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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE, Plaintiff and Respondent, v. JOHNNY MATA, Defendant and Appellant.	B270264 (Los Angeles County Super. Ct. No. KA101342)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert M. Martinez, Judge. Conditionally reversed and remanded with directions.

Mary Jo Strnad, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey and Mary Sanchez, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Johnny Mata appeals his conviction for attempted murder, arguing the trial court erred in denying his motion under *Batson v. Kentucky* (1986) 476 U.S. 79 and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Batson*/*Wheeler* motion). Because the trial court erred, we conditionally reverse the judgment and remand the matter for a new hearing on Mata's *Batson*/*Wheeler* motion.

FACTUAL AND PROCEDURAL HISTORY

Mata shot at his girlfriend's previous boyfriend with a semiautomatic handgun while sitting in the passenger seat of a car driven by the girlfriend. The victim survived.

The People charged Mata with, among other crimes, attempted murder and possession of a firearm by a felon. The People also alleged Mata personally used and intentionally discharged a firearm, committed the crime to benefit a criminal street gang, and had suffered a prior serious or violent felony conviction.

The jury convicted Mata of attempted murder and possession of a firearm by a felon, found the firearm allegations true, and found the gang allegation not true. The court found Mata had suffered a prior serious or violent felony conviction within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12), and a prior serious felony conviction within the meaning of Penal Code section 667, subd. (a)(1). The trial court sentenced Mata to life imprisonment with the possibility of parole, with a minimum term of confinement of 14 years, for the murder conviction, plus 20 years for the firearm enhancement and five years for the prior serious felony

conviction. The court also imposed and stayed execution under Penal Code section 654 a term of three years for the conviction for possession of a firearm by a felon.

Mata appealed. He argues the trial court erred in denying his *Batson*/*Wheeler* motion.

DISCUSSION

A. *Jury Selection*

This appeal involves the prosecutor's peremptory challenges to four Hispanic prospective jurors. Although at trial the prosecutor did not agree that all four prospective jurors were Hispanic, the trial court found they were. On appeal the People do "not challenge the trial court's finding that all four stricken jurors were Hispanic." The four prospective jurors were Nos. 9, 7, 11, and 15.

1. *Prospective Juror No. 9*

Prospective Juror No. 9 was a legal secretary in the civil division of the Los Angeles City Attorney's office. She was divorced and had two children, both of whom worked in the workers' compensation department of the Los Angeles City Attorney's office.

In response to questioning by the prosecutor, Prospective Juror No. 9 stated that on one occasion officers came to her house and arrested her ex-husband for causing a disturbance, and she did not believe it was right the officers arrested him. She stated, "I know the officer was kind of a rookie, because she's so young. I don't think she knows all the law." Prospective Juror No. 9 also stated her feelings about that experience would not affect how she viewed the testimony by officers in this case: "I work for the City Attorney's office. I work with police officers every day. I

know. Now I work with older police officers. They have much more experience. But I may have doubt about the younger one[s]. They don't have a lot of experience. And I watch a lot of police T.V., and you really influence me of how I feel about officers and criminals." Prospective Juror No. 9 stated she "might have some feelings" from her experience with younger police officers and watching television shows. When the prosecutor asked whether the jurors could separate what they heard in the courtroom from their experiences outside the courtroom, Prospective Juror No. 9 stated, "To tell you, I cannot promise you hundred percent, but, as you say, I'm going to try my best. But no hundred percent that, you know, I will not apply my own experience to the case. I [am] just being honest." Later she explained, "I hope it's as simple as you said, like one plus one equals two. There's so many, you know, jury trials that have, you know, hung jur[ies] because the jury cannot make a decision whether the defendant is guilty or not."

2. *Prospective Juror No. 7*

Prospective Juror No. 7 was a student in business administration who lived with his father and stepmother, both of whom were retired. When the court asked him, "What year in school," the prospective juror said, "Six."

Prospective Juror No. 7 said he would "keep any bias" out of his decision. He also stated, in response to a question by the prosecutor about whether he would require "some type of scientific evidence" to find proof beyond a reasonable doubt, "In my opinion, scientific proof would definitely weigh a lot, you know, heavier than testimony, but I believe I could reach an opinion based only on testimony."

3. *Prospective Juror No. 11*

Prospective Juror No. 11 had two jobs, one in customer service at Metrolink and one as a production assistant for a cable company. He had "no family or friends in law enforcement" and "no other concerns." Prospective Juror No. 11 said he would not think a defendant was guilty just because the defendant was a gang member. He also stated he would base his decision "solely on what's presented . . . from the witness stand," and he would start the trial "with a clean slate."

Prospective Juror No. 11 stated some members of his extended family were "kind of affiliated" with gangs, but that would not impact his ability to be a fair and impartial juror. He said he was not "extremely close" with those relatives, whom he only saw "at large family gatherings," and he had "negative opinions" about the way his distant relatives behaved in the gang. He stated he felt their gang membership was "unnecessary," explaining: "I kind of don't see the appeal to it. I feel they're just as—not that it dilutes them as a person, but they could be just who they are without being a member of a gang. So I don't see the appeal to it."

4. *Initial Peremptory Challenges*

After the court denied the prosecutor's cause challenge to Prospective Juror No. 9, the prosecutor exercised his first peremptory challenge on that prospective juror. The prosecutor then exercised peremptory challenges to Prospective Juror Nos. 7 and 11. The court called six new prospective jurors, one of whom was Prospective Juror No. 15.

5. *Prospective Juror No. 15*

Prospective Juror No. 15 was a single woman with four minor children and one adult child in the Marines. She, too, had "no friends and family in law enforcement, and no concerns" about serving as a juror. She stated she had never had any problems with the law or any relationships with anyone in law enforcement. She worked as a customer service supervisor in the administrative office of a car manufacturer. Prospective Juror No. 15 said she grew up in an area where there were gangs, and she had acquaintances in school who were gang members. She stated, "They didn't bother me. We just communicated during school, but it didn't bother me." She said there was nothing about her personal experiences that would make her an unfair juror in a case with a gang allegation and she believed the law and justice system should treat cases the same regardless of whether the victims were gang members. She also stated she would vote guilty if she believed the prosecution had proved the case beyond a reasonable doubt, even if she did not hear any scientific evidence.

The prosecutor exercised his fourth peremptory challenge against Prospective Juror No. 15.

B. *Batson/Wheeler Motion*

Before the court excused Prospective Juror No. 15, counsel for Mata made a *Batson/Wheeler* motion. He argued:

"[Counsel for Mata]: I believe the prosecutor is focusing on younger Hispanics. Now, Hispanics are clearly a category—a class that is recognized as a group. Younger—for the following reason: This last challenge appeared to be a Hispanic, [Prospective Juror No. 15]. And, again, my assessment of their racial background is, in part, observation and in part surmising

from surnames. [Prospective Juror No. 15] appears to be Latina, younger. And I'm using younger—

"The Court: The thing is, younger is not [a] suspect classification. If you're going on the basis of race or ethnicity—

"[Counsel for Mata]: Well, I'm trying to show a pattern. Yes, I agree. Race is the main thing. But I'm trying to show an overall pattern to highlight that Hispanics are being removed inappropriately and show that it's a motive for a certain pattern."

Counsel for Mata argued the prosecutor had exercised four peremptory challenges against "young Hispanic male[s]," and counsel could see no reason for the challenges other than the prospective jurors were Hispanic. Counsel for Mata observed that Prospective Juror No. 7 was a young Hispanic student whose father had worked for the IRS and who did not indicate he would have "any problems with principles of law." Counsel also noted Prospective Juror No. 15 had five children, worked in customer service, and "raised nothing about having problems with any of the D.A.'s questions at all." And counsel stated that Prospective Juror No. 11 worked for Metrolink and did not say "anything indicative with any problems of principles or any prejudice." Counsel argued that, other than the fact these prospective jurors were young and Hispanic, he could think of no reason to excuse them.

The court found "a prima facie case in light of the fact that the four peremptories exercised by the People were directed at Latino or Latinos." The court gave "the prosecution an opportunity to be heard."

