Filed 4/5/17 P. v. Wingo CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. ANGELO WINGO, Defendant and Appellant.	B268978 (Los Angeles County Super. Ct. No. BA366923)

APPEAL from a judgment of the Superior Court of Los Angeles County, Sam Ohta, Judge. Affirmed.

A. William Bartz, Jr., 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 Rama R. Maline, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Angelo Wingo raises a contention of trial error relating to jury selection, following his conviction of multiple robbery, attempted robbery and illegal use of tear gas charges, with principal armed and personal use of a firearm findings.

For the reasons discussed below, the judgment is affirmed.

BACKGROUND

Defendant Wingo and his codefendant Thaddeus Love were tried on charges arising out of a series of six armed robberies committed during December 2009 and January 2010. The robberies were committed at the following businesses: a T-Mobile store on December 23, 2009; a second T-Mobile store on December 24, 2009; a RadioShack on December 28, 2009; Academy Insurance on January 5, 2010; Wolfcom Enterprises/Asian Wolf on January 13, 2010; and a GameStop on January 13, 2010. Besides Love, several others were involved in these crimes. Wingo and those individuals were the ones who went into the stores while Love apparently directed the robberies from his car. Love is not a party to this appeal.[1]

Wingo was convicted on two counts of robbery, 22 counts of attempted robbery, and one count of the illegal use of tear gas, with principal armed and personal use of a firearm findings. (Pen. Code, §§ 211, 664/211, former 12403.7, subd. (g), 12022, 12022.53.) Wingo was sentenced to a prison term of 27 years 8 months.

---

[1] Wingo, Love and three others were originally charged in this case. Two of the three defendants entered plea agreements and the third person became a prosecution witness.

CONTENTION

Because the only appellate issue raised by Wingo is that the prosecutor improperly used peremptory challenges to keep women off the jury, we need not describe the details of the crimes committed.

DISCUSSION

Wingo contends his constitutional rights were violated under the so-called *Batson/Wheeler* doctrine because the prosecutor used his peremptory challenges discriminatorily to excuse female prospective jurors from the jury. We disagree.

1. *Legal principles.*

When choosing a jury, attorneys may exercise two different kinds of challenges (i.e., motions aimed at barring particular prospective jurors from sitting on the jury): challenges for cause (based on a showing that a prospective juror is actually biased for or against either side), and peremptory challenges (based on an attorney's subjective belief that a particular prospective juror is unsuited to sit on this jury). This case involves the latter type of challenge.

"A party [commits error under *Batson v. Kentucky* (1986) 476 U.S. 79 [106 S.Ct. 1712] (*Batson*), and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*), by using] peremptory challenges to remove prospective jurors solely on the basis of group bias. Group bias is a presumption that jurors are biased merely because they are members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds." (*People v. Fuentes* (1991) 54 Cal.3d 707, 713.) "In [*Wheeler*] we held ' "that the use of peremptory challenges by a prosecutor to strike prospective jurors on the basis of group membership violates the right of a criminal defendant to trial by a jury drawn from a

representative cross-section of the community under article I, section 16, of the California Constitution. Subsequently, in [*Batson*] . . . the United States Supreme Court held that such a practice violates . . . the defendant's right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution." ' [Citation.]" (*People v. Schmeck* (2005) 37 Cal.4th 240, 266, disapproved on other grounds in *People v. McKinnon* (2011) 52 Cal.4th 610, 638–639.) "Women constitute a cognizable group for purposes of *Wheeler*. [Citation.]" (*People v. Panah* (2005) 35 Cal.4th 395, 438.)

"The United States Supreme Court . . . [has set forth] the applicable legal standards [for establishing *Batson/Wheeler* error]. '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 [group-based] exclusion" by offering permissible [group]-neutral justifications for the strikes. [Citations.] Third, "[i]f a [group]-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination." ' [Citations.]" (*People v. Gray* (2005) 37 Cal.4th 168, 186.)

