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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. DERREL ANTHONY PARKER, Defendant and Appellant.	B263940 (Los Angeles County Super. Ct. No. VA134524)

APPEAL from a judgment of the Superior Court of Los Angeles County. Roger Ito, Judge. Affirmed.

Eileen Manning-Villar, 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, Steven D. Matthews and Robert C. Schneider, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Derrel Anthony Parker (defendant) appeals from his conviction of second degree burglary and felony grand theft.[1] He contends the trial court erred in: (1) denying his *Batson/Wheeler* motion;[2] (2) denying his motion to relieve retained counsel; and (3) ordering defendant to pay victim restitution in the amount of $1,024,000. We affirm.

FACTS

The nature of defendant's contentions makes a detailed recitation of the facts unnecessary. It is sufficient to state that, viewed in accordance with the usual rules on appeal (*People v. Zamudio* (2008) 43 Cal.4th 327, 357), the evidence established that in November 2013, Jewels by Angelo was a wholesale jewelry design and manufacturing company with a factory located in Downey. When the owner, Angelo Cardona, left the factory at the end of the day on November 4, he verified that all the doors and windows were locked before he set the separate vault and building alarms. When he returned to work the next morning, Cardona saw wires protruding from the alarm panel

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1 Defendant was charged by information with second degree burglary (Pen. Code, § 459; counts 1 and 2) and grand theft (§ 487, subd. (a); count 3); enhancements for destruction of property (§ 12022.6) and prior conviction/prison terms (§ 667.5, subd. (b)) were also alleged. Count 2 was dismissed prior to trial. A jury found defendant guilty of counts 1 and 3 and found true the enhancements. Defendant was sentenced to a total of seven years in prison comprised of the three year upper term for grand theft, plus a consecutive two years for the section 12022.6 enhancement, plus a consecutive one year for each of the two section 667.5, subdivision (b) enhancements. He timely appealed.

All further statutory references are to the Penal Code, unless otherwise indicated.

2 *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

next to the entry door, which was ajar. Inside, it was apparent that the premises had been ransacked - there were open file cabinets and things thrown on the floor. The vault had been broken into and finished pieces of jewelry and raw material worth more than $1 million had been stolen. DNA testing revealed that blood found on a shelf in the vault was defendant's blood. Cardona did not know defendant and never gave defendant permission to be in the building or the vault. Computer equipment found in a search of defendant's Bellflower home revealed online searches for "Angelo's Jewelry" and Google maps showing the location of the factory.

DISCUSSION

A. Batson/Wheeler

Defendant contends the judgment must be reversed because the trial court erred in denying his *Batson/Wheeler* motion. He argues the prosecutor dismissed Juror Nos. 1 and 21, the only two African-American potential jurors, for improper reasons of group bias. Although defendant did not make a comparative juror analysis in the trial court, he argues on appeal that the prosecutor did not challenge Juror Nos. 13 or 36, who had similar negative characteristics as the challenged jurors, but were not African-American. We find no error.

1. Governing Legal Authority

a. Batson/Wheeler

Group bias is bias against members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds. When a prosecutor uses peremptory challenges to strike prospective jurors because of group bias, he violates the defendant's right to trial by a jury drawn from a representative cross-section of the community under both the Fourteenth Amendment to the United States Constitution and article I, section 16 of the California Constitution. (*People v. Bell* (2007) 40 Cal.4th 582, 596 (*Bell*), disapproved of on another point in *People v. Sanchez* (2016) 62 Cal.4th 665, 686, fn. 13.) The federal constitutional right was established by *Batson, supra*, 476 U.S.

79 and the California counterpart was recognized by *Wheeler, supra*, 22 Cal.3d 258.

In response to a *Batson/Wheeler* motion, the trial court conducts a three-part inquiry. First, it must determine whether the defendant has made out a prima facie case by showing that the totality of the circumstances gives rise to a reasonable inference of discriminatory purpose. (*Bell, supra*, 40 Cal.4th at p. 596.) A prima facie case requires nothing more than evidence or circumstances that give rise to a reasonable inference of discrimination. (*Johnson v. California* (2005) 545 U.S. 162 (*Johnson*); *Bell*, at p. 596.) Second, if the defendant makes out a prima facie case of discriminatory purpose, the burden shifts to the prosecution to adequately explain its peremptory challenges by offering bias-neutral justifications for excusing the jurors at issue. Third, if such an explanation has been given, the trial court must decide whether the defendant has proven purposeful discrimination. (*Bell*, at p. 596.)