The prosecutor first disputed he had used all four peremptories on Hispanic prospective jurors (he asserted only his last peremptory challenge was to a Hispanic prospective juror, while the other three were to an Asian female juror and two White male jurors). The prosecutor explained his reasons for the

challenges: "Counsel is correct in his characterization that I am striking young jurors. I am looking for jurors with life experiences, and these young jurors that I struck did not appear to have that life experience." The prosecutor explained Prospective Juror No. 7 "seemed a little weird [in] that he's in his sixth year of school" and seemed "very young and inexperienced"; Prospective Juror No. 11 "also appeared to be very young" and "associates with gang member family members"; and Prospective Juror No. 15 "also appears to be very young" and has five kids but had never been married. The prosecutor did not give a reason for challenging Prospective Juror No. 9 because, even though the court had found all four prospective jurors were Hispanic, he believed she was Asian.[1]

Counsel for Mata responded: "By kicking the young people, he's kicking Hispanics, and it goes hand in hand. There hasn't been any reason legally. As far as I know, young jurors are eligible, as well. I don't know statutorily or case-wise, as Your Honor pointed out, young probably isn't a class. But I'm using that to show the very nature and admission of the D.A. that he's, basically, trying to excuse the younger jurors who are here, qualified because of the statutory requirements, and they happen to be Hispanic or Latino."

The prosecutor stated: "There are also older people who are currently in the box right now who are also Hispanic. I have not kicked those and, if we progress, we can see what I do with them. But youth has been the primary reason for my striking the jurors."

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[1] Counsel for Mata stated: "I would agree with that."

The trial court stated:

"The Court: The first peremptory [Prospective Juror No. 9] was a juror, female, who had Latino features but, in fact, has a last name of . . . . This is the juror who worked in the City Attorney's office who expressed her skepticism about the young police officers. Also, she indicated that she had time concerns . . . .

"[Prospective Juror No. 11], again, was a juror who indicated he had extended family involved in drugs who had been arrested and indicated that [he] visited with him, at least, once or twice a month.

"[Prospective Juror No. 15] is the most recently challenged one. Again, she indicates that she has one adult child and four minor children and, apparently, has never been married. She also appears to be not young but not middle age.

"But that leaves the second peremptory. [Prospective Juror No. 7], again, indicated that he was a student in business administration, sixth year. Again he was—appeared young.

"The court doesn't find that young persons of any ethnicity are a protected class and the motion is denied."

C. *Applicable Law*

"[T]he exercise of even a single peremptory challenge solely on the basis of race or ethnicity offends the guarantee of equal protection of the laws under the Fourteenth Amendment to the federal Constitution. [Citations.] Such conduct also violates a defendant's right to trial by a jury drawn from a representative cross-section of the community under . . . the state Constitution." (*People v. Gutierrez* (2017) 2 Cal.5th 1150, 1157 (*Gutierrez*).) Hispanic individuals "are members of a cognizable class for purposes of *Batson*/*Wheeler* motions." (*Gutierrez*, at p. 1156, fn. 2; see *People v. Ayala* (2000) 23 Cal.4th 225, 256 ["'[w]hether

characterized on the basis of Spanish surname or self-identification, Hispanics are a cognizable population'" for *Batson*/*Wheeler* motions].)

"When a party raises a claim that an opponent has improperly discriminated in the exercise of peremptory challenges, the court and counsel must follow a three-step process." (*Gutierrez*, *supra*, 2 Cal.5th at p. 1158; see *People v. Lenix* (2008) 44 Cal.4th 602, 612.) "'First, the defendant must make out a prima facie case "by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose." [Citations.] Second, once the defendant has made out a prima facie case, the "burden shifts to the State to explain adequately the racial exclusion" by offering permissible race-neutral justifications for the strikes. [Citations.] Third, "[i]f a race-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination."'" (*People v. Cunningham* (2015) 61 Cal.4th 609, 663.)

