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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES WILