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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

PARIS WILLIAM BERRY,

Defendant and Appellant.

A132275

(Contra Costa County
Super. Ct. No. 50909812)

Defendant Paris William Berry appealed after he was convicted of second degree robbery and other crimes for shoplifting from two grocery stores. He argues that the trial court erred in permitting the prosecutor to exercise peremptory challenges to remove an African-American prospective juror and an African-American prospective alternate juror based on their race, in violation of *Batson v. Kentucky* (1986) 476 U.S. 79, 89 (*Batson*) and *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*). We disagree and affirm.

I.

FACTUAL AND PROCEDURAL
BACKGROUND

Because the evidence supporting defendant's convictions is not relevant to the limited issues raised on appeal, we provide only a limited summary of facts (taken from the probation report), and focus in detail below on the relevant portions of jury selection. In July 2009, defendant stole merchandise from the same grocery store in Antioch on three separate occasions. He also stole merchandise twice from a grocery store in Pittsburg that same month. Following a jury trial, defendant was convicted of five counts

of second degree burglary (Pen. Code, §§ 459, 460, subd. (b))¹—counts 1, 4, 6, 8, 11), with an enhancement in connection with counts 4 and 11 for personally using a firearm in the commission of the crimes (§ 12022.5, subd. (a)); three counts of petty theft (§ 484—counts 2, 7, 9); two counts of second degree robbery (§§ 211, 212.5, subd. (c))—counts 3, 10),² with an enhancement for personally using a firearm in the commission of the crimes (§ 12022.53, subd. (b)); and two counts of being a felon in possession of a firearm (former § 12021, subd. (a)(1))—counts 5, 12).

Defendant was sentenced to 13 years in prison, and this timely appeal followed.

II. DISCUSSION

A. *Applicable Law.*

A prosecutor may not use peremptory challenges to remove prospective jurors solely because they are members of an identifiable racial group. (*Batson, supra*, 476 U.S. at p. 89; *Wheeler, supra*, 22 Cal.3d at pp. 265-266, 272.) The three-step inquiry under *Batson/Wheeler* is well established. “First, the trial court must determine whether the defendant has made a prima facie showing that the prosecutor exercised a peremptory challenge based on race. Second, if the showing is made, the burden shifts to the prosecutor to demonstrate that the challenges were exercised for a race-neutral reason. Third, the court determines whether the defendant has proven purposeful discrimination. The ultimate burden of persuasion regarding racial motivation rests with, and never shifts

¹ All statutory references are to the Penal Code unless otherwise specified.

² In reviewing the record, we discovered an unraised clerical error. (*People v. Mitchell* (2001) 26 Cal.4th 181, 186-188.) Defendant was charged in count 10 with second degree robbery (§§ 211, 212.5, subd. (c)), the verdict form states that his conviction on count 10 was for second degree robbery, and the minute orders following both defendant’s convictions and his sentencing hearing show that defendant’s count 10 conviction was for second degree robbery. However, although the abstract of judgment lists the correct statutes for defendant’s conviction on count 10 (§§ 211, 212.5, subd. (c)), the abstract describes the conviction as being one for second degree *burglary*. To avoid any potential confusion over this conviction in the future, we order the abstract of judgment to be corrected to describe defendant’s conviction on count 10 as being for second degree robbery.

from, the opponent of the strike. [Citation.]” (*People v. Lenix* (2008) 44 Cal.4th 602, 612-613 (*Lenix*); see also *Johnson v. California* (2005) 545 U.S. 162, 168-170 (*Johnson*).)

“A prosecutor asked to explain his conduct must provide a ‘ “clear and reasonably specific” explanation of his “legitimate reasons” for exercising the challenges.’ [Citation.] ‘The 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. [Citations.] Nevertheless, although a prosecutor may rely on any number of bases to select jurors, a legitimate reason is one that does not deny equal protection. [Citation.] Certainly a challenge based on racial prejudice would not be supported by a legitimate reason.” (*Lenix, supra*, 44 Cal.4th at p. 613, original italics; see also *Johnson, supra*, 545 U.S. at p. 168.)

