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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. ISAIAH YOUNG, Defendant and Appellant.	B229846 (Los Angeles County Super. Ct. No. BA360441)

APPEAL from a judgment of the Superior Court of Los Angeles County. Leslie A. Swain, Judge. Affirmed.

William Hassler, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Susan Sullivan Pithey and Michael J. Wise, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Isaiah Young, an African-American, of attempted second degree robbery of Vincente Hernandez, a Hispanic. On appeal Young contends the trial court erred in finding that he failed to establish a prima facie case that the prosecutor peremptorily challenged an African-American juror on the basis of his race. (*People v. Wheeler* (1978) 22 Cal.3d 258; *Batson v. Kentucky* (1986) 476 U.S. 79 [90 L.Ed.2d 69, 106 S.Ct. 1712].) He further contends the court erred in admitting evidence of a set of brass knuckles found in his possession shortly after the attempted robbery and in denying his motion for a mistrial based on prosecutorial misconduct.[1] We find no merit to these contentions and affirm the judgment.

FACTS AND PROCEEDINGS BELOW

A. The Prosecution's Case

Vicente Hernandez waited for a bus just after midnight at the corner of Vermont Avenue and Venice Boulevard. Hernandez saw a van drive by, make a U-turn, and pull into the strip mall behind the bus stop. Two men got out of the van. One of the men "stared" at Hernandez while the other man, later identified as defendant Young, stood on the corner and "was looking around."

Suddenly, someone grabbed Hernandez's hands and pulled them behind his back. He felt a blow to the back of his head. Hernandez first testified that it "felt like he hit me with something that he must have had in his hand" but he did not see what it was. Later, Hernandez testified that he believed he had been struck by bare hands. Still later Hernandez testified that it felt like the person who struck him had something metal in his hands.

Hernandez testified that the person behind him held his hands with one of his hands while searching Hernandez's pockets with his other hand. The person who did this

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[1] We dealt with the latter claim in our opinion affirming the conviction of Young's codefendant, Kent Morrison (*People v. Morrison* (2011) 199 Cal.App.4th 158, 163-165), in which we held that the trial court did not err in admitting testimony to impeach Morrison's claims regarding his employment and permission to use the van.

was not Morrison or Young. When Hernandez called out "the police is coming," the person searching him ran toward the van while the other person remained at the corner. The van drove out of the parking lot.

A passerby offered to give Hernandez a ride to follow the van and Hernandez accepted. As they pursued the van, Hernandez called 911 and gave a description of the van and the last three numbers of its license plate. A police officer in a patrol car spotted a van that met the description given by Hernandez. After the van ran through two stop signs, the officer ordered it to stop. The officer detained Morrison, who was the driver, and two male passengers including Young. When Hernandez arrived at the scene, he identified all three men as the ones who had been involved in trying to rob him. Other officers arrived at the scene to assist in the arrest and to search the men and the van. In searching Young, Officer Larry Oliande saw that Young was wearing a belt that had a set of "brass knuckles" as the belt buckle. Officer Oliande testified that he was "quite easily" able to remove the brass knuckles from the belt. Without objection, the brass knuckles were shown to the jury and admitted into evidence.

At trial, Hernandez testified that the van the police stopped was the same van the robbers had used. He identified Young as the "look-out."

B. Young's *Wheeler*/Batson Motion

The prosecutor used a second peremptory challenge to excuse Juror No. 7430, an African-American man, leaving just one other African-American on the panel.[2] Young immediately moved for a mistrial under the *Wheeler* and *Batson* decisions which prohibit a party from striking jurors based on group bias. In a sidebar conference, Young's counsel explained that his motion was "based on the fact that [Juror No. 7430] had served on two other juries, that he otherwise seemed to be a fit juror.[3] He indicated

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[2] The record does not show whether this remaining African-American served on the trial jury.

[3] Juror No. 7430 is referred to in the reporter's transcript as Juror No. 8.

he was a prior Explorer [scout] and he had no bad feelings about any of the hung jury experiences and he's also one of only two African-Americans on the panel." The court did not ask the prosecutor to explain her strike and she did not volunteer a reason. The court denied the motion stating: "I don't see any pattern. There have only been two challenges exercised by the People."

C. The Verdict and Sentence

A jury found Young guilty of one count of attempted second degree robbery. The court sentenced him to a total prison term of seven years, eight months. Young filed a timely appeal.