"[T]he law recognizes that a peremptory challenge may be predicated on a broad spectrum of evidence suggestive of juror partiality. The evidence may range from the obviously serious to the apparently trivial, from the virtually certain to the highly speculative. [¶] For example, a prosecutor may fear bias . . . because [a juror's] clothes or hair length suggest an unconventional lifestyle." (*Wheeler*, *supra*, 22 Cal.3d at p. 275.) " ' "The [prosecutor's] justification need not support a challenge

for cause, and even a 'trivial' reason, if genuine and neutral, will suffice." [Citation.] A prospective juror may be excused based upon facial expressions, gestures, hunches, and even for arbitrary or idiosyncratic reasons.' [Citation.]" (*People v. Winbush* (2017) 2 Cal.5th 402, 434.)

"Ordinarily, we apply a deferential standard of review to the trial court's denial of a defendant's *Wheeler/Batson* motion, considering only whether the ruling is supported by substantial evidence. [Citations.] A prosecutor is presumed to employ peremptory challenges in a constitutional manner, and we defer to the trial court's ability to assess the prosecutor's rationale for excusal in order to distinguish ' " 'bona fide reasons from sham excuses.' " ' [Citations.] We also defer to the trial court's conclusions in ruling on the motion, so long as the court makes 'a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered.' [Citations.]" (*People v. Salcido* (2008) 44 Cal.4th 93, 136–137; accord *People v. Reynoso* (2003) 31 Cal.4th 903, 924 (*Reynoso*) ["The proper function on review in this case was to determine whether the trial court's conclusion—that the prosecutor's *subjective* race-neutral reasons for exercising the peremptory challenges at issue here were sincere, and that the defendants failed to sustain their burden of showing 'from all the circumstances of the case' [citation] a strong likelihood that the peremptory challenges in question were exercised on improper grounds of group bias—is supported by the record when considered under the applicable deferential standard of review."].)

2. *Procedural background.*

a. *Wingo's* Batson/Wheeler *motion.*

Wingo made a *Batson/Wheeler* motion during voir dire,[2] alleging that the prosecutor had improperly exercised his peremptory challenges by excusing seven female prospective jurors in a row: prospective juror Nos. 7, 10, 12, 14, 28, 37 and 39.[3] At the first step of the *Batson/Wheeler* analysis, the trial court determined that the defendants had made out a prima facie case of discrimination only as to prospective jurors 7, 10, 12, 14 and 39, but not as to prospective jurors 28 and 37. Because neither side disputed this finding, we move on to step two of the analysis in which the trial court asked the prosecutor to give his reasons for excusing prospective jurors 7, 10, 12, 14 and 39.

---

[2] "The process by which a large pool of prospective jurors is winnowed down to ensure that the final 12 jurors (plus some alternates) satisfy the constitutional requirement of impartiality is called voir dire, meaning "To speak the truth." (Black's Law Dict. (5th ed. 1979) p. 1412, col. 2.) ' "Voir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without adequate voir dire the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." ' [Citation.]" (*People v. Carasi* (2008) 44 Cal.4th 1263, 1324 (*Carasi*).)

[3] The record reveals that there was some miscounting and misidentification by both the trial court and the attorneys before everyone eventually agreed that these were the prospective jurors at issue. Wingo made the *Batson/Wheeler* motion jointly with codefendant Love but, as already noted, Love is not a party to this appeal.

The prosecutor stated that prospective No. juror 10 "works somewhere in the [Human Resources] division in the [County] Assessor's Office. I got rid [of] her because she's young. She is unmarried. I prefer jurors who have more life experience. She had no opinions on law enforcement, either positive or negative. And again it dealt with the life experience issue. [¶] I'm looking for jurors that are going to be able—particularly as to Mr. Love—to make practical inferences about how people operate, not that people tend to snitch on somebody because they're trying to get a better deal . . . . [¶] So I think that would be the sort of decision that a more mature individual, somebody that owns property, somebody who is married, somebody who has more life experience. That's what I'm looking for, so that's why I excused juror No. 10."