“At the third stage of the *Wheeler/Batson* inquiry, ‘the issue comes down to whether the trial court finds the prosecutor’s race-neutral explanations to be credible.’ ” (*Lenix, supra*, 44 Cal.4th at p. 613.) “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.” (*People v. Silva* (2001) 25 Cal.4th 345, 386; see also *People v. Long* (2010) 189 Cal.App.4th 826, 842.)

“Review of a trial court’s denial of a *Wheeler/Batson* motion is deferential, examining only whether substantial evidence supports its conclusions. [Citation.] ‘We review a trial court’s determination regarding the sufficiency of a prosecutor’s justifications for exercising peremptory challenges “ ‘with great restraint.’ ” [Citation.] We presume that a prosecutor uses peremptory challenges in a constitutional manner and give great deference to the trial court’s ability to distinguish bona fide reasons from sham excuses. [Citation.] 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. [Citation.]’ [Citation.]” (*Lenix, supra*, 44 Cal.4th at pp. 613-614; see also *People v. Fiu* (2008) 165 Cal.App.4th 360, 391-392.)

B. Prospective Juror M.F.

Jury selection began on February 2, 2011. Prospective juror M.F., a 22-year-old African-American man who lived at home with his parents and an aunt, stated that he had recently resigned from two jobs he held, and that he planned to become a full-time student the following fall “in film, fashion and merchandising.” He previously had worked at his godfather’s sports management company for several years, but he decided to enter the “fashion and business” field. He was currently traveling and working on his clothing line.

M.F.’s cousin worked for the San Francisco Police Department, and his grandmother retired from the same department. He told the trial court that his relationships with those relatives would not make it hard for him to be fair in the case, and he agreed to listen to all the evidence presented, and decide the case based on that evidence.

When asked whether M.F. or anyone close to him had ever been a witness to, or the victim of, a crime, or charged with a crime, M.F. responded: “I came from a rough neighborhood, so I’ve been multiple times a victim of robberies and stuff like that. One was I got into an accident. I don’t know if it was a prank or joke. They tried to rob me for my motorcycle, and it caused me to get into an accident where I pierced my neck on a fire hydrant. Nearly died. [¶] But coming from that neighborhood, it’s typical to be in those situations. And I grew up—I grew out of it, and it doesn’t bother me. I’m used to it. I live in a better neighborhood now. So just multiple times. And I have friends that have been—you know, do crimes. It doesn’t bother me.”

The prosecutor later asked M.F. for more detail about the robbery he had described to the trial court. The robbery had taken place six years earlier, three people were involved, and M.F. never had to testify in the case because the people involved died in an accident. M.F. provided a detailed description of the incident, which we quote in full: “Just a regular day, and me and my friends were riding on my motorcycle around

the neighborhood. Guys were in a vehicle. I remember I stopped 'cause I thought there was something wrong with my bike, and they were in their car, sitting in their car. And they asked me questions about my bike. Where did I get it? What kind of bike it was?

“And when I—one of them told me he liked it, and he pulled out a gun. He didn’t get out the car [*sic*]. He pulled out a gun and, you know, told me to come up off the bike. And from then, I thought he was—he pulled out a gun. He’s smiling and giggling and laughing. He’s doing like some kind of practical joke, so I didn’t know what to do.

“And I proceeded like I’m not going to pay you no mind. Nothing to me. Guy’s just trying to scare me. So I just rolled off, and next thing I see them following me. And I started taking off. Next thing I know bullets are flying, and I was going into the opposite way of traffic. So hit my brakes going downhill and hit a curb, and I crashed my bike and I went flying off forward into a fire hydrant. It was right in the way, and it stopped me, piercing me in the neck.

“And so all I remember was shots were fired. I hear cars. Next thing I hear my friend coming down the hill on his bike and cars, like a big crash around the corner. And that was it.” M.F. worked with the police in their investigation of the incident, and he was at first frustrated that the case never went to a jury trial. He explained that “I wasn’t looking towards like trial or anything. When something happens to you out of frustration, a lot of times you’re not looking for a trial or anything. You’re looking for retaliation, just to be honest. [¶] I don’t like nobody messing with me, you know? I’m not saying I’m the type of person to commit a crime. I’m just saying I’m standing up for myself, basically, before I rely on anyone else or the system. If it does—if it was to have to come to trial, then that’s what it is. You know, as far as I know, it is what it is.” M.F. reported that he had “learn[ed] how to deal with it,” and had “turn[ed] a negative into a positive.”

