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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES VERNON WARD,

Defendant and Appellant.

B280320

(Los Angeles County
Super. Ct. No. BA392093)

APPEAL from a judgment of the Superior Court of Los Angeles County. Craig J. Mitchell, Judge. Affirmed.

Barbara A. Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

James Vernon Ward appeals from a judgment that was reinstated following a second remand for the hearing and determination in appellant's presence of whether the prosecutor's reasons for exercising a peremptory challenge against a prospective juror were race-neutral. In his first appeal, appellant challenged the trial court's failure to require an explanation for the prosecutor's use of a peremptory challenge against one of two African-American jurors. (*Batson v. Kentucky* (1986) 476 U.S. 79, 85, 96–99 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258, 276–277 (*Wheeler*).) We conditionally reversed the judgment, remanding the matter for the trial court to “attempt to perform the second and third stages of the *Batson/Wheeler* analysis” with respect to Prospective Juror No. 4. (*People v. Ward* (Oct. 24, 2014, B244947 [nonpub. opn.] p. 8.)

Upon remand, the trial court conducted the hearing as directed, but appellant was not present. The record did not reflect whether the trial court refused to order appellant transported for the hearing or simply failed to do so. The record showed no waiver of appellant's right to be present. The only reference to appellant's absence was the trial court's statement at the start of the hearing that “Mr. Ward is not before the court. He is currently serving time in state prison on this case.” (*People v. Ward* (Aug. 24, 2016, B263316 [nonpub. opn.] p. 3.)

We again conditionally reversed the judgment and remanded the cause to the trial court, with orders that the trial court “must—in the presence of defendant Ward—attempt to perform the second and third stages of the *Batson/Wheeler* analysis. The court should require the prosecutor to explain her peremptory challenge of Prospective Juror No. 4. If the prosecutor offers a race-neutral explanation, the court must attempt to make a sincere and reasoned evaluation of that

explanation. 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 improperly challenged Prospective Juror No. 4, it should set the case for a new trial. If it finds the prosecutor exercised her peremptory challenges in a permissible fashion, it should reinstate the judgment.” (*People v. Ward, supra*, B263316, p. 9.)

The second remand hearing took place on January 9, 2017. Appellant was present. The trial judge began the proceedings by describing his own recollections of the trial and Prospective Juror No. 4, and he explained why his memory of the proceedings was so clear.

Tiffany Forsberg, the trial prosecutor, then testified under oath to her recollections of Prospective Juror No. 4 and the reasons she independently recalled for excusing the juror. The prosecutor explained: “I excused Juror No. 4 for a variety of reasons. One reason was that he informed us that he was a social worker. . . . [A]s a general matter, . . . [I] didn’t like social workers on my jury, primarily because I believe that a juror should look to the facts and examine the facts and determine from the facts that are presented if the defendant is guilty or not and not be swayed by any sympathy or try to fill in any blanks of maybe what happened in this person’s background that maybe contributed to where they are today.” Ms. Forsberg testified that she held this opinion about social workers regardless of the race of the juror or the defendant. In this case she used a peremptory challenge to excuse three social workers, which accounted for all of the social workers on the entire panel. One of the other jurors she excused for being a social worker was a white woman, but Ms. Forsberg

did not recall the race or gender of the third social worker she excused.

Ms. Forsberg also testified that Prospective Juror No. 4's statement that "he wears different hats" as a social worker caused her concern that he might not follow the law as given in the court's instructions. The prosecutor opined that a jury trial is "a one-hat process," and "if someone has a way of thinking where they like to change hats frequently, that that is not the type of juror that I was looking for in this particular case."

Another reason the prosecutor gave for excusing Prospective Juror No. 4 was that he had been late to court one day. She explained that in a previous trial a juror who was consistently late throughout the trial had "hung the jury" in that case. "So I pay particular notice to someone if they arrive late to court on a particular date. I think that just, in general, shows—can show a disrespect for the court process. So I don't like to have a juror who is not respectful of the process, and to me that's one possible indicator that they don't respect the process."

Finally, Ms. Forsberg explained that she noticed Prospective Juror No. 4 had nodded positively at something defense counsel had said, but did not give her a similar nonverbal response during voir dire. This conduct led the prosecutor to believe that the prospective juror might be responding more positively to the defense attorney, which became a factor in excusing the juror.

When asked about a moment during voir dire when Prospective Juror No. 4 did not seem to understand Ms. Forsberg's question about the theory of aiding and abetting, the prosecutor stated that she did not specifically recall that. Nevertheless, it could have factored into her exercise of the peremptory challenge. At least one, possibly two, African-

American jurors remained on the jury that was impaneled. The prosecutor specifically recalled the jury foreperson, who was an African-American man.

The trial judge stated that he had a specific clear memory of Prospective Juror No. 4 “being a very professionally attired, well-spoken individual, consistent with his job as a social worker. He was very involved in the selection process, was quite able to interject himself when he had a question.”

The trial judge stated he was satisfied that Ms. Forsberg’s memory was sufficient to allow the court to make a sincere and reasoned examination of the proffered explanation for the peremptory challenge, based on the prosecutor’s statement that this had been a unique and very significant case in her career. The court found the prosecutor’s reasons for excusing Prospective Juror No. 4 to be genuine, and her exercise of the peremptory challenge based on race-neutral reasons having nothing to do with the juror’s ethnicity or status in a cognizable class. Thus, in accordance with this court’s prior opinion in *People v. Ward*, *supra*, B263316, pp. 3, 9), the trial court reinstated the judgment.

Mr. Ward once again appealed, and we appointed counsel to represent him on appeal. After examination of the record, counsel filed an opening brief raising no issues and asking this court to independently review the record. Appellant has filed no supplemental brief of his own.

We have examined the entire record and are satisfied that appellant’s attorney has fully complied with her responsibilities and that no arguable issues exist. (*People v. Kelly* (2006) 40 Cal.4th 106, 109–110; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

LUI, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.