The trial court said, "I agree with you that she had a youthful appearance. . . . Tell me how you arrived at your belief that she lacked life experiences," and "[W]hat you told me is she didn't say much about her life experiences and that she worked in the Human Resources Division of the Assessor's Office." The prosecutor replied, "But I'm familiar with the County. I mean, I work in the County. I know that when you reach a position of management, when you reach a position where you're making decisions, important decisions, then you're generally much older. You have seniority. There is simply no way somebody at her age is working in a capacity where she's making important decisions on a day-to-day basis. It's just . . . in my judgment, inconceivable that someone at that age could be doing that within the County structure."

The prosecutor also said he viewed prospective juror No. 10 as "very happy. She has a smile on her face. I think that's rather

obvious. That is almost constant." After the trial court agreed with this observation, the prosecutor said: "That's not something that I like in jurors. It's a very serious case, and [defense counsel[4]] has a good personality. He's good at getting laughter from the jurors. I prefer serious people that have to go back to work." When one of the defense attorneys pointed out the prospective juror had described her position as Administrative Services Manager—a statement with which the trial court agreed—the prosecutor said: "Again I'm basing it on the youthfulness. You can call the payroll title whatever you can call it within the County structure. She does not appear to me to be at that age within the County structure of the Tax Assessor's Office to be making important decisions." When the prosecutor said "she can't be over 30," the court said: "I don't know. She does look youthful, but I don't know what her age is."

Next discussed was prospective juror No. 39, a history professor at the University of California, Riverside, who was apparently currently teaching a class in which her students were simulating a civil lawsuit related to the infamous Tuskegee Syphilis Experiment.[5] The prosecutor explained his peremptory challenge by saying: "[S]he is an academic. I prefer people that are not academics in ivory tower situations."

---

[4] This was a reference to Love's defense counsel.

[5] While arguing the *Batson/Wheeler* motion, the prosecutor mistakenly referred to the professor's project as relating to the Tuskegee Airmen (a group of African-American fliers who served in World War II at a time when the U.S. military was racially segregated).

As to prospective juror No. 12, who worked as a surgical technician and had three children being cared for by her "stay-at-home" husband, the prosecutor explained: "Again, it's the fact she is young. She appears very youthful. Her job, she works as a surgical tech. She's not making decisions, and she didn't share any opinions, any biases. The one thing I'm trying to get from the young people is some statement, some sentiment how they feel about law enforcement . . . ." He continued: "[I]t would be the same reasoning as to juror No. 10, Your Honor, based upon her job working as a surgical tech. I don't know that she engages in very much decision making on a day-to-day basis. [¶] The case against Mr. Wingo in this case is very strong. The case against Mr. Love is predicated entirely on the testimony of Mr. Jackson and on cell phone evidence. And I'm looking for older more mature people, people that make decisions in their day-to-day jobs. That's why I excused juror No. 12."

The trial court then said: "The appearance of juror No. 12 will not show up on the record, so I will say . . . that pursuant to my observation . . . she also, like juror No. 10, appeared youthful. I do not know what her age is, obviously. We did not ask that, but she was also youthful in appearance."

Regarding prospective juror No. 14, the prosecutor gave two reasons. One was that she had "a particular look on her face. I think the best way to describe it is a scared look." "[S]he looks like she's confused, scared," "some sort of anxiety." The other reason was her response to a question from the prosecutor that he found "a little bit odd"—"I don't know if it was a negative experience or just a negative thought she had." The combination of these two factors made the prosecutor "not really sure how this individual is going to be thinking about this case. I'm not quite

sure . . . we're going to draw the same inferences that I'm going to be inviting her to draw during this case."

The trial court replied: "Concerning the reason offered by the prosecutor . . . that she looked scared, I will note—because that will not show up in the record . . . in my opinion . . . I would not describe her look as scared. I didn't think she looked scared, fearful. I would describe it as a look of—what is the proper adjective? [¶] I am going to say a look of concern, a mixture of concern and anxiousness. . . . She had a smile on her face, but it was a nervous smile. And she just had this look of concern to herself like she was on the edge really wanting to kind of make sure she was getting everything."