At the third step, "the credibility of the explanation becomes pertinent. To assess credibility, the court may consider, '"among other factors, the prosecutor's demeanor; . . . how reasonable, or how improbable, the explanations are; and . . . whether the proffered rationale has some basis in accepted trial strategy."' [Citations.] To satisfy herself that an explanation is genuine, the presiding judge must make 'a sincere and reasoned attempt' to evaluate the prosecutor's justification, with consideration of the circumstances of the case known at that time, her knowledge of trial techniques, and her observations of the prosecutor's examination of panelists and exercise of for-cause and peremptory challenges." (*Gutierrez*, *supra*, 2 Cal.5th at pp. 1158-1159; see *Miller-El v. Cockrell* (2003) 537 U.S. 322, 339; *People v. Lenix*, *supra*, 44 Cal.4th at p. 613.) "This

assessment may also take into account 'the court's own experiences as a lawyer and bench officer in the community, and even the common practices of the advocate and the office that employs him or her.'" (*People v. Winbush* (2017) 2 Cal.5th 402, 434.)

"A trial court's conclusions are entitled to deference only when the court made a 'sincere and reasoned effort to evaluate the nondiscriminatory justifications offered.' [Citation.] What courts should not do is substitute their own reasoning for the rationale given by the prosecutor, even if they can imagine a valid reason that would not be shown to be pretextual. '[A] prosecutor simply has got to state his reasons as best he can and stand or fall on the plausibility of the reasons he gives. . . . If the stated reason does not hold up, its pretextual significance does not fade because a trial judge, or an appeals court, can imagine a reason that might not have been shown up as false.'" (*Gutierrez*, *supra*, 2 Cal.5th at p. 1159.) Because the best evidence of discriminatory intent is often the demeanor of the prosecutor, determinations of credibility and demeanor lie "'"peculiarly within a trial judge's province."'" (*Snyder v. Louisiana* (2008) 552 U.S. 472, 477; see *People v. Fuentes* (1991) 54 Cal.3d 707, 720, ["the trial court is in the best position to determine whether a given explanation is genuine or sham"].)

D. *Trial Court Error*

The trial court, at step one, ruled Mata had made out a prima facie case of an inference of discrimination because the prosecutor had exercised four peremptory challenges against Hispanic prospective jurors. The prosecutor, at step two, gave race-neutral justifications for three of the four peremptory

challenges,[2] including that the three prospective jurors were young, lacked "life experience," were in school too long (six years in the case of Prospective Juror No. 7), associated with gang members in the family, and had a lot of children (five in the case of Prospective Juror No. 15). At step three, the court . . .

Made no findings at all. The court did not conduct any inquiry into the prosecutor's stated reasons, let alone make "'a sincere and reasoned attempt to evaluate the prosecutor's explanation[s]'" for his four peremptory challenges against Hispanic prospective jurors. (*Gutierrez*, *supra*, 2 Cal.5th at p. 1172.) Nor did the trial court make any findings, let alone "'clearly express its findings'" (*id.* at p. 1175), on the credibility of the prosecutor's explanations for the peremptory challenges. And there is no indication in the record the court considered, and the trial court made no findings regarding, the court's knowledge of trial techniques, observations of the prosecutor's questioning of the prospective jurors, experiences as a lawyer and a judge, or familiarity with the common practices of the prosecutor. (See *id.* at pp. 1158-1159; *People v. Winbush*, *supra*, 2 Cal.5th at p. 434.)

The only reason the court gave for denying Mata's *Batson*/*Wheeler* motion was that young persons were not a protected group. Young persons indeed may not be a protected group for purposes of *Batson*/*Wheeler*. (See *People v. Lewis* (2008) 43 Cal.4th 415, 482 [young persons are not a cognizable group under *Batson*/*Wheeler*], disapproved on other grounds in *People v. Black* (2014) 58 Cal.4th 912, 919-920; *People v. McGhee* (1987) 193 Cal.App.3d 1333, 1351-1352 ["[y]outh is not recognized as a

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[2] As noted, the prosecutor did not give any reason for his peremptory challenge against Prospective Juror No. 9 because, despite the court's contrary finding, the prosecutor believed Prospective Juror No. 9 was Asian.

cognizable class for purposes of a *Wheeler* motion"]; *U.S. v. Pichay* (9th Cir. 1993) 986 F.2d 1259, 1260 ["young adults do not constitute a cognizable group for purposes of an equal protection challenge to the composition of a petit jury" under *Batson*].) And "a prospective juror's youth and corresponding lack of life experience can be a valid race-neutral reason for exercising a peremptory challenge." (*People v. Jones* (2017) 7 Cal.App.5th 787, 805.) As noted, however, Hispanic persons are a cognizable group under *Batson*/*Wheeler*. (See *Gutierrez*, *supra*, 2 Cal.5th at p. 1156, fn. 2; *People v. Ayala*, *supra*, 23 Cal.4th at p. 256; see also *People v. Lucas* (2014) 60 Cal.4th 153, 256 [although "we have held that young persons are not a cognizable group for purposes of an equal protection challenge to a jury's composition," Hispanic persons "are a cognizable group for purposes of such challenges"], disapproved on another ground in *People v. Romero* (2015) 62 Cal.4th 1, 53, fn. 19.)

Counsel for Mata based his *Batson*/*Wheeler* motion on the prosecutor's use of peremptory challenge to remove jurors who were both young and Hispanic.[3] Counsel argued, "Hispanics are clearly a category" under *Batson*/*Wheeler* and emphasized "Hispanics are being removed inappropriately." He stated: "Hispanics are clearly a category—a class that is recognized as a group." Counsel did state several times the prosecutor was "focusing on younger Hispanics," but he made clear "race is the main thing" and claimed the prosecutor challenged the four prospective jurors only because they were Hispanic. Indeed, the

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[3] Although it does not appear Prospective Juror No. 15 was particularly young. She had five children, one of whom was an adult in the Marines, and the trial court observed she "was not young but not middle age." And the prosecutor stated later in the trial proceedings that Prospective Juror No. 9 "appeared to be in her late 50's."

trial court found a prima facie case of discrimination based on ethnicity, not youth. Yet, the trial court never inquired, made findings, or ruled on Mata's motion based on ethnicity discrimination.

The People argue "it is evident from the transcript of the hearing that the trial court made a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered by the prosecutor" because the court "discussed each of the strikes . . . ." Actually, no. The trial court summarized its recollection of some of the characteristics of the four challenged prospective jurors, but the court did not evaluate or make credibility determinations on the prosecutor's reasons for exercising the challenges or the characteristics the court was describing. The trial court's brief comments cited by the People were narrative, not evaluative or adjudicative. (See *Miller-El v. Dretke* (2005) 545 U.S. 231, 251-252 ["the rule in *Batson* provides an opportunity to the prosecutor to give the reason for striking the juror, and it requires the judge to assess the plausibility of that reason in light of all evidence with a bearing on it"]; *People v. Fuentes*, *supra*, 54 Cal.3d at p. 720 ["a truly 'reasoned attempt' to evaluate the prosecutor's explanations [citation] requires the court to address the challenged jurors individually to determine whether any one of them has been improperly excluded," and "the trial court must determine not only that a valid reason existed but also that the reason actually prompted the prosecutor's exercise of the particular peremptory challenge"]; *People v. Arellano* (2016) 245 Cal.App.4th 1139, 1169 ["the trial court's ultimate determination—that defendant failed to meet his burden of proving intentional discrimination as to the removal of [a prospective juror]—is not supported by the record and unreasonable in light of the evidence of the voir dire proceedings and the court's failure to 'take the next, necessary step of asking

whether the asserted reasons actually applied to the particular juror[ ]' being excused by the prosecutor"].) And the prosecutor gave no reason for exercising a peremptory challenge against Prospective Juror No. 9 for the court to evaluate.

In any event, to the extent the trial court's summary of the four prospective jurors' answers during voir dire and physical appearances amounted to actual findings, the trial court did the one thing the Supreme Court in *Gutierrez* stated a trial court should *not* do: give reasons justifying the exercise of a peremptory challenge that the prosecutor did not give. (See *Gutierrez*, *supra*, 2 Cal.5th at p. 1159.) For example, as noted, the prosecutor gave no reason for exercising a peremptory challenge against Prospective Juror No. 9, but the trial court observed the prospective juror was skeptical of young police officers and had time concerns about her availability for trial. The prosecutor's explanation for challenging Prospective Juror No. 11 was that he was young and associated with gangs, but the trial court observed the prospective juror had family members who were involved in drugs and had been arrested. Thus, the People's assertion that "the trial court did not rely upon any justification not advanced by the prosecutor," to the extent the court relied on any justification, is incorrect.