Later that day, the trial court and counsel for both sides discussed prospective jurors. The court asked if either side challenged M.F. for cause, and the prosecutor responded, “No, after he woke up.” The court replied, “He came back to life.”

On the second day of jury selection, the prosecutor exercised a peremptory challenge of M.F., without objection from the defense attorney.

C. Questioning of Prospective Alternate Juror P.T.

On the third day of jury selection, during the selection of alternate jurors, the trial court questioned P.T., an African-American man with two adult children who lived out of state. P.T. stated that he worked at a hospital in a different county as a “logistics person” who ordered medical supplies for patient care. When asked whether he could think of any reason why he could not be a completely fair and impartial juror, P.T. responded that he was concerned about how jury service would affect his job. He was unsure whether he would continue to get paid if he were to serve as a juror, and he was not sure if his “brand new boss” would know. He also reported that he had requested a postponement of jury service the previous October at his boss’s request.

P.T. stated that he had once been a witness to a crime, when he saw a shotgun blast come from a car double parked in front of the building where he taught martial arts. When asked if anything P.T. witnessed would make it hard for him to be a fair juror, P.T. stated that it was “[n]ot an issue about being fair. Just a matter of knowing that, for what I do in life and death, health care and martial arts, I’m opposed to hand weapons period. I don’t own one myself.” When asked by the trial court if he thought he could follow the law and not vote in favor of guilt just because he did not believe in weapons, P.T. answered, “I would be partial [*sic*], but my only concern is, because of my profession, I have deal [*sic*] with kids in the community, and I wouldn’t want repercussions coming my way because my face is known.” P.T. added that he would be objective.

P.T. described in detail a recent negative experience with law enforcement: “This past weekend, in El Cerrito, coming out of a Walgreens store, there was an interracial couple getting out of their vehicle. And I saw a police car, all to the side. And these people just parked there and going inside. As I’m trying to turn in, the police officers decided to go around and check the tags or whatever. Before I could drive off, a second car showed up. [¶] My assumption is, whether they know this car was a suspect, it was pointless. A couple just got out of the car. There was a second car showing up for

whatever reason when they just drove into the parking lot. So my concern is, I don't have that much experience—bad experience with law enforcement. I do have friends and former students that are on the police department out of Richmond. It's just that I see things, and sometimes I say something and sometimes I don't." The trial court told P.T. that police officers likely would testify in the case, and P.T. stated that he "wouldn't know them and would just have to judge the facts as it is," and that he would be impartial.

The prosecutor later asked P.T. whether his experience at Walgreens would affect him when he listened to a police officer's testimony. P.T. answered: "Once—once again, I said I'm objective, but due to my life experiences, being from the South, and just being objective on what I see and what I choose to participate in of a situation, where I was on the side of giving information to law enforcement on the things I've seen. But on this particular occasion, the issue was my observation was suspicious to the nature of the event itself." In response to the prosecutor's question as to why he was suspicious, P.T. responded, "Like I said, my background is from the South, and the issue was I was leaving the parking lot, and this couple showed up, got out of their car, going to hold hands and go into the store. I guess they were in love with each other. That's none of my business. It was interracial. The fact that the police car was sitting all to the side observing them made me suspicious of their intent, only because there was one car, but before I left, a second car showed up. [¶] So, you know, people that was out of the car, they knew nothing that was going on the outside at that particular time. There's no reason for me to stick around and participate 'cause any repercussions on my end, maybe seeing something that shouldn't have happened."

The prosecutor also asked about whether P.T. was frustrated with law enforcement's handling of the shooting near where he taught martial arts, and P.T. stated that "part of the investigation that dealt with me, I was satisfied with because we could only give information on what we heard or saw at that time."

D. Batson/Wheeler Motion.

After the prosecutor later exercised a peremptory challenge of P.T., defense counsel made a motion pursuant to *Batson, supra*, 476 U.S. 79 and *Wheeler, supra*, 22 Cal.3d 258, alleging that the peremptory challenge was based upon P.T.'s race. Counsel argued that P.T. was only the second African-American prospective juror (the other being M.F.) who had survived a challenge for cause, and both P.T. and M.F. had said things to indicate that they would favor the prosecution, such as M.F.'s revelation that he had been the victim of a robbery. As for P.T., defense counsel argued that he could see "no reason, other than race, why he would be excused."