Finally, there was a discussion about prospective juror No. 7, an eighth-grade English teacher who was married to a teacher. Also, her uncle had been murdered 24 years ago and the crime was never solved. The prosecutor said his reason for excusing her "was very similar to my reason for excusing" the professor: "I found, in my experience, that individuals that are teachers tend to be very progressive and very liberal in their views of the administration of justice, that they tend to be very sympathetic toward young individuals and I think all the jurors have agreed that both defendants . . . appear to be young. [¶] Additionally, the one experience she's had with law enforcement has been a failure. Her uncle gets killed. Law enforcement doesn't solve it. I don't know how that would affect her. Again, primarily, it's her occupation . . . ."

The trial court then invited argument from the defendants, noting that, at step three of the *Batson/Wheeler* analysis, it was the court's duty "to evaluate the prosecutor's justification" in order to determine if "his reasons are genuine." In response, one

of the defense attorneys invited the court to engage in a comparative analysis with prospective juror No. 15, whom the prosecutor had left on the jury. Defense counsel described prospective juror No. 15 as "a male, 20-year-old, single produce clerk, young, no apparent life experience [yet] still on the jury." To this argument, the prosecutor responded: "The difference is I think juror No. [15] wants to get out of . . . here" because "he's not getting paid. He's going to want to go back to work and this isn't some sort of vacation for him, so that's a unique status that only he has out of all these jurors. He's the only one that doesn't have unlimited status. He needs to go back to work. He's going to try to work efficiently, I think, to reach a verdict as quickly as possible."

The trial court said: "I think that juror No. 15 is a valid comparative juror analysis issue. He does look youthful. In my opinion, he is in the range of age of juror No. 10 and juror No. 12. [The prosecutor] has offered a speculation as to why that juror is not objectionable to him which is that he has time constraints and he believes that juror will work efficiently to arrive at a conclusion in this case." The court asked the prosecutor, "Tell me a little bit more about why you believe he'll more quickly resolve this case," to which the prosecutor said, "Because he's been sending us notes. If I'm correct, he's the juror that's been stating he's not getting unlimited status." After the trial court clarified that juror No. 15 had in fact "walked in yesterday at the end of the day to inform the bailiff that he had time constraints," the prosecutor said: "At that point, I assumed the defense would be getting rid of him quite frankly, so that's one of the reasons I didn't use my peremptory challenge. I assumed the defense was going to use a peremptory challenge. [¶] Another reason is I like

individuals that have to go back to work. I don't want an individual that's just going to want to come back for deliberations every day and hang my jury. I want somebody that has to make money. He's single . . . . He's got to take care of himself."

The court asked, "If you're fearful that someone who is young is the type of person who may not be a good juror for you, how is that issue overcome by the fact that the person has to go back to work?" To which the prosecutor replied: "[I]f I have a juror that I know is in a situation where he needs to get back to work to get paid, then I'm confident this juror is not going to hang my jury." "There is one other thing I'd like to point out. Juror No. 15, as opposed to juror No. 10 and juror No. 12, appears to be weaker. . . . The strong types of personalities concern me. . . . [Juror No. 15] appeared to me to be a weaker personality set that would go along with the jury. And like I said, I thought [the] defense was going to kick him."

b. *The trial court's ruling.*

As to prospective jurors 7 and 39, the trial court found the prosecutor's justifications were genuine because "while people may disagree as to whether or not those in the teaching profession are liberal and/or progressive, it cannot be doubted that such a view is not unreasonable." As to prospective juror No. 14, the court acknowledged that its observations had "differed a bit" from the prosecutor's, but it was clear that the prosecutor's reason was genuine: "The [prosecutor] indicated he thought the juror appeared scared and nervous while I characterized it as concerned and nervous. Either way, it is clear juror 14's demeanor stood out as different from others. One reading of that demeanor could cause concern having that juror sit on the trial."

As to prospective juror No. 12, the court found the prosecutor's "justification to be genuine. The youthful appearance is supported by the record and is inherently plausible." As to prospective juror No. 10, the court found "the justification as to youthful appearance is supported by the record and is inherently plausible. As to the second reason, that the juror lacks life experience, while the mere fact of youthfulness is not a clear barometer for lacking life experience, the view that those who are County employees with less years on the job hold positions of less responsibility is not an illogical conclusion. I do not think this view expressed by [the prosecutor] is pretextual. I find the justification subjectively genuine."