"At the third stage of the *Wheeler/Batson* inquiry, 'the issue comes down to whether the trial court finds the prosecutor's race-neutral explanations to be credible. Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy.' [Citation.] In assessing credibility, the court draws upon its contemporaneous observations of the voir dire. It may also rely on 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. [Citation.]" (*People v. Lenix* (2008) 44 Cal.4th 602, 613 (*Lenix*).) The trial court "must make 'a sincere and reasoned attempt to evaluate the prosecutor's explanation in light of the circumstances of the case as then known . . . .' [Citation.] The court need not make affirmative inquiries, but must determine whether the prosecutor's reason for exercising peremptory challenges is sincere and legitimate in the sense of being nondiscriminatory.

[Citation.]" (*People v. Hamilton* (2009) 45 Cal.4th 863, 907 (*Hamilton*).)

On appeal, we determine whether substantial evidence supports the trial court's findings. (*People v. Bonilla* (2007) 41 Cal.4th 313, 341-342.) Reversal is appropriate only if "the record as a whole shows purposeful discrimination," despite the apparently neutral explanations given. (*People v. Silva* (2001) 25 Cal.4th 345, 384; *People v. Gonzales* (2008) 165 Cal.App.4th 620, 629.)

Some types of evidence to be considered in making this determination are whether the party has used a disproportionate number of his peremptory challenges against the identified group and whether the only shared characteristic among the challenged jurors is their membership in this group. (*Bonilla*, *supra,* 41 Cal.4th at p. 342.) Examples of race-neutral reasons to excuse a juror include that the juror has a child that was tried for a crime (*People v. Jones* (2011) 51 Cal.4th 346, 366); has family members in prison (*Hamilton, supra*, 45 Cal.4th at p. 906); is young, single or unemployed (*id*. at pp. 903-905); or lacks prior jury experience (*People v. Reynoso* (2003) 31 Cal.4th 903, 925 (*Reynoso*)). Another race-neutral reason is that, because of the juror's job, the juror might "consciously or unconsciously exert undue influence during the deliberative process, or that fellow jurors would ascribe to her a special legal expertise." (*People v. Clark* (2011) 52 Cal.4th 856, 907 (*Clark*) [that juror worked as an administrative law judge was a race-neutral reason to excuse her].)

b. Comparative juror analysis

Comparative juror analysis is a comparison of the characteristics of the jurors allegedly excused because of group bias with the characteristics of jurors who were not excused and are not members of the identifiable group at issue. "[C]omparative juror analysis must be considered in the trial court and even for the first time on appeal if relied upon by the defendant and the record is adequate to permit the urged comparisons." (*Lenix, supra*, at p. 622.) But it is "not necessarily

dispositive, on the issue of intentional discrimination." (*Ibid*.) In particular, "comparative juror analysis on a cold appellate record has inherent limitations." (*Ibid*.) " 'In that situation, an appellate court must be mindful that an exploration of the alleged similarities at the time of trial might have shown that the jurors in question were not really comparable.' " (*Id*. at p. 620, citing *Snyder v. Louisiana* (2008) 552 U.S. 472.) The *Lenix* court gave an example of two potential jurors, each stating that they were arrested for driving under the influence and each denying that they harbored any ill feeling against the police as a result of the incident. But the demeanor of the two jurors differs such that one is believable and one is not. "A transcript will show that the panelists gave similar answers; it cannot convey the different ways in which those answers were given. Yet those differences may legitimately impact the prosecutor's decision to strike or retain the prospective juror. When a comparative juror analysis is undertaken for the first time on appeal, the prosecutor is never given the opportunity to explain the differences he perceived in jurors who seemingly gave similar answers." (*Id*. at p. 623.)

