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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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. VICTOR PRECIADO, Defendant and Appellant.	B226362 (Los Angeles County Super. Ct. No. TA088962)

APPEAL from a judgment of the Superior Court of Los Angeles County. Gary E. Daigh, Judge. Affirmed as modified.

Verna Wefald, 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, Roberta L. Davis and Kathy S. Pomerantz, Deputy Attorneys General, for Plaintiff and Respondent.

Victor Preciado appeals from a judgment which sentences him to four consecutive terms of life without the possibility of parole, plus four consecutive indeterminate terms of 25 years to life for the murder of four people. We modify various fines and fees, and, as modified, affirm the judgment.

FACTS

I. The Shooting of Jeffrey Shade

In the evening of November 6, 2006, Jeffrey Shade and others were sitting in Lueders Park in Compton. Shade was in his mid-40's and had been affiliated with the Lueders Park Pirus, a Bloods street gang, throughout his adult life. He was wearing a red bandana on his head that evening. At some point, Shade left on a bicycle to go to a liquor store near Rosecrans Avenue and Bradfield Avenue, about a block away. As Shade was riding on Rosecrans Avenue back to the park, a black Impala or Monte Carlo with "shiny rims [and] tinted windows" drove by slowly, and the front passenger in the car fired shots at Shade. Witnesses believed the men in the car looked Hispanic and saw the barrel of a gun sticking out of the passenger side of the car. One of the witnesses, however, recanted his statements to the police at trial. Shade suffered gunshot wounds to his left bicep, left upper chest and left armpit. He died from the gunshot wound to the chest.

II. The Shooting of Francisco Santos

In the evening of November 15, 2006, Francisco Santos was drinking and listening to music with his father-in-law and brother-in-law, outside of their home in Compton. A black car drove by the house and shots were fired. Santos's father-in-law jumped in his car and attempted to chase the shooters but was unsuccessful. Santos died from a gunshot wound to the neck. Deputies from the Los Angeles County Sheriff's Department recovered numerous .223-caliber shell casings belonging to a rifle and a nine-millimeter casing from the scene of the crime.

III. The Shooting of Shudray Jenkins and Deuandre Hunt

On November 19, 2006, Shudray Jenkins and Deaundre Hunt were shot while at a bus stop near Rosecrans Avenue and Bradfield Avenue. Both died from multiple gunshot wounds. Among other things, sheriff's deputies recovered a pair of jean shorts with red

shoelaces for a belt and a red marker inside the pocket, a red T-shirt, and a baseball cap with gang writing on it. Plastic wadding that is typically discharged from a shotgun along with the shotgun pellets was also found lodged in the back of the bus bench. The damage to the bus stop appeared to be caused by shots from a high caliber rifle and shotgun.

IV. Preciado's Arrest

On the evening of December 4, 2006, sheriff's deputies observed a front passenger holding a rifle with the barrel pointing up in a parked black four-door Chevy Impala with tinted windows. When the deputies stopped in front of the Impala, the passenger immediately put the rifle on the center console. The passenger with the rifle was Daniel Riley, the driver was Michael Mauricio, and the three people sitting in the back were James Hicks, Deonna Willis and Gerald Edwards. Riley wore latex gloves to avoid leaving fingerprints on the rifle, which was loaded. The stock on the rifle was inscribed with the letters "WLC," which stood for Ward Lane Crips. Mauricio and Edwards were known members of the Ward Lane Crips. At the time of the murders, the Holly Hood Piru gang, which was affiliated with the Bloods, was feuding with the Ward Lane Crips.

The following day, Preciado contacted the Sheriff's Department to inform them that he lent the Chevy Impala to Edwards and Riley the night before. He also stated that he was present at the shooting of several people on December 1, 2006, including Riley's girlfriend. He believed that members of the Holly Hood Piru gang were responsible for the shooting.