The trial court therefore denied defendants' *Batson/Wheeler* motion, and pointed out "for the record . . . of the jurors that remain, several are female. At this point, six. . . . [¶] The prosecutor indicates that he intends to excuse juror 31 which will leave five female jurors on the present jury panel."[6]

3. *Discussion.*

On appeal, Wingo contends the trial court erred in denying the *Batson/Wheeler* motion. He relies on two arguments: (1) the "prosecutor's [gender-neutral] reasons for dismissing juror No. 10 and not dismissing juror No. 15 are simply not credible," and that "the excuse offered to justify the peremptory challenge as to juror No. 10 does not withstand scrutiny and constitutes purposeful discrimination"; (2) even if the justification for challenging prospective juror No. 10 appeared legitimate when examined in isolation, "this Court should consider this explanation in light of

---

[6] When voir dire resumed, the prosecutor did immediately excuse prospective juror No. 31.

the indisputable fact juror No. 10 was one of the seven female jurors whom the prosecutor exercised peremptory challenges against." We are not persuaded by either argument.

The prosecutor may have excused seven female prospective jurors, but the trial court concluded there was a prima facie case of *Batson/Wheeler* error only as to five of them, a finding Wingo has never disputed. Indeed, the trial court properly found no prima facie case as to prospective jurors 28 and 37 because the record showed that they, respectively, reported negative police experiences and sympathy for the defendants based on their youth.[7]

As for the remaining five female jurors at issue, the record indicates that the prosecutor had legitimate reasons for using peremptory challenges to excuse them. Prospective jurors 7 and 39 were both teachers; one taught the eighth grade and one was a college professor. Occupation can be a permissible, non-discriminatory reason for exercising peremptory challenges. (See *People v. Trevino* (1997) 55 Cal.App.4th 396, 411 ["it could be hypothesized the People were exercising their challenges based on a belief those members who had some connection with providing [health] care or social services would not be sympathetic to their case"]; *People v. Landry* (1996) 49 Cal.App.4th 785, 790–791 [race-neutral factors included job in youth services agency and background in psychiatry or

---

[7] Negative encounters with the criminal justice system can make a juror unsympathetic to the prosecution. (See *People v. Gray*, *supra*, 37 Cal.4th at p. 192 ["someone close" to juror arrested and sent to jail for auto theft]; *People v. Panah*, *supra*, 35 Cal.4th at pp. 441–442 [arrest of juror or relative]; *People v. Farnam* (2002) 28 Cal.4th 107, 138 [nephew incarcerated].)

psychology]; *People v. Perez* (1996) 48 Cal.App.4th 1310, 1315 [no prima facie case where challenged members shared characteristic of being single and working in "social services or caregiving fields"].) This occupation category includes teachers because it is well-established that teachers may be reasonably perceived as more liberal and less prosecution-oriented than the average juror. (See *People v. Barber* (1988) 200 Cal.App.3d 378, 394 [proper to challenge kindergarten teacher based on belief teachers are generally liberal and less prosecution-oriented]; see also *U.S. v. Nelson* (10th Cir. 2006) 450 F.3d 1201, 1206–1208 [prosecutor's stated reason for striking African American college professor—that professors are "typically very opinionated"—"was race-neutral and met the second step of the *Batson* test"].)

As for prospective juror No. 14, the trial court acknowledged that although its perception of the juror's countenance was slightly different from the prosecutor's—where the prosecutor saw "scared and nervous," the court saw "concerned and nervous"—in either case it was "clear [that] juror 14's demeanor stood out as different from [the] others. One reading of that demeanor could cause concern having that juror sit on the trial." Hunches and "gut feelings" may be valid justifications (*People v. Dunn* (1995) 40 Cal.App.4th 1039, 1048), and peremptory challenges can be proper even when based on a prospective juror's silent looks or gestures that happen to alienate one side or the other. (*Wheeler*, *supra*, 22 Cal.3d at pp. 275–276 ["upon entering the box the juror may have smiled at the defendant, for instance, or glared at him"].) "[N]othing in *Wheeler* disallows reliance on the prospective jurors' body language or manner of answering questions as a basis for rebutting a prima facie case." (*People v. Fuentes*, *supra*,

54 Cal.3d at p. 715.)[8] Hence, it was proper for the prosecutor to excuse prospective juror No. 14 on the ground that he "didn't like the look on her face because it does appear to be she looks like she's confused, scared."

Regarding prospective jurors 10 and 12, youth and lack of life experience are legitimate reasons for rejecting prospective jurors. (See *People v. Lomax* (2010) 49 Cal.4th 530, 575 ["potential juror's youth and apparent immaturity are race-neutral reasons"]; *People v. Taylor* (2010) 48 Cal.4th 574, 616 [prospective juror "was single and very young, and had not registered to vote"]; *People v. Neuman* (2009) 176 Cal.App.4th 571, 582 [prospective jurors were "young students, inexperienced at life"]; see also *People v. Sims* (1993) 5 Cal.4th 405, 430 [prosecutor gave legitimate race-neutral explanation by characterizing prospective juror as "youthful college student with insufficient maturity to accept responsibility involved in serving on a death-penalty case"].)

The trial court also pointed out that, at the time of the *Batson/Wheeler* motion, half the seated jurors were women and

---

[8] The prosecutor had given, as a second reason for excusing prospective juror No. 14, her odd response to one of his questions. Although the prosecutor could not recall the specific question and answer, the following colloquy would support the prosecutor's concern: "[The prosecutor]: And your thoughts about the police, what happened in your life? What did you observe in the media that makes you feel maybe . . . a negative view about law enforcement? [¶] Prospective juror No. 14: Because you brought up the news about—because I heard—before I always thought police, it's like God, like do no wrong, and then later on I find out and it changed my mind. Because sometimes police could be, you know, not perfect God. So I don't feel they are perfect."

even after the prosecutor carried out his intention to dismiss prospective juror No. 31 there would still remain five women on the jury. Although not conclusive evidence of a non-discriminatory intent, the jury's composition when a *Batson/Wheeler* motion is heard is a proper factor to consider in evaluating the motion. (*Carasi*, *supra*, 44 Cal.4th at pp. 1294–1295; *People v. Turner* (1994) 8 Cal.4th 137, 168, disapproved on another ground in *People v. Griffin* (2004) 33 Cal.4th 536, 555, fn. 5.)

Hence, we are not persuaded by Wingo's argument that the elimination of seven female prospective jurors demonstrates the prosecutor's discriminatory intent.

As for Wingo's more specific argument that the prosecutor's explanation for excusing prospective juror No. 10 was not credible when compared with the fact that the prosecutor left prospective juror No. 15 on the jury, we are also unconvinced. The cases relied on by Wingo to support his assertion that "there was no substantial evidence supporting [the prosecutor's] feeble explanation" for excusing prospective juror No. 10 are entirely inapposite.

In *People v. Allen* (2004) 115 Cal.App.4th 542 (*Allen*), "the prosecutor's explanation, in full, was as follows: 'The first woman, her very response to your answers [*sic*], and her demeanor, and not only dress but how she took her seat. I don't know if anyone else noticed anything but it's my experience, given the number of trials I've done, that type of juror, whether it's a personality conflict with me or what have you, but they tend to . . . disregard their duty as a juror and kind of have more of an independent thinking.' " (*Id.* at p. 546.) *Allen* characterized this proffered justification for excusing the prospective juror as

"incomprehensible" and "so vacuous that it precludes evaluation. In light of the vague and unsupported reasons offered by the prosecutor, additional inquiry was necessary."[9] (*Id.* at pp. 551, 553.) Because the lower court failed to inquire, *Allen* reversed the judgment and remanded for a new trial: "[T]he trial court erred in accepting the prosecutor's meaningless explanation . . . and implicitly finding on the basis of that explanation that the prosecutor met his burden to overcome the prima facie case of discrimination." (*Id.* at p. 553.) In the case at bar, however, the trial court probed for clarification whenever it felt the prosecutor's stated reasons were vague or ambiguous.