The trial court concluded that the defense had established a prima facie case that the prosecutor's peremptory challenges of both M.F. and P.T. were based upon race, noting that defendant and both challenged jurors were African-American. The court directed the prosecutor to state the reasons for his challenges.

As for P.T., the prosecutor stated that he sought to excuse the prospective alternate juror "for the reasons and the lens in which he views police action toward minorities. [¶] The fact is an interracial couple showed up at Walgreens, and a police officer was nearby. According to [P.T.], he was suspicious of the police officer. He was suspicious of their intent." The prosecutor added that he excused P.T. for the same reason that he had excused "a young Caucasian juror with blonde hair," who had speculated that a friend was arrested for being drunk in public "because of some sort of immigration [issue]. She saw the defendant and said, well, there might be some race undertones going on here."³ The prosecutor stated that P.T. likewise viewed police action "through a race lens," suspecting officers of "profiling certain people, particular races, and because of that, [P.T.] has a distrust of the police officers." The story P.T. told about the incident at Walgreens "seemed pretty innocent on its face," according to the prosecutor, but P.T.

³ This is a reference to the peremptory challenge of E.B., who reported that she felt a friend who was arrested in Walnut Creek was treated unfairly, and she was not sure whether there was "racial profiling" involved because of his immigration status.

“read a lot into it, especially related to what’s going on inside the minds of the police officers.”

As for M.F., the prosecutor offered three reasons for the peremptory challenge.⁴ First, M.F. worked in the fashion industry, and the prosecutor tended to challenge people who work in “some sort of creative arts industry,” which is why the prosecutor also excused another juror who was “involved in [a] rock n’ roll music school.”⁵ Second, the prosecutor had run an Internet search on the first 18 people called as prospective jurors, and his search revealed that M.F. had a “Twitter account where he was referring to the N word to African Americans. He was talked [*sic*] about selling drugs. I knew it was [he] because he talked about his fashion line of work.” Third, the prosecutor did not find the story that M.F. told about being robbed to be believable: “The fact that he fell into [a] fire hydrant and somehow the other two people died, I didn’t find that story particularly believable, and because of that, going on his occupation, as well as the language used, the reference to illicit behavior on his web pages, I excused [M.F.]”

Defense counsel stated that he had not seen M.F.’s Twitter page. As for P.T., defense counsel emphasized that although the prospective alternate juror had described an incident involving police officers at Walgreens, he had also mentioned that he had worked with law enforcement, that he had friends who were police officers, and that “[h]e’s not scared of police. He just found that, based upon his experience, to be a little suspicious.” Defense counsel stressed that P.T. did not say that all police officers are motivated by race, and that counsel thought that it was “specious to bring it up now, that

⁴ Although defense counsel did not object to the challenge of M.F. at the time he was excused, counsel’s *Batson/Wheeler* motion was nonetheless timely. (*People v. McDermott* (2002) 28 Cal.4th 946, 969-970 [motion made before alternates are sworn, and before any remaining unselected prospective jurors are dismissed, timely as to challenged prospective alternates, as well as to those dismissed during selection of 12 jurors already sworn].)

⁵ This is an apparent reference to the prosecutor’s peremptory challenge of J.L., a business manager at a small, private music school that offered classes in rock and roll music.

one incident where he was forthright in saying I saw something disturbing to me; I don't see that every time I see officers pull people over.”

The trial court denied defendant's *Batson/Wheeler* motion as to both prospective jurors, finding that there were sufficient race-neutral reasons for both peremptory challenges. The court stated: “I recall specifically [P.T.]’s description of the event that occurred outside the Walgreens in El Cerrito: That he saw this couple—he mentioned they were interracial—get out of their car seemingly unknowing that there was a police car parked somewhere nearby that seemed to be watching them, and then another police car pulled into that lot, and he jumped to the conclusion, in my opinion, from the way he described it, that something untoward was going on because of the fact that it was an interracial couple. [¶] There was nothing about that he stayed around to see anything further. There was no contact between the police and this couple that he described. And it seemed to be that his initial suspicion was because of the interracial nature of the couple, the police were somehow going to investigate what was going on and basically discriminate against them because of their relationship. [¶] He mentioned they were holding hands, seemingly in love. And the whole nature of his discussion struck me as an initial suspicion upon seeing the police that they were being racist in their involvement. And I believe that is sufficient to support a peremptory challenge.” The trial court did not specifically address the stated reasons supporting the challenge of M.F. P.T. thereafter was excused from the panel.

On appeal, defendant renews his objection to the exercise of peremptory challenges as to both M.F. and P.T.

E. No Batson/Wheeler Error.

1. Prospective juror M.F.

As for M.F., defendant argues that because one of the three reasons given for excusing him (the fact that the prosecutor did not find M.F.’s account of a robbery believable) was inherently implausible and did not withstand scrutiny (*People v. Silva, supra*, 25 Cal.4th at p. 386), the trial court was required to “evaluate and make findings with respect to whether the other two reasons given were supported by the record.” (E.g.,

Snyder v. Louisiana (2008) 552 U.S. 472, 478-479, 485-486 [where prosecutor offered two reasons for peremptory strike of African-American prospective juror and it was unclear upon which reason trial court relied, fact that one reason did not withstand scrutiny required reversal of judgment].) We disagree.

“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.] So, for example, if a prosecutor believes a prospective juror with long, unkempt hair, a mustache, and a beard would not make a good juror in the case, a peremptory challenge to the prospective juror, sincerely exercised on that basis, will constitute an entirely valid and *nondiscriminatory* reason for exercising the challenge. [Citation.] It matters not that another prosecutor would have chosen to leave the prospective juror on the jury. Nor does it matter that the prosecutor, by peremptorily excusing men with long unkempt hair and facial hair on the basis that they are specifically biased against him or against the People’s case or witnesses, may be passing over any number of conscientious and fully qualified potential jurors. 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.]” (*People v. Reynoso* (2003) 31 Cal.4th 903, 924 (*Reynoso*), original italics [no *Batson/Wheeler* error where trial court accepted prosecutor’s nondiscriminatory reasons for peremptory challenge, but did not comment on one of them, *Reynoso* at pp. 911, 913].)

The prosecutor here repeatedly asked M.F. for more detail about his involvement with law enforcement regarding the robbery. When the prosecutor asked if M.F. worked with police officers on the investigation, this exchange took place:

“A. Yeah. They [the police officers] asked me typical questions like what happened, what I was just saying, exactly what happened. And I can’t remember much, you know, but—

“Q. How long did that investigation go on for?

“A. A little over a year because they were into a bunch of other stuff supposedly, I guess the guy with the gun that they used and details of the car and descriptions of the guys. And it was three of them. I remember that it was three of them. There was a lot of multiple other robberies.”

M.F. had reported that he “[n]early died” as a result of the crime, meaning that it presumably was a major, traumatic event in his life, yet he could not “remember much” about the ensuing investigation. M.F. also described the incident as a “practical joke,” even though shots were fired, and a suspect in the incident apparently was involved with several other robberies. Although these might be considered “ ‘ “trivial” ’ ” potential inconsistencies (*Lenix, supra*, 44 Cal.4th at p. 613), the fact that the prosecutor did not believe that two people involved in the robbery died “in an accident” withstands scrutiny and is not *inherently* implausible.

Indeed, defendant points to nothing in the record to contradict the prosecutor’s disbelief of M.F.’s story regarding the robbery. Even if the prosecutor was mistaken about the accuracy of M.F.’s story, and ended up passing over a qualified juror based on a reason that was not objectively reasonable, these are insufficient grounds to reverse based on *Batson/Wheeler*. (*Reynoso, supra*, 31 Cal.4th at p. 924.) The prosecutor could rely on his “hunch[]” that M.F.’s description of the incident was not entirely accurate. (*Lenix, supra*, 44 Cal.4th at p. 613.) Although it is true, as defendant argues, that the prosecutor thanked M.F. for his “honesty,” this comment was made in response to M.F.’s reactions to criminal charges against M.F.’s *friends*, and not against the people who tried to rob him.

Defendant likewise does not direct this court to anything in the record that contradicts the other two nondiscriminatory reasons given for peremptorily challenging M.F. He claims the fact that the prosecutor did not challenge M.F. for cause over the statements on his Twitter account “casts a considerable amount of doubt” on the genuineness of those reasons. As respondent points out, however, using the “N word” and describing the sale of drugs on the Internet are not grounds for a challenge for cause. (Code Civ. Proc., § 225, subd. (b)(1)(A)-(C).)