2. Voir Dire of Juror Nos. 1 and 21

In this case, voir dire established that Juror No. 1 lived in Bellflower, had two children (17 years old and two-and-a half years old) and was separated from her husband. She completed high school and had some college education but no degree. For the past 17 years, Juror No. 1 had worked as a Judicial Assistant in a criminal courtroom of the Compton Superior Court; she did not believe anything about that experience prevented her from following the trial court's instructions in this case or being a fair juror. Juror No. 1 was familiar with DNA evidence and had no problem with it. Juror No. 1's mother had been carjacked about 20 years ago; the perpetrator was never caught. Her brother was currently in prison for murder; she visited him about 10 years ago but no longer had any relationship with him; she felt he had been treated fairly by the criminal justice system. Juror No. 1 had cousins who had been, but were no longer, incarcerated on drug-related charges. Juror No. 1 had performed jury service but

was never on a jury. The trial court asked: "It sounds like you are comfortable and you are tired of watching for 17 years and want to get into that jury room yourself?" To which Juror No. 1 responded, "Sure." The prosecutor used his first peremptory challenge to excuse Juror No. 1.

Juror No. 21 lived in Downey, was not married and had no children. He had a high school diploma and graduated from vocational school the year before with a technical degree for "office assistant;" for about one month, he worked as an unpaid intern at a newspaper that reported local events; he was currently seeking employment; he had no prior jury service. Juror No. 21 was the last juror peremptorily challenged by the prosecutor before a panel of 12 jurors was accepted by both sides.

After the parties stipulated to an alternate juror, defendant asked to make a record of his objection to the prosecutor's exercise of peremptory challenges to Juror Nos. 1 and 21. Defendant asserted they were the only two African-Americans in the 38 person jury pool and the prosecutor had excused them "without any showing of bias on their part that the record reflects . . . ." The trial court responded: "Well, I think under the circumstances, because you have made the objection, and I do note I think that those are the two African-Americans, [prosecutor]. I'm going to go ahead and make a prima facie finding and I want you to respond."

The prosecutor explained he excused Juror No. 1 because she "had a son convicted of murder.[3] She also had cousin who

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3 The prosecutor incorrectly stated that Juror No. 1 had *a son* convicted of murder; it was her brother. We do not find the discrepancy particularly meaningful. As our Supreme Court explained in *Jones, supra,* 51 Cal.4th at page 366, the "purpose of a hearing on a *Wheeler/Batson* motion is not to test the prosecutor's memory but to determine whether the reasons given are genuine and race neutral. 'Faulty memory, clerical errors, and similar conditions that might engender a "mistake" of the type the prosecutor proffered to explain his peremptory challenge

was convicted of drugs. She's also a judicial assistant in Compton. She has seen a lot of the criminal trials, I'm assuming. If she was for me, that would be great in the jury room, but if she was not, against me, based on her experience, I did not want to take the chance, so that was the basis for her." The prosecutor said he excused Juror No. 21 because he lacked "jury experience, single, unemployed. I don't know if he has a disability of some sort, but the way he was speaking, I didn't know if it was the manner of his speech that would indicate that he was a little slower."

Although defendant did not make a comparative juror analysis argument, the prosecutor volunteered that, as to Juror No. 21, he "had a decision to make, take somebody who has served on criminal juries that reached verdicts, who are the jurors in Juror Number 35 and 36 who have – who are – are married, have children, are college educated and have actually served on juries that reached verdicts. [¶] So if I had to do a comparative analysis and had to pick, I selected individuals that I thought would be better jurors. [¶] And for example, I kicked off an Asian juror [Juror No. 16] who was on there the whole time, but in comparing who I thought would be better, I selected to kick this Asian male because I thought another juror would be a better fit."

Defendant did not object to the trial court's statement that it would not consider the prosecutor's comparative juror analysis. The trial court expressly credited the prosecutor's race-neutral reasons for excusing Juror No. 21 – because he was single, unemployed, had very little work experience and no prior jury experience. Although the trial court did not make an express ruling as to Juror No. 1, a finding that the prosecutor's stated

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are not necessarily associated with impermissible reliance on presumed group bias.' [Citation.] This 'isolated mistake or misstatement' [citation] does not alone compel the conclusion that this reason was not sincere."

reasons for excusing Juror No. 1 were both race-neutral and supported by the evidence is implicit in the trial court's denial of the *Batson/Wheeler* motion.

3. Analysis

We conclude, based on our independent review of the entire record of voir dire, that the trial court made a sincere and reasoned attempt to evaluate the prosecutor's reasons for challenging Juror Nos. 1 and 21 and that substantial evidence supports the trial court's finding that the prosecutor had race-neutral grounds for his peremptory challenges to Juror Nos. 1 and 21. Under *Hamilton, supra*, 45 Cal.4th at page 906, the fact that Juror No. 1 had family members in prison was a race-neutral reason for excusing her. Further, under *Clark, supra*, 52 Cal.4th at page 907, the fact that Juror No. 1 worked as a judicial assistant in a criminal court was a race-neutral reason for excusing her because the prosecutor could reasonably believe Juror No. 1 "might consciously or unconsciously exert undue influence during the deliberative process, or that fellow jurors would ascribe to her a special legal expertise." Under *Hamilton, supra*, 45 Cal.4th at page 906, that Juror No. 21 was single and unemployed were race-neutral reasons for excusing him. Under *Reynoso, supra*, 31 Cal.4th at page 925, the fact that he lacked prior jury experience was also a race-neutral reason. On this record, the trial court did not err in denying defendant's *Batson/Wheeler* motions.

We are not persuaded otherwise by defendant's comparative juror analysis, made for the first time on appeal. The gist of defendant's argument is that the prosecutor's reasons for excusing Juror Nos. 1 and 21 should not be credited because he did not excuse Juror Nos. 13 and 36, who shared similar characteristics to Juror Nos. 1 and 21, respectively, but were not African-American. We do not agree.

The argument as to Juror No. 1 is that the prosecutor could not have excused her for the race-neutral reason that she worked as a Judicial Assistant in a criminal court since he did not excuse Juror No. 13, who worked as a legal secretary in an intellectual

property law firm. But those professional experiences are qualitatively different and the prosecutor could reasonably believe that other jurors were more likely to ascribe special expertise in criminal matters to a person who worked as Judicial Assistant in a criminal courtroom, much like the courtroom in which this very trial was taking place, than to a person who worked in an office environment as a legal secretary in an intellectual property law firm.

The argument as to Juror No. 21 is that the prosecutor did not excuse him for the race-neutral reason that he was single, with only a high school education, because Juror No. 36 was also single and had only a high school education. But Juror No. 36 was employed as a clerk at a school district and had served on a jury that reached a verdict in a criminal case, whereas Juror No. 21 had no jury experience and his only work experience was as an unpaid intern. We conclude substantial evidence supports the distinction, and defendant's comparative juror analysis fails.

B. Replacement of Retained Counsel

Defendant contends he was denied his Sixth Amendment right to counsel by the trial court's denial of his request to replace his retained attorney.

On appeal, defendant expressed dissatisfaction with retained counsel twice. Once before trial and once before sentencing. Although the heading of the relevant section of Appellant's Opening Brief refers to a "*posttrial motion* to relieve retained counsel," the text discusses only the *pretrial motion.* The Respondent's Brief discusses only the pretrial motion, and defendant's Reply Brief is silent on the point. On this record, we understand defendant to be challenging only the pretrial order.

We find no error.

1. Governing Legal Authority

"A criminal defendant is entitled to assistance of counsel at all critical stages of the proceeding. (U.S. Const., 6th Amend.; Cal. Const., art. I, § 15; [] §§ 686, 859 & 987; *Gideon v. Wainwright* (1963) 372 U.S. 335, 344–345.)" (*People v. Lara* (2001) 86 Cal.App.4th 139, 149 (*Lara*).) An indigent defendant is

entitled to appointed counsel. (*Id*. at p. 150.) Under *Marsden*, a defendant who wants to obtain new *appointed* counsel must show either that appointed counsel is providing inadequate representation or an irreconcilable conflict exists such that ineffective representation is likely to result. (*People v. Jones* (2003) 29 Cal.4th 1229, 1244-1245.)

By contrast, subject to limited circumstances, a non-indigent criminal defendant has the due process right to discharge his retained counsel at any time with or without cause and need not satisfy the requirements of *Marsden* to *retain* different counsel. (*Lara, supra*, 86 Cal.App.4th at pp. 150-152; *People v. Lau* (1986) 177 Cal.App.3d 473, 478 (*Lau*).) Reversal is automatic when a non-indigent defendant has been deprived of this right. (*People v. Ortiz* (1990) 51 Cal.3d 975, 988; *Lara*, at p. 55.)