Sheriff's deputies executed a search warrant at Preciado's home on December 18, 2006. The deputies recovered a spent cartridge case and four live rounds of ammunition from a box in Preciado's bedroom closet as well as a small bag with live .380-caliber rounds in the night stand. Preciado's Impala contained four spent .223-caliber rounds, one spent .380-caliber round, and two live .25-caliber rounds. Ballistics evidence showed that the following were fired from the rifle recovered from the Impala: the spent cartridge case found in Preciado's bedroom, the four spent cartridge cases from the Impala, the 15 cartridge cases recovered from the Santos shooting and three bullet

fragments from Hunt's body. Further, bullet fragments recovered from the bodies of Santos, Hunt, and Jenkins had similar rifling characteristics as test shots fired from the seized rifle.

Preciado was arrested on January 31, 2007, in connection with Santos's murder. After he was given *Miranda*[1] warnings and had waived them, Preciado asked to take a polygraph and the police agreed. As Preciado was transferred from the polygraph examination, he indicated to Sheriff's Investigator Michael Caouette that he was involved not only in Santos's murder but in two other shooting deaths in the City of Compton. He admitted in a recorded interview that they used his car during Shade's shooting and the shooting of Jenkins and Hunt at the bus stop. Riley used a rifle and Edwards used a pistol.

Later that same day, Preciado was interviewed by the detectives investigating the murder of Jenkins and Hunt at the bus stop. After he was again *Mirandized*, Preciado told the detectives that Mauricio, Riley and Edwards showed up at his home on the night of Jenkins's and Hunt's shooting with a shotgun and a rifle. Riley threatened him to "put in work or we gonna fuck your ass up." They forced Preciado to accompany them in his car. Preciado sat behind Mauricio, who was driving. Preciado stated that he did not want to get involved but "they just steadily talkin' shit like, yeah, cuz, we're gonna go kill some Die-ru-ass niggas."[2] While the others were "pros at it" and killed "like it's nothing," Preciado said he could not "take nobody's life like that." Preciado was hiding when the shooting occurred and did not see anything. Preciado admitted he was a member of the Ward Lane Crips and had been jumped in to the gang by 14 men.

Preciado accused Mauricio and Riley of similarly forcing him to participate in Shade's murder. That day, they arrived at his house and when Preciado refused to go with them, Riley lifted his shirt and showed Preciado a gun in his waistband. Mauricio

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1 *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

2 "Die-ru-ass" is a derogatory term used to refer to Piru gang members.

again drove Preciado's car with Riley in the front seat with a rifle. Preciado remained in the backseat with his eyes down and ears covered. Mauricio and Riley left in another car after the shooting but left bullet casings from the shooting in Preciado's car. Preciado told the detectives the shooting was a "blue/red thing" involving a feud between the Crips and Bloods.

V. Jailhouse Confession

At the time of his arrest, Preciado was wearing a Coca-Cola T-shirt and had been detained in a holding cell in the basement of the Compton courthouse. Approximately 20 people were in the holding cell, including Mark Meloncon. Meloncon heard Preciado bragging that he was in the Ward Lane Crips and that he was the "mastermind" behind a driveby shooting involving members of his gang who were juveniles. He admitted that he used a rifle to shoot a woman because his gang was feuding with another gang called Holly Hood and Lueders Park. Preciado told Meloncon that he told the police he was forced to participate in the shootings in case one of the other gang members implicated him in the murders.

Meloncon had cooperated with police numerous times over the years and had Detective Peter Hecht's cell phone number. The next day, Meloncon reported what he heard to Hecht, who had conducted the search on Preciado's home. Meloncon testified at trial that he did not receive anything in exchange for the information. However, Meloncon received $200 from Hecht on April 23, 2007, for turning in an AK-47 rifle. He denied receiving $40 from another detective on May 31, 2002. At trial, Meloncon admitted he was in a Blood gang called the Fruit Town Pirus in 1981 but that he had never heard of Ward Lane Crips before and did not know what they were.