Citing *People v. Long*, *supra*, 189 Cal.App.4th 826, defendant also claims that the prosecutor should have been required to provide more specific information regarding M.F.’s Twitter account. *Long* addressed a situation where, unlike here, the reporter’s transcript revealed that one reason given by the prosecutor for a peremptory challenge was “demonstrably false.” (*Id.* at p. 843.) The prosecutor also stated that a prospective juror was excused based in part on his “ ‘body language,’ ” without providing specific examples. (*Id.* at p. 847.) The court concluded that this statement was a general, nonverifiable utterance, which was not worthy of credit. (*Ibid.*) Here, by contrast, the prosecutor provided specific reasons why he found M.F.’s Twitter account objectionable.⁶

Defendant also claims that M.F. was not “comparable” to the music school business manager the prosecutor identified as also having been peremptorily challenged for working in the “creative arts industry.” However, the prosecutor did not focus on whether the two prospective jurors held comparable positions in their fields, only that they both worked in the same general type of industry.

In sum, the trial court did not err in denying defendant’s *Batson/Wheeler* motion as to prospective juror M.F.

2. Prospective alternate juror P.T.

As for prospective alternate juror P.T., defendant “disagrees with the trial court’s evaluation” of P.T.’s reaction to the incident he described at Walgreens, and claims that the prosecutor “jump[ed] to an unwarranted conclusion” that P.T. “distrust[ed] police

⁶ Defense counsel acknowledged below that he had not seen the information about M.F. that the prosecutor had found on the Internet. For the first time on appeal, defendant argues that the trial court should have required the prosecutor to show trial counsel his Internet search results. Because the prosecutor offered three permissible grounds upon which to peremptorily challenge M.F., and there is nothing in the record to suggest that the prosecutor had not, in fact, viewed objectionable topics on M.F.’s Twitter account, we decline to reverse based on the fact that the prosecutor did not present the results of his search, where defense counsel never requested them below.

officers because they're all racist.”⁷ First, defendant mischaracterizes, to a certain extent, the discussion regarding the stated reason for the challenge to P.T. Although the prosecutor referred to the “lens in which he [P.T.] views police action toward minorities,” it is clear from a review of the entire discussion that the prosecutor and the court focused primarily on the specific incident at Walgreens described by the prospective alternate juror, which was a legitimate reason to exercise a peremptory challenge. (*People v. Gutierrez* (2002) 28 Cal.4th 1083, 1125 [“A prospective juror’s negative experiences with law enforcement can serve as a valid basis for peremptory challenge”].) Moreover, a prosecutor may excuse a prospective juror who belongs to a protected group based on the prospective juror’s stated individual biases or attitude, even if the biased attitude “may be more widely held inside the cognizable group than outside of it.” (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 1016.)

Second, defendant essentially focuses on the objective reasonableness of the prosecutor’s stated reason for challenging P.T. Again, however, our focus is on the subjective genuineness of the nondiscriminatory reasons given for a peremptory challenge, not on their objective reasonableness. (*Reynoso, supra*, 31 Cal.4th at p. 924.) We give deference to the trial court’s conclusion that the prosecutor’s reason was bona fide where, as here, the trial court made a sincere and reasoned effort to evaluate the prosecutor’s justification. (*People v. Fiu, supra*, 165 Cal.App.4th at pp. 391-392.)

III. DISPOSITION

The abstract of judgment shall be modified to describe defendant’s conviction on count 10 as being for second degree robbery, not second degree burglary (*ante*, fn. 2). The trial court is directed to prepare an amended abstract of judgment, and a certified copy of the modified abstract shall be forwarded to the Department of Corrections and Rehabilitation. The judgment is otherwise affirmed.

⁷ Because an alternate juror was substituted in after one of the original twelve jurors was excused for medical reasons, the issue of whether a *Batson/Wheeler* violation occurred is not moot. (Cf. *People v. Turner* (1994) 8 Cal.4th 137, 172.)

Sepulveda, J.*

We concur:

Ruvolo, P. J.

Rivera, J.

* Retired Associate Justice of the Court of Appeal, First Appellate District, Division 4, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.