The right to discharge retained counsel without cause exists "regardless of financial ability to hire another attorney." (*People v. Stevens* (1984) 156 Cal.App.3d 1119, 1128 (*Stevens*).) Nevertheless, the right to discharge retained counsel is not absolute. (*Lara*, *supra*, 86 Cal.App.4th at p. 153.) It can constitutionally be forced to yield " 'when it will result in . . . a disruption of the orderly processes of justice unreasonable under the circumstances of the particular case.' " (*People v. Courts* (1985) 37 Cal.3d 784, 790; *Ortiz*, at p. 982; *Lara*, at p. 153 [trial court "may exercise discretion to ensure orderly and expeditious judicial administration if the defendant is 'unjustifiably dilatory or . . . arbitrarily desires to substitute counsel at the time of trial.' [Citations.]"].) "Absent a proper finding of unwarranted disruption of the orderly processes of justice, a court may not force a defendant who timely requests substitution to go to trial represented by retained counsel he no longer trusts." (*Stevens,* at p. 1128, fn. omitted.)

Three cases offer guidance on the issue of timeliness: *Stevens, supra*, 156 Cal.App.3d 1119; *Lau, supra*, 177 Cal.App.3d 473 and *People v. Jeffers* (1987) 188 Cal.App.3d 840 (*Jeffers*). In *Stevens, supra*, the indigent defendant's retained counsel was his

brother-in-law, McGhee, who volunteered to represent him without compensation. McGhee did not appear at a hearing 11 days before the date set for trial and there was evidence that it was because he had a drinking problem; the hearing was continued one week. At the continued hearing, four days before the date set for trial, McGhee informed the trial court that the defendant wanted a public defender appointed. The trial court refused the request for appointed counsel because it would require a continuance. The appellate court reversed reasoning the request made almost two weeks before trial was timely and would not cause an adverse effect on judicial administration. (*Stevens*, at p. 1126.)

In *Lau, supra*, 177 Cal.App.3d 473, codefendants Lau and Marenko each replaced their appointed attorneys with retained counsel. *On the date set for trial*, Marenko's attorney appeared and announced ready but Lau's attorney did not appear and could not be reached until the next day, at which time he was ordered to appear that afternoon. When Lau's attorney appeared that afternoon, a prospective jury was waiting outside the courtroom. Lau's attorney said he believed a disposition could be reached; the district attorney expressed doubt since he would accept a disposition as to both defendants only, and Marenko would not agree. After a recess to discuss a possible disposition, Lau's attorney informed the trial court that Lau wanted to replace him with the public defender because Lau believed the attorney wanted Lau to plead whereas Lau did not believe he was guilty. The trial court denied Lau's request, reasoning that Lau's stated reasons for wanting to replace his retained attorney " 'are not legally sufficient and the motion has not been timely made.' " (*Id*. at p. 479.) The appellate court found no error, given the untimeliness of the request. (*Ibid.*)

In *Jeffers, supra*, 188 Cal.App.3d 840, the law firm of Franklin & Robinson was appointed to represent the defendant. Robinson represented the defendant at pretrial proceedings. When the matter was called for trial, Robinson informed the court that she was unavailable but another attorney from the

firm could handle the case, however the defendant wanted a continuance to hire his own attorney. (*Id*. at p. 848.) The next day, an attorney from Franklin & Robinson appeared and announced ready; attorney Nicholas De Pento also appeared and informed the trial court that he was willing to substitute in as retained counsel on the condition that the trial was continued. The defendant said he would "feel a lot happier" with De Pento and thought he "would be better represented by someone who had more time to be interested in the case." The trial court denied the continuance. It denied another request for a continuance the next day, finding the reasons stated not sufficient and the motion not timely. (*Id*. at pp. 848-849.) The appellate court affirmed, reasoning that appointed counsel was prepared for trial and the defendant did not show "compelling circumstances supporting his late request for continuance." (*Jeffers*, *supra*, at pp. 850-851.)

2. Defendant's pretrial request for new counsel

Here, defendant was represented by the alternate public defender at the preliminary hearing on August 18, 2014. At his arraignment on September 2, 2014, defendant was represented by retained counsel, Erick V. Munoz. On Monday, March 16, 2015, Mr. Munoz and the prosecutor announced ready for trial. After the trial court indicated its intention to put the matter over for one week, the matter was placed on second call so that the attorneys could discuss some witness stipulations. When the matter was recalled, Mr. Munoz informed the trial court that defendant wished to be heard "on a *Marsden*."[4] The trial court pointed out that since Mr. Munoz was privately retained, defendant could fire him but there was no grounds for a *Marsden* motion. In an abundance of caution, the trial court agreed to hear defendant's "complaint." This colloquy, initially with all parties present, followed:

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[4] *People v. Marsden* (1970) 2 Cal.3d 118.