VI. The Trial and Verdict

On September 21, 2007, an information charged Mauricio[3] and Preciado with the murders of Santos (count 1; Pen. Code, § 187, subd. (a)[4]; Jenkins (count 2; § 187,

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[3] Mauricio was tried separately and we rendered an opinion on his appeal in *People v. Mauricio* (Nov. 28, 2011, B224505) [nonpub. opn.].

subd. (a)); Hunt (count 3; § 187, subd. (a)); and Shade (count 4; § 187, subd. (a)). Each of the four counts included special circumstance allegations that the murder was perpetrated by means of discharging a firearm from a motor vehicle (§ 190.2, subd. (a)(21)) and that the murders were carried out to further the activities of a criminal street gang (§ 190.2, subd. (a)(22)). Special circumstance allegations also applied to each of the four counts. (§ 190.2, subd. (a)(3).) Each of the murder counts also included allegations that a principal personally used a firearm (§ 12022.53, subds. (b) & (e)), that a principal personally discharged a firearm (§ 12022.53, subds. (c) & (e)), and that the discharge caused great bodily injury and death (§ 12022.53, subds. (d) & (e)), and that the offense was committed to benefit a criminal street gang (§ 186.22, subd. (b)(1)(C)).

The People presented evidence as described above. Deputy Gail Durham testified as the gang expert for the prosecution. She described a very violent feud between the Ward Lane Crips and Piru gangs. She opined that the murders were committed for the benefit of a criminal street gang. Martin Flores testified as the gang expert for the defense. He described the hierarchy within gangs and that there were "shot callers," who "are the ones that are putting in the work, the ones determining what's going to happen, they are the ones influencing other members of the gang." Flores also testified that gangs also have members with different levels of participation: some only sell narcotics and some join just to socialize. Not all gang members were active. Flores described the Bloods and Crips as predominately Black gangs who were enemies and it was "very unlikely" a Blood would inform a Crip about a crime he committed in casual conversation. He opined it was "unheard of" for a Hispanic in a Black gang to be a shot caller. He also stated that gang members usually committed driveby shootings in stolen cars so the car could not be traced back to them.

On May 6, 2010, the jury returned verdicts finding Preciado guilty on all four counts of murder. They found true the special allegation that a principal personally and intentionally discharged a firearm, within the meaning of section 12022.53,

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[4] All further section references are to the Penal Code.

subdivisions (b), (c), (d) and (e)(1) as to all four counts, but found not true as to counts 1 through 3 that Preciado personally used a firearm within the meaning of section 12022.53, subdivisions (b) through (d). They found true, however, the allegation that Preciado personally used a firearm within the meaning of section 12022.53, subdivisions (b) through (d) as to count 4, the murder of Shade. They also found the gang enhancement and special circumstance allegations to be true (§ 190.2, subds. (a)(3) & (a)(21)-(22)), as well as the allegation that the murders were committed by means of discharging a firearm from a motor vehicle (§ 186.22, subd. (b)(1)(C)). Preciado was sentenced to life imprisonment without the possibility of parole plus a consecutive sentence of 25 years to life on each of the four counts. In addition to various fines and fees, the trial court imposed an $80,000 restitution fine pursuant to section 1202.4, subdivision (b). Preciado timely appealed.

DISCUSSION

Preciado presents two issues on appeal. He first contends the trial court violated his Fourth Amendment rights when it denied his motion to quash the search warrant of his home because the warrant application failed to state probable cause. He claims the evidence recovered from his home and his subsequent confession were fruits of an illegal search. Preciado also challenges the trial court's denial of his *Wheeler/Batson* motion during voir dire. He contends either error requires reversal of his conviction. We find no error in the trial court's rulings.

I. Motion to Quash Warrant

In support of the warrant application, Hecht submitted an affidavit of probable cause which described the discovery of Mauricio, Riley and others with the rifle in the Chevy Impala and provided, in relevant part, that:

"Michael Mauricio told me he and Daniel Riley got the rifle from another admitted Ward Lane Crip gang member by the name of Victor. Michael Mauricio told me Victor's gang moniker is 'Tony Boy.' Michael Mauricio told me the vehicle they were arrested in was Victor's. Michael Mauricio told me they went to Victor's house to get the rifle just prior to being arrested.

"Michael Mauricio told me Victor was present when the plan was formulated to shoot a Holly Hood Piru gang member. Michael told me the plan was to use Victor's vehicle and to use the rifle Victor kept at his home. Michael Mauricio told me he and the suspects went to Victor's house and retrieved the rifle and his vehicle.

"Michael Maurcio told me the reason for their planned attack on the Holly Hoods was in retaliation for the Holly Hoods shooting them on Friday, December 1, 2006. Several Ward Lane Crips were in fact the victims of a shooting on December 1, 2006. This incident is documented under Sheriff's file number 406-20368-2846-051. During this incident Daniel Riely's girlfriend, Meshay, was shot.

"The next day, on December 5, 2006, Victor Preciado telephoned me. Victor Preciado told me the Chevy Impala that the suspects were arrested in belonged to him. Victor Preciado told me he lent his vehicle to Daniel Riley earlier in the day. He denied any knowledge of the rifle found inside the vehicle. [¶] . . . [¶]

"Your Affiant believes Victor Preciado was involved in the conspiracy to commit murder and requests this search warrant to recover any evidence of ownership of the rifle recovered and any evidence of gang membership to prove his association with Ward Lane Crips."

Preciado's motion to quash the search warrant at trial was denied because the trial court found "sufficient corroboration [of Mauricio's statements] within the four corners of the search warrant." On appeal, Preciado contends the affidavit was so lacking in probable cause that Hecht could not have in good faith relied on it. In particular, Mauricio was an untested informer who lacked reliability. Further, there was no corroboration for any of Mauricio's accusations that Preciado was involved in a conspiracy to commit a driveby shooting.

In reviewing a search conducted pursuant to a warrant, we must decide "whether the magistrate had a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing." (*People v. Kraft* (2000) 23 Cal.4th 978, 1040.) Probable cause sufficient to support the issuance of a warrant requires a showing that makes it " 'substantially probable that there is specific property lawfully subject to

seizure presently located in the particular place for which the warrant is sought.' [Citation.]" (*People v. Frank* (1985) 38 Cal.3d 711, 744.) That showing must appear in the affidavit offered in support of the warrant. (*Ibid*.)

"The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him [or her], including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (*Illinois v. Gates* (1983) 462 U.S. 213, 238.) Thus, an affidavit need not be based on personal knowledge of the affiant; information from an informant may justify issuance of a warrant if that informant has previously been reliable or his information is corroborated. (*Ibid.*; *Humphrey v. Appellate Division* (2002) 29 Cal.4th 569, 573.) The magistrate's determination of probable cause is entitled to deferential review. (*People v. Kraft, supra*, 23 Cal.4th at p. 1041.)

Because unverified information from an untested or unreliable informant is ordinarily unreliable, probable cause may not be established unless the informant's information is "corroborated in essential respects by other facts, sources or circumstances." (*People v. Fein* (1971) 4 Cal.3d 747, 752; *People v. Maestas* (1988) 204 Cal.App.3d 1208, 1220.) For corroboration to be adequate, it must pertain to the alleged criminal activity; accuracy of information regarding "pedestrian facts" of the suspect, such as descriptions of his person, residence and vehicle, is insufficient. (*Higgason v. Superior Court* (1985) 170 Cal.App.3d 929, 940; see also *People v. Costello* (1988) 204 Cal.App.3d 431, 446.) On the other hand, corroboration is sufficient if police investigation uncovers probative indications of criminal activity along the lines suggested by the informant. (*People v. Kershaw* (1983) 147 Cal.App.3d 750, 759.)

" '[I]f it can be shown that part of the information provided by an informer is correct, this gives credibility to the remainder of the information.' " (*People v. Medina* (1985) 165 Cal.App.3d 11, 18, quoting *United States v. Spach* (7th Cir. 1975) 518 F.2d 866, 871.) Even observations of seemingly innocent activity provide sufficient corroboration if the informant casts the activity in a suspicious light. (*Illinois v. Gates*,

supra, 462 U.S. at p. 244, fn. 13.) We have noted that " '[a]lthough in a particular case it may not be easy to determine when an affidavit demonstrates the existence of probable cause, the resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants.' " (*People v. Superior Court (Corona)* (1981) 30 Cal.3d 193, 203, quoting *United States v. Ventresca* (1965) 380 U.S. 102, 109.)

Here, there was sufficient corroboration of Mauricio's statements within the affidavit to establish probable cause to issue the warrant. Detective Hecht confirmed that Daniel Riley's girlfriend was shot on December 1, 2006, by members of the Holly Hoods gang. This fact tended to corroborate Mauricio's statement that they planned to retaliate by shooting a Holly Hood Piru gang member at a known Holly Hood gang member's house on Holly Avenue. Indeed, Mauricio and the others were arrested just 100 feet south of the gang member's house. Preciado himself corroborated Mauricio's statement that they were using his car at the time of the arrest. This fact is especially relevant to whether probable cause was established to search the Impala, from which numerous spent bullet casings were recovered.

Moreover, Mauricio's statements did not serve to exonerate himself. He did not claim Preciado forced him to participate or that Preciado was the mastermind behind the shooting. His statements to Detective Hecht merely indicated that Preciado was present when they planned the shooting and agreed to lend them his car and rifle. These statements tended to support the conclusion that Mauricio was reliable. Given the totality of the circumstances, probable cause was established by Hecht's affidavit to support the issuance of a warrant.

In any event, the good faith exception set forth by the Supreme Court in *United States v. Leon* (1984) 468 U.S. 897, 922-926, applies in this case. There is no indication from the record, and Preciado does not contend, that Detective Hecht misled the magistrate in any way or that the magistrate abandoned his judicial role in evaluating the warrant application or that the warrant itself was so facially deficient that "no reasonably well trained officer" could rely on the warrant. (*Id.* at p. 923.) For the reasons stated

above, we reject Preciado's contention that the affidavit was so lacking in probable cause that Hecht could not in good faith have relied on it. (*Ibid.*) The trial court properly denied the motion to quash.

II. *Wheeler/Batson* Error

Preciado next contends *Wheeler/Batson* error requires reversal of his convictions. He argues the trial court failed to fully evaluate the prosecutor's peremptory challenges to potential jurors who were Hispanic under *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*) and *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*). Substantial evidence supports the trial court's finding that the prosecutor did not use his peremptory challenges to engage in purposeful discrimination.

A. Preciado's *Wheeler/Batson* Motion Below

During voir dire, defense counsel made a *Wheeler* motion because he believed "that the prosecutor is kicking off most of the Hispanic individuals with the exception of prospective juror 2795." Noting that the prosecutor had excluded seven Hispanics out of his 13 peremptory challenges, the trial court asked him to state his rationales. The following colloquy took place:

"[PROSECUTOR]: . . . I'm presuming the court is finding a prime [*sic*] facie case.

"THE COURT: I think that the burden now is the inference and I think there is an inference so under that standard, yes.

"[PROSECUTOR]: You know, the first person going through my list that I considered Hispanic was Prospective Juror 0504. Now, he didn't have a Hispanic surname, but he appeared to be a Hispanic gentleman and he was the person that worked for the post office and he had disclosed that he had actually been arrested in a John sting and I felt that that arrest was not as innocuous as something like a D.U.I. or an arrest for traffic tickets. And I thought that type of crime went above and beyond what was acceptable for a prospective juror, so that's why I exercised a peremptory challenge as to Prospective Juror 0504.

"I also have Prospective Juror 4066 who I exercised a challenge against, and ordinarily looking at her demographic information, she would be the desirable juror. But I noticed that her husband was a psychologist and a minister. The minister portion is concerning to me because I don't know to what extent her and her husband talk about religion or what religious beliefs they share. That is something I want to stay clear from, someone like Prospective Juror 4551 who we spoke to earlier this afternoon or this morning who professed a belief that she could not judge other people or evaluate testimony or vote guilty in spite of seeing evidence that proved guilt.

"But on top of that she said that her husband was a clinical psychologist. Counsel has in this case amongst his prospective witnesses a psychologist and I don't know to what extent Prospective Juror 4066 will be affected and be swayed by testimony from a psychologist when her husband is in the same profession. And I thought in the interested of – in an abundance of caution it was best to exercise a challenge against her because I didn't want any of that of the fact that her husband was a psychologist, her listening to testimony from a psychologist to be a factor in my case.

"The next peremptory challenge I have is Prospective Juror 9980, and I believe it's a Prospective Juror 9980. And the primary reason I kicked off Prospective Juror 9980 was because he had very prominent tattoos on his forearms. Now, the fact that a juror has tattoos isn't in my opinion something that would be dispositive of exercising a challenge, but in the case of Prospective Juror 9980, a single young man with tattoos that were so prominently displayed I would characterize his tattoos as being sleeved. I think that's someone who probably has a lifestyle at his stage in his life anyway where he would not be the optimal or best productive juror in a case like this.

"In addition to that, you know, gang member oftentimes have very prominent tattoos. I'm not suggesting that this juror is an associate or affiliate with a gang, but there's a connection there that I chose to stay away from so that's why I exercised a peremptory challenge against Prospective Juror 9980.

"With respect to Prospective Juror 4374, she was the dental assistant. I exercised a challenge against her because she disclosed to the court that she had friends arrested with guns, and that fact kind of resonated with a factual scenario in this case where the defendant's alleged crime partners were arrested by sheriff's deputies late at night with a high-powered assault rifle preparing to engage in a retaliatory shooting. And I thought the fact that she had friends arrested with a gun in the car -- or friends arrested with guns and the fact that we have a similar factual scenario in our case was too close and I didn't think that Prospective Juror 4374 was a good juror for this case.

"The next challenge I exercised was Prospective Juror 1280 and she was a housewife. And the primary reason that I exercised a challenge against her was she disclosed while being questioned by Mr. Banks that she preaches in her spare time, and that is a spare-time activity that I certainly haven't heard while practicing law and I think that sort of connotes someone who would ordinarily be a little more sympathetic to a defendant in such a serious case like this, and so that suggestion or the inference I made from the fact that she preaches in her spare time caused me to exercise a peremptory challenge against Prospective Juror 1280.

"The next person that I exercised a peremptory challenge against was Prospective Juror 9719, and he was the long-time truck driver, a truck driver for 22 years. I exercised a peremptory challenge against Prospective Juror 9719 because he disclosed that he had a coworker who was a gang member who reported to him that he was retiring from the gang and he also described the fact that he had done so many years in the gang and according to him, the gang is now allowing him to simply leave the gang. That recitation of sort of gang culture is not consistent with my experience as a prosecutor not my conversations with gang investigations and deputies who have patrolled the streets.

"In addition to that, more alarmingly is his statement that he said, and this is a quotation, I respect his beliefs. And for someone like Prospective Juror 9719 who has already told the court that he was a victim of a strong-arm robbery, I would expect someone like him who has a job, who has been robbed to say, well, I don't respect their

beliefs. I disagree with their beliefs. I disagree with gangs. I disagree with what gangs do.

"THE COURT: You can move along to the next one.

"[PROSECUTOR]: Sure. The next peremptory challenge I exercised was as to Prospective Juror 1483. She was the woman that worked at the credit union. She disclosed to the court that she has nephews and brothers in a gang, but more importantly she stated to the court, and this is a direct quotation from her, that she did not want to be a juror on this case. And I think the fact that Prospective Juror 1483 told the court she was unwilling to disclose the names of the gangs that her relatives may have been affiliated with or members of coupled with her explicit statement that she didn't want to be on this case for me was enough to exercise a challenge because I don't want someone like that who simply doesn't want to participate.

"And lastly, I exercised a challenge as to Prospective Juror 3501 because, number one, he was a young man like the defendant, but more importantly he lacks life and work experience. He told the court he has been working for T.S.A. for one month. And if you look at the majority of the jurors that are currently on the panel now, these are people that have been working the same job for 20 plus years that are managers, that are supervisors and those are the types of jurors that I'm looking for, people with life experience. So that's why I chose to exercise a challenge against Prospective Juror 3501.