DISCUSSION

I. THE RECORD SUPPORTS THE TRIAL COURT'S DENIAL OF THE *WHEELER/BATSON* MOTION

The use of peremptory challenges to remove prospective jurors solely on the basis of group bias, predicated on their membership in a racial or other type of cognizable group, constitutes a violation of the right under the California Constitution to a jury selected from a representative cross-section of the community (*People v. Wheeler*, *supra*, 22 Cal.3d at p. 272), and of the right under the United States Constitution to equal protection of the law. (*Batson v. Kentucky*, *supra*, 476 U.S. at p. 89.) The party claiming a *Wheeler*/*Batson* violation must make a prima facie showing that a peremptory challenge has been exercised on the basis of race, ethnicity or other group bias. If that showing is made, the burden of producing evidence shifts to the party who made the peremptory challenge to offer a neutral basis for it. If that showing is made, it is up to the trial court to determine whether the objecting party has proven purposeful discrimination. (*People v. Hamilton* (2009) 45 Cal.4th 863, 898.) Here, Young did not get past the first step of his *Wheeler*/*Batson* motion—the showing of a prima facie case of group bias.

Young's attempt to establish a prima facie case rested on two grounds. First, the prosecution's challenge eliminated one of only two African-Americans in the jury venire. Second, Juror No. 7430, a former Boy Scout, was a married businessman from

Santa Monica and there was nothing in his background that would support a legitimate peremptory challenge, leaving racial bias as the only possible motive. Although Young did not mention it, it would have been clear to the court that Young and the challenged juror were of the same race. The prosecutor did not contest Young's reasoning nor offer any reason of her own for excluding the juror. The trial court denied the motion on the ground that striking a single black juror did not establish a "pattern" of discrimination.

The trial court's ruling was half right. A prima facie case of group bias cannot be based *solely* on the striking of one or two minority jurors. (*People v. Garcia* (2011) 52 Cal.4th 706, 747.) But, on the other hand, "[w]hen a party makes a *Wheeler* motion, the issue is not whether there is a pattern of systematic exclusion; rather, the issue is whether a particular prospective juror has been challenged because of group bias." (*People v. Avila* (2006) 38 Cal.4th 491, 549.) Because the prosecutor did not offer even a post-ruling reason for excluding Juror No. 7430, it is up to us to "review[] the record of voir dire for evidence to support the trial court's ruling." (*People v. Farnam* (2002) 28 Cal.4th 107, 135.) We find such evidence in the juror's disclosure that he had served on two juries that could not reach a verdict. Even though he stated he was in the majority in both cases, his service in two trials that resulted in hung juries constitutes a race-neutral reason which could have led the prosecutor to excuse him. (*Id.* at p. 138 [juror's disclosure that she previously served in a case that resulted in a hung jury "'constitutes a legitimate concern for the prosecution'" and a legitimate reason for the challenge].)

II. THE COURT DID NOT ERR IN ADMITTING EVIDENCE OF THE BRASS KNUCKLES

Young objected to the introduction of evidence of the brass knuckles on the grounds that there was no evidence whoever struck Hernandez on the back of the head used the brass knuckles found on Young's belt shortly after the crime and that the introduction of this evidence was unduly prejudicial. The court found the brass knuckles were relevant because Hernandez testified he felt something "metal" in the hands of the

man who struck him and that their introduction into evidence was not unduly prejudicial under Evidence Code section 352. We agree.

As Young concedes, the brass knuckles had at least "some minimal relevance" to the case. They linked Young to the attempted robbery. Hernandez testified that the person who struck him had something "metal" in his hand. The prosecution did not claim that Young was the person who struck Hernandez but Young's brass knuckles belt buckle could have been the "metal" in the hand of Hernandez's assailant. The assailant would have had access to the brass knuckles because he and Young were riding in the van together and the brass knuckles were easy to remove from Young's belt and reattach.

The trial court's ruling on the admission of evidence under section 352 is reviewed for abuse of discretion. (*People v. Cole* (2004) 33 Cal.4th 1158,1195.) Young argues the introduction of the brass knuckles was unduly prejudicial because the jurors would look on them as evidence of his dangerousness. The evidence was relevant to connect the assailants to the crime. The trial court did not abuse its discretion in weighing the probative value of that evidence against its prejudice and admitting the brass knuckles.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, Acting P. J.

We concur:

CHANEY, J.

JOHNSON, J.