Similarly, Wingo relies on *People v. Long* (2010) 189 Cal.App.4th 826, in which "[t]he prosecutor stated that she excused T.N. because, during questioning of the entire panel, he did not participate in the discussion. Also he 'did not make eye contact with me during the time throughout the entire process of us questioning the first 12 jurors, and it was based on that that I did not feel he was a participating member of the jury, and I did not feel comfortable with his body language and the way that he was expressing himself, or able to express himself in the context of a juror.' " (*Id.* at p. 843.) The trial court accepted this explanation without question, even though the record showed that T.N. had in fact participated in the discussion during voir dire: "On appeal, defendant disputes the accuracy of the

---

[9] *Allen* added: "While specific findings were not required, probing into what specifically about Ms. W.'s body language, dress and demeanor the prosecutor disliked presumably would have provided descriptions which the court could have evaluated in determining the genuineness of the proffered explanation." (*Allen*, *supra*, 115 Cal.App.4th at p. 553, fn. omitted.)

prosecutor's recollection, asserting that T.N. twice volunteered information in response to general questions to the jury panel, stating that his father was a retired attorney and that a sexual assault victim might not immediately report a crime because she was afraid. The Attorney General concedes that the prosecutor's comment about T.N.'s nonparticipation 'might not have been correct.' Indeed, the assertion is demonstrably false from the reporter's transcript." (*Ibid.*) *Long* reversed for *Batson/Wheeler* error: "Doubt may undermine deference, however, when the trial judge makes a general, global finding that the prosecutor's stated reasons were all 'legitimate,' and at least one of those reasons is demonstrably false within the limitations of the appellate record." (*Id.* at p. 845.)

Wingo also cites *People v. Silva* (2001) 25 Cal.4th 345, where a death sentence was reversed because "the prosecutor gave reasons that misrepresented the record of voir dire, [and] the trial court erred in failing to point out inconsistencies and to ask probing questions." (*Id.* at p. 385.) "Although we generally 'accord great deference to the trial court's ruling that a particular reason is genuine,' we do so only when the trial court has made a sincere and reasoned attempt to evaluate each stated reason as applied to each challenged juror. [Citations.] When the prosecutor's stated reasons are both inherently plausible and supported by the record, the trial court need not question the prosecutor or make detailed findings. But when the prosecutor's stated reasons are either unsupported by the record, inherently implausible, or both, more is required of the trial court than a global finding that the reasons appear sufficient. As to Prospective Juror M., both of the prosecutor's stated reasons were factually unsupported by the record. Because the trial court's

ultimate finding is unsupported—at least as to Prospective Juror M—we conclude that defendant was denied the right to a fair penalty trial in violation of the equal protection clause of the federal Constitution ([*Batson*, *supra*, 476 U.S. at pp. 84–89]) and was denied his right under the state Constitution to a trial by a jury drawn from a representative cross-section of the community ([*Wheeler*, *supra*, 22 Cal.3d at pp. 276–277].)" (*Id.* at pp. 385–386.) Wingo does not contend that his prosecutor ever misrepresented what happened at voir dire.

Rather than the case law relied on by Wingo, the facts here are far more similar to the case of *Reynoso*, *supra*, 31 Cal.4th 903, where the prosecutor explained "that he had excused [prospective juror] Elizabeth G. because she was a customer service representative, and . . . 'we felt that she did not have enough educational experience.' The Court of Appeal concluded that this reason 'was not supported by the record and lacked any content related to the case being tried.' " (*Id.* at pp. 923–924.) Our Supreme Court reversed the Court of Appeal, explaining: "The proper focus of a *Batson/Wheeler* inquiry, of course, is on the subjective *genuineness* of the race-neutral reasons given for the peremptory challenge, *not* on the objective *reasonableness* of those reasons. [Citation.] . . . All that matters is that the prosecutor's reason for exercising the peremptory challenge is sincere and legitimate, legitimate in the sense of being nondiscriminatory. '[A] "legitimate reason" is not a reason that makes sense, but a reason that does not deny equal protection. [Citations.]' [Citation.]" (*Id.* at p. 924.)[10]

