its conclusions about Lopez's criminal background and the nature of the current offense. Contrary to Lopez's contention, the age of the prior, Lopez's work history and support of his family and medical conditions did not necessitate the striking of his prior strike conviction.

7. *Lopez's Claims of Bias Requiring Disqualification of the Trial Court Lack Merit*

After trial, but before sentencing, Lopez filed a motion for recusal of the trial court based on its prior review and authorization of a search warrant involving Lopez, which involved the sealing of a portion of the affidavit in support of the warrant. The court

treated the motion as a statement of disqualification for cause and struck it. According to the court, "[t]he allegations are that I knew who [Lopez] was because of the search warrant that I signed [a few weeks before this case was called for trial for] what turns out to be regarding his residence[.] . . . I review[] ten to 15 search warrants a week on the average[.] . . . I read them to see if there is probable cause that exists for the issuance of the search warrant. I do not pay attention to the names of the suspects. I do not keep a record of the names of the suspects. I did not make any connection of any kind between the search warrant regarding a Richard Lopez signed on March the 1st of 2013, and the defendant Richard Lopez that is in this court. The first I learned of this connection was when I read the declaration of the defense motion to continue [the sentencing]. Now that I do know, I can tell you that the fact that I signed a search warrant for Richard Lopez has no relevance, no importance or significance to me in this case involving any decision I make or any ruling that I must make. As I stated in my order striking the statement I have no prejudice against [Lopez] or any other defendant because of any information I might have received. I was not aware of any information. The first I learned of this, [defense counsel], is when you brought it up."

Lopez filed a petition for writ of mandate in this Court after the striking of the statement of disqualification. We summarily denied his petition. Lopez now contends on appeal that his due process rights were violated by the striking of the statement of disqualification. He contends the trial court's "bias was demonstrated during trial by permitting impeachment of [him] with three separate cases, refusing to strike a thirty (30) year old prior, twice admonishing [Lopez] during testimony, and not allowing him to complete answers, thereby demeaning him in front of the jury." No due process violation occurred here. The court said that it had no knowledge that Lopez was connected to the search warrant authorized before his trial, and no evidence suggested the contrary. As noted, the court's rulings on the impeachment evidence and the prior strike conviction were proper rulings and thus do not demonstrate bias. The court's admonitions to Lopez during his testimony simply directed him in one instance to answer the question posed on cross-examination and in two other instances to only answer the

question asked on redirect examination. Such directions were short, to the point and without criticism, thus nothing more than proper control of the proceedings by the court. Lopez, therefore, has failed to present any ground for reversal based on the striking of his statement of disqualification.

Lopez also contends that he was entitled to look at the sealed portion of the affidavit and suggests that this Court should look at it. In addressing his request for the sealed portion of the affidavit, the trial court stated, "I sign on the average about ten search warrants a week. I do not pay attention to the names. As soon as I sign the search warrant or review the search warrant, whatever name is on there leaves my mind. I don't keep track of the names. I pay no attention to the names. The first I knew about my signing the search warrant for [Lopez's] residence is when . . . the defense pointed this out. Had you not mentioned this to me, I would have no idea that I [signed] a search warrant for Mr. Lopez's house. Had I known that, it still would not have made any difference because signing the search warrant doesn't mean that the defendant is guilty of anything, and I would not have made any ruling any different, and had I known it, I would have disclosed it. But I'm telling you in no uncertain terms, I did not know that I had signed a search warrant for Mr. Lopez's residence . . . ." Defense counsel stated that he understood and accepted the court's explanation. Given the lack of connection between the search warrant and Lopez as a defendant on the instant charges, no reason existed for him to review the sealed portion of the affidavit, nor is there any basis for this Court to review it.[2]

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[2] Lopez also argues that the trial court erred by denying his new trial motion. According to Lopez, the court should have granted the motion because it refused to instruct on duress, allowed impeachment with some of Lopez's prior convictions, declined to strike Lopez's prior strike conviction and demeaned Lopez during his testimony. Because we already have rejected those arguments, no grounds exist for the granting of a new trial.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

CHANEY, J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, Assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.