"THE COURT: Okay. . . .

"[DEFENSE COUNSEL]: Well, Your Honor, I believe that Prospective Juror 0384, who is No. 8, indicated that she lived in I believe it's Compton. She knows gang members. She has been around gang members and she is familiar with a number -- have heard of a number of gang members so that negates the argument. She is still on the panel. That negates the argument that -- and she is also a young woman. That negates the experience argument. It also negates that argument as to whether or not you know gang members, seeing gang members or affiliate with gang members. Any of those gang-member scenarios the prosecutor put up.

"As it relates to the last one he just talked about which was Ortega, the individual said he respected his beliefs. Now, to me if an individual tells me he is a gang member and I've been robbed and I've been assaulted, I don't think I'm gonna get into his face. And we are talking about the prosecutor is indicating that he wants worldly people. I don't think as a worldly person I would get into his face and tell him that he is wrong, especially with my experience having been in the world. I think that as I indicated many of the other individuals have been around gangs and seen gangs.

"THE COURT: Any response as to Prospective Juror 0384?

"[PROSECUTOR]: As to Prospective Juror 0384, I do want to make some factual connections. Prospective Juror 0384 lives in Long Beach. The reason I like Prospective Juror 0384 as a juror is she is a retail manager, and while she has only been in her current job for three years, she did disclose to the court that her previous job she had been in retail for 15 years

"THE COURT: All right. You don't have to say anything else about Prospective Juror 0384. I don't know if she'll remain here or not, but I just wanted you to respond. Anything else?

"[PROSECUTOR]: Well, as to Prospective Juror 9719 --

"THE COURT: You don't need to talk about Prospective Juror 9719 any more.

"[PROSECUTOR]: I'll submit, Your Honor.

"THE COURT: Well, you know, the numbers jumped out at me with the lower threshold as to being an inference that we need to hear from the prosecutor. Once I've heard about his explanations, it clearly seems to the court that they are race neutral. Had nothing to do with the fact that they are Hispanic. I didn't get Prospective Juror 0504 as being Hispanic oriented, but if you did, that's fine. His explanation about the prostitution ring makes sense why you would exclude him. It's not race based. I'm not saying that there's, you know, legal cause to excuse any. I'm just saying that there are rational reasons that aren't related to race as to why you would excuse them, so the motion is denied."

Defense counsel renewed his objection when the prosecutor excused two other potential jurors of Hispanic descent. Upon the trial court's request, the prosecutor explained that he excused Juror No. 2297 because she had little work experience or any life experience that would make her a desirable juror. He also excused another juror because he had "some misgivings about keeping a pastor on. One person who is in the business of forgiving, who is in the business of consoling people in situations that are difficult, they are trying and someone who is in the business of preaching forgiveness. I have extremely strong difficulties keeping someone on the jury like that when the potential defense in this case is one of duress, is one of I was forced to participate in these crimes." The court denied the motion, stating, "I also am considering that of the existing 12 there are five Hispanics still in the box and the reasons that you've given while again as I said before wouldn't be a legal reason for cause to excuse it is certainly a non-raced based reason for a peremptory challenge . . . ."

B. Analysis

"[W]hen a party presumes that certain jurors are biased merely because they are members of an identifiable group distinguished on racial, religious, ethnic, or similar grounds—we may call this 'group bias'—and peremptorily strikes all such persons for that reason alone, he not only upsets the demographic balance of the venire but frustrates the primary purpose of the representative cross-section requirement." (*Wheeler, supra,* 22 Cal.3d at p. 276.) As a result, no party may use a peremptory challenge to strike a potential juror based on group bias—that is, a presumption that the potential juror may be biased for or against a defendant due to the potential juror's identification with a particular racial, ethnic or religious group. (*Id.* at pp. 276-277; *Batson, supra,* 476 U.S. at pp. 88-97.)