---

[10] As *Reynoso* explained: "We acknowledge that, when viewed objectively, the notion that *all persons* employed as customer service representatives would have insufficient 'educational

"If a prosecutor can lawfully peremptorily excuse a potential juror based on a hunch or suspicion, or because he does not like the potential juror's hairstyle, or because he observed the potential juror glare at him, or smile at the defendant or defense counsel, then surely he can challenge a potential juror whose occupation, in the prosecutor's subjective estimation, would not render him or her the best type of juror to sit on the case for which the jury is being selected." (*Reynoso*, *supra*, 31 Cal.4th at pp. 924–925, fn. omitted.) "Indeed, an attorney could peremptorily excuse a potential juror because he or she feels the potential juror's occupation reflects *too much education,* and that a juror with that particularly high a level of education would likely be specifically biased against their witnesses, or their client's position in the case." (*Id.* at p. 925, fn. 6.) "With regard to the first reason given in justification of the peremptory challenge of Elizabeth G., the question for the trial court was *not* whether, objectively speaking, *all customer service representatives* lack sufficient 'educational experience' to sit on a jury (a dubious

---

experience' to effectively serve on juries is of questionable persuasiveness. But the proper function of the reviewing court in a case such as this is not to objectively validate or invalidate such a broadly stated premise. The proper function on review in this case was to determine whether the trial court's conclusion—that the prosecutor's *subjective* race-neutral reasons for exercising the peremptory challenges at issue here were sincere, and that the defendants failed to sustain their burden of showing 'from all the circumstances of the case' [citation] a strong likelihood that the peremptory challenges in question were exercised on improper grounds of group bias—is supported by the record when considered under the applicable deferential standard of review." (*Reynoso*, *supra*, 31 Cal.4th at p. 924.)

notion when viewed in isolation) or even whether, subjectively speaking, Elizabeth G., who was employed as a customer service representative, herself had insufficient 'educational experience' to sit on the jury. The question for the trial court was this: was the reason given for the peremptory challenge a 'legitimate reason,' legitimate in the sense that it would not deny defendants equal protection of law [citation], or was it a disingenuous reason for a peremptory challenge that was in actuality exercised solely on grounds of group bias?" (*Id.* at p. 925.)

Reynoso concluded that "the record on appeal in this case does . . . support the prosecutor's stated reasons for exercising a peremptory challenge against Elizabeth G., [and] the trial court's express determination that those reasons were sincere and genuine." (*Reynoso*, *supra*, 31 Cal.4th at p. 923, fn. omitted.) "[T]he prosecutor's reasons . . . were neither inherently implausible, nor affirmatively contradicted by anything in the record." (*Id.* at p. 926.) "An appellate court's proper role in reviewing a *Batson/Wheeler* claim is not to engage in speculation, but to instead draw appropriate inferences from the record under the deferential standard made applicable by this court in *Wheeler,* and by the high court in *Batson.*" (*Id.* at p. 928, fn. 9.) "Where, as here, the trial court is fully apprised of the nature of the defense challenge to the prosecutor's exercise of a particular peremptory challenge, where the prosecutor's reasons for excusing the juror are neither contradicted by the record nor inherently implausible [citation], and where nothing in the record is in conflict with the usual presumptions to be drawn, i.e., that all peremptory challenges have been exercised in a constitutional manner, and that the trial court has properly made a sincere and reasoned evaluation of the prosecutor's reasons for exercising his

peremptory challenges, then those presumptions may be relied upon, and a *Batson/Wheeler* motion denied, notwithstanding that the record does not contain detailed findings regarding the reasons for the exercise of each such peremptory challenge." (*Id.* at p. 929.)

This last point was not even at issue in this case because the trial court conscientiously and clearly scrutinized the prosecutor's explanations that were offered to justify his peremptory challenges. We conclude the trial court did not err by denying Wingo's *Batson/Wheeler* motion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

ALDRICH, J.

LAVIN, J.