"[THE DEFENDANT]: I just feel that he's not really trying to fight for me. He's talking to me like, you know, I been dealing with him for a long time.

"THE COURT: Actually, this is – no. Never mind. This is not really a *Marsden* motion. I'm not going to hear any more.

"You have the right to fire him. Then what are you going to do for your attorney? We're not appointing a public defender. Apparently you or your family have enough money to represent you."

"[¶] . . . [¶]

"[COUNSEL]: Pardon my interrupting, but just to clarify . . . , [defendant] is asking that the trial be further continued. And I've explained to him that is not conducive to my schedule. And also the court is highly unlikely to allow such a request, given that we've already set this date. The case is already well beyond the 120 days. Discovery is complete and both sides have indicated they are ready for trial.

"And in light of that, I [explained] if he were to retain new counsel that person's going to have to be ready for trial within the ten-day period. And then that's when he has asked to address the court, because he feels like he'd like more time.

"THE COURT: You are ready to try the case?

"[COUNSEL]: Yes, Your Honor.

"THE COURT: I'm going to ask you to step outside, [prosecutor], in an abundance of caution.

> "[COUNSEL]: Just for the record, I have no objection to her [counsel] being here. I appreciate the court's courtesy. So, just so the court's record is clear, I have no objection to her being here.
>
> "THE COURT: I know, but to the extent that it borders on a *Marsden* motion.
>
> "Okay. [Defendant], go ahead. You say you don't think your attorney is fighting for you. Why?
>
> "[THE DEFENDANT]: He just – ever since the new case it's just he hasn't been interested in this case. First he was super interested in it and then he just lost interest.
>
> "THE COURT: How do you know how interested he is?
>
> "[THE DEFENDANT]: Well, he pretended to be interested.
>
> "THE COURT: He pretends to be."

There followed some discussion of the "new case," which involved a jewelry store burglary in Pomona, and the fact that defendant was on probation in another jewelry store burglary when he was charged in this case. Asked what he expected Mr. Munoz to be doing, defendant responded, "Fight." The trial court next explained to defendant the persuasive power of the DNA evidence:

> "THE COURT: . . . Your blood was in the vault, because there was smashed glass all around. DNA evidence controls, totally, [defendant].

"I don't think that you have a valid basis –

"[THE DEFENDANT]: I don't feel comfortable, you know.

"THE COURT: Of course you don't feel comfortable. You're going to prison for a long time.

"[THE DEFENDANT]: I don't feel comfortable with him.

"THE COURT: I'm not concerned with your comfort. So far all I can see is an attempt to delay the proceedings on your part. There's nothing reasonable by way of a defense. There's certainly no indication that your attorney isn't prepared. He'll try this case to the best of his extent, but it's like trying to beat his head against the wall. All any attorney can do for you is to see that you are tried according to the law and according to the rules of evidence.

"But the evidence that is introduced is what controls the outcome of the case.

"Mr. Munoz, you're ready for trial. I don't think there's a valid basis here for your – unless you have an attorney ready to take over the case, [defendant], and you don't, I'm not going to allow further delay."

After the prosecutor returned to the court room, the trial court concluded:

"THE COURT: . . . [T]he court is satisfied that Mr. Munoz is prepared and ready to try the case.

> "I believe that [defendant] is simply trying to delay the inevitable here and continue this matter without any good cause for doing so.
>
> "So the court is not going to relieve counsel at this juncture."

Later, the trial court clarified:

> "It's not a *Marsden* motion. You can't run a *Marsden* motion on privately retained counsel. I'm denying his request to fire his attorney because there is no new attorney prepared to step in, because his current attorney is fully prepared to try the case. And I find this is a dilatory attempt on his part to continue and delay this matter without good reason."

The trial court continued the trial one week to Monday, March 23, 2015. Jury selection commenced on Wednesday, March 25, 2015.

3. Analysis

This case is more similar to *Jeffers, supra*, 188 Cal.App.3d 840 and *Lau, supra*, 177 Cal.App.3d 473, than it is to *Stevens, supra*, 156 Cal.App.3d 1119. Here, defendant expressed dissatisfaction with his retained attorney for the first time after both sides announced ready for trial on March 16, 2015. The only complaint defendant had about Mr. Munoz's representation was that Mr. Munoz had appeared to lose interest in the case after defendant was charged with another jewelry store burglary and defendant was not convinced that Mr. Munoz would "fight" for him. Defendant did not indicate he had another retained attorney prepared to substitute in for Mr. Munoz.
Nor did he ask that the public defender be appointed in place of Mr. Munoz.