E. *Conditional Reversal and Remand*

Mata asserts that, because "the trial court clearly failed to meet its obligation to make a sincere and reasoned attempt to test the prosecutor's explanation against the voir dire record" (an assertion with which we agree), this court "has no choice but to reverse [Mata's] conviction." In *People v. Johnson* (2006) 38 Cal.4th 1096, however, the California Supreme Court held the remedy for a trial court's error in failing to find a prima facie case at the first step of the *Batson*/*Wheeler* analysis is to remand the

matter for the limited purpose of allowing the trial court to make the appropriate rulings and findings. (*Id.* at p. 1100.) The Supreme Court acknowledged the possibility that the passage of time and the fading of memories may make it too difficult to perform the second and third steps of the process, but the Supreme Court concluded the trial court should have the opportunity to try. (*Id.* at pp. 1101-1102.)

Such a limited remand is appropriate here, even though this case, unlike *People v. Johnson*, involves the completion of the second step (i.e., the prosecutor's reason for challenging Prospective Juror No. 9) and the third step of the *Batson*/*Wheeler* analysis. (See, e.g., *People v. Hutchins* (2007) 147 Cal.App.4th 992, 999 ["a limited remand is appropriate so that the trial court may reconsider the third *Batson* step" where there were "detailed trial transcripts" and "the prosecutor took notes during voir dire"]; see also *People v. Lightsey* (2012) 54 Cal.4th 668, 709 ["[e]vidence in the record existed that might assist in the review of the challenges at issue, such as the juror questionnaires and the transcripts of voir dire, and the prosecutor's notes from jury selection might provide additional insight"]; *People v. Kelly* (2008) 162 Cal.App.4th 797, 802-805 [rejecting various challenges to the fairness of a limited remand for the trial court to conduct a new hearing on the second and third *Batson*/*Wheeler* steps]; *People v. Tapia* (1994) 25 Cal.App.4th 984, 1031 ["the trial court should have no difficulty in recalling the circumstances of the case as they existed at the time of the *Wheeler* motion and the manner in which the prosecutor examined the other prospective jurors and exercised his peremptory and 'for cause' challenges" because the "trial court will have available for its review the transcript of the voir dire examination of the jurors, the written questions and answers signed by the prospective jurors before voir dire, and the detailed reasons stated by the prosecutor for challenging the

jurors"]; cf. *Snyder v. Louisiana*, *supra*, 552 U.S. at p. 486 [no "realistic possibility" that the prosecutor's reason for exercising a peremptory challenge could "be profitably explored further on remand at this late date, more than a decade after petitioner's trial"].)

Therefore, on remand, the trial court should complete the second step and conduct the third step of the *Batson*/*Wheeler* analysis. The court should require the prosecutor to give his reasons for challenging Prospective Juror No. 9, review the prosecutor's explanation of his challenges to Prospective Juror Nos. 9, 7, 11, and 15, and "evaluate that explanation and decide whether defendant has proved purposeful racial discrimination. If the court finds that, due to the passage of time or any other reason, it cannot adequately address the issues at this stage or make a reliable determination, or if it determines that the prosecutor exercised his peremptory challenges improperly, it should set the case for a new trial. If it finds the prosecutor exercised his peremptory challenges in a permissible fashion, it should reinstate the judgment." (*People v. Johnson*, *supra*, 38 Cal.4th at pp. 1103-1104.)

DISPOSITION

The judgment is conditionally reversed and the matter is remanded to the trial court to conduct, if possible, the second and third stages of the *Batson*/*Wheeler* analysis. After reviewing the prosecutor's explanations for challenging Prospective Juror Nos. 9, 7, 11, and 15, the court is to make a sincere and reasoned evaluation of those explanations. If the court finds that, because of the passage of time or for any other reason, the court is unable make such an evaluation, or if the court determines the prosecutor improperly challenged any of the four Hispanic

prospective jurors, the court should set the case for a new trial. If the court finds the prosecutor's race-neutral explanations are credible and the prosecutor exercised the four peremptory challenges in a permissible fashion, the court should reinstate the judgment.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.*

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