"When a defendant moves at trial to challenge the prosecution's use of peremptory strikes, the following procedures and standards apply. '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." . . . Second, once the defendant has made out a prima facie case, the "burden shifts to the State to explain adequately the racial

exclusion" by offering permissible race-neutral justifications for the strikes. . . . Third, "[i]f a race-neutral explanation is tendered, the trial court must then decide . . . whether the opponent of the strike has proved purposeful racial discrimination." ' " (*People v. Lewis* (2008) 43 Cal.4th 415, 469, citations omitted.) A reviewing court applies a deferential standard of review to a trial court's determination that a prosecutor's explanation for a juror's exclusion was bona fide, i.e., that the prosecutor, in fact, had a legitimate, nonracial basis for challenging the juror. (*People v. Lenix* (2008) 44 Cal.4th 602, 613-614 (*Lenix*).) " 'We review a trial court's determination regarding the sufficiency of a prosecutor's justifications for exercising peremptory challenges " 'with great restraint.' ". . . . So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered, its conclusions are entitled to deference on appeal.' " (*Id.* at pp. 613-614, citations omitted.)

Preciado contends on appeal that the trial court failed to reach step three of the *Wheeler/Batson* analysis and thus failed to see that the prosecution's reasons for his peremptory challenges were pretextual. According to Preciado, the trial court denied his *Wheeler/Batson* motion at step two (i.e., finding that the prosecution's reasons were race neutral) and failed to reach step three (i.e., sincerely evaluating whether the prosecution's race neutral reasons were genuine). Preciado relies on the fact that the prosecutor did not excuse Prospective Juror No. 0384, who was not Hispanic and who had two cousins who had been incarcerated, one of whom had just been released after three years in prison for robbery. Yet, he excused Prospective Juror No. 4374, who was Hispanic and who had friends who had been arrested. Under this comparative analysis, Preciado argues the prosecutor's reasons for striking Juror No. 4374 were pretextual.[5]

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[5] The prosecution claims Preciado forfeited his *Wheeler/Batson* argument because he failed to raise any federal or state constitutional claim below and because he failed to object to the trial court's purported failure to conduct step three of the analysis. We find defense counsel adequately preserved his *Wheeler/Batson* objection and his failure to make these precise arguments in the trial court does not preclude our consideration of them on appeal.

We do not credit Preciado's argument that the trial court failed to reach step three of the *Wheeler/Batson* analysis. Defense counsel specifically raised the issue of comparative juror analysis when he compared Prospective Juror No. 0384 with Prospective Juror No. 4374. The trial court actively questioned the prosecutor about Juror No. 0384. According to the California Supreme Court, comparative juror analysis is evidence that the trial court reached *Wheeler/Batson*'s third stage. (*Lenix*, *supra*, 44 Cal.4th at p. 607.) In any event, it is clear from the record that the trial court made a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered. We give due deference to the trial court's conclusion.

Further, the prosecutor sufficiently differentiated the two prospective jurors by explaining that Prospective Juror No. 0384 lives in Long Beach and had been in retail for 15 years and in her current job for three. By contrast, the prosecutor excused Prospective Juror No. 4374 because she had friends who had been arrested with guns, which presented a similar factual scenario to the present case. Thus, the prosecutor provided a race-neutral explanation for excusing Juror No. 4374 and not Juror No. 0384, which is supported by substantial evidence.

III. Restitution Fine

The trial court imposed a restitution fine under section 1202.4 in the amount of $80,000. Section 1202.4, subdivision (b)(1), however, limits the amount of the restitution fine to $10,000. (See *People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1534 [the maximum restitution fine that may be imposed in a criminal prosecution is $10,000 regardless of the number of victims or the counts involved].) Although neither party addressed this issue, we nevertheless correct the error in our disposition of this matter as part of our duty to correct any sentence not authorized by law. (*People v. Serrato* (1973) 9 Cal.3d 753, 763, disapproved on another ground in *People v. Fosselman* (1983) 33 Cal.3d 572, 583, fn. 1.) Accordingly, the restitution fine must be reduced to $10,000.

DISPOSITION

The restitution fine included in the judgment is modified in accord with this opinion. In all other respects, the judgment is affirmed.

BIGELOW, P. J.

We concur:

RUBIN, J.

FLIER, J.