Defendant makes much of the trial court's reference to a *Marsden* motion even though defense counsel was retained. The

trial court correctly said this was not a *Marsden* motion; the reference to the appointed counsel procedure appears to have been intended to reassure defendant that the court was treating his motion seriously. Even though perhaps not required, the trial court concluded some of the proceedings should have been outside prosecutor's presence, again in an effort to make sure no defense strategy would be inadvertently revealed. It is also clear to us that the trial court denied this motion to relieve counsel because the motion was untimely. Defendant admitted he did not have a new attorney ready to try the case. On the other hand, present retained counsel was ready.

On this record, we find no abuse of discretion in the trial court's finding that defendant's request to replace Mr. Munoz was untimely and intended to interfere with the orderly process of the trial.

C. *Victim Restitution*

Defendant contends there was insufficient evidence to support the $1,024,000 victim restitution award. He argues People's Exhibit No. 34, a list of stolen items Cardono prepared for the police soon after the burglary, showed that the stolen merchandise had a value of only $714,773 and that Cardono's testimony about the value of other items he discovered missing after the inventory was prepared is not relevant. We find no error.

With exceptions not relevant here, "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court." (§ 1202.4, subd. (f).) "To the extent possible, the restitution order . . . shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to . . . [f]ull or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the

replacement cost of like property, or the actual cost of repairing the property when repair is possible." (§ 1202.4, subd. (f)(3)(A).) "The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so and states those reasons on the record. . . . ." (§ 1202.4, subd. (g).)

We review victim restitution orders for abuse of discretion. (*People v. Millard* (2009) 175 Cal.App.4th 7, 26.) In exercising its broad discretion to order victim restitution, the trial court " 'may use any rational method of fixing the amount of restitution as long as it is reasonably calculated to make the victim whole. [Citations.]' [Citations.]" (*Id*. at p. 26.) " ' "When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court." ' . . . . 'In reviewing the sufficiency of the evidence [to support a factual finding], the " 'power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the trial court's findings." [Citations.] Further, the standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt. [Citation.] "If the circumstances reasonably justify the [trial court's] findings," the judgment may not be overturned when the circumstances might also reasonably support a contrary finding. [Citation.] We do not reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact. [Citations.]' [Citation.]" (*Ibid*.)

Here, Cardono testified that People's Exhibit No. 34 was an itemized list of *some* of the merchandise stolen in the burglary. Cardono prepared the list with the help of his daughter, who works with him in the business, and gave it to the police. Cardona explained that the values ascribed to each item on the list was the "actual value" of that item, which is the factory's out-

of-pocket cost to produce the item.[5] The actual value of the items listed on People's Exhibit No. 34 was a total of $714,773. At the time he prepared People's Exhibit No. 34, Cardona was under a lot of stress to make a list for the police. But it was hard because, although they maintained written lists of finished pieces, Cardona kept the inventory of raw materials in his head. In addition to raw gold and silver, Cardona had unset rubies, sapphires, diamonds, emeralds, jade and coral. Cardona said every day he would discover something else missing. For example, after he gave the list to the police, Cardono discovered boxes of gemstones and a large box of jade had also been stolen; he estimated the value of these items to be between $50,000 and $100,000. Also stolen was a two-and-a-half carat diamond that Cardona kept in the vault; Cardona did not recall what he paid for that diamond, but it had been appraised for about $70,000. Cardona estimated that over $1 million worth of jewelry and gemstones had been stolen, including the diamond. At most, about $300 worth of loose stones had been recovered. Cardona testified that it had cost about $24,000 to replace the telephone and alarm system that were damaged in the burglary.

Cardona's testimony that the stolen property had a value of at least $1 million and that the cost to repair the damaged telephone and alarm system was $24,000 provides a factual and rational basis for the $1,024,000, restitution award. For this reason, defendant's challenge to the award fails.

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[5] Cardona explained that the price at which the factory sells the item to its jewelry store clients is the "wholesale" value; and the price at which the jewelry store sells the item to the ultimate consumer is the "retail" value.

DISPOSITION

The judgment is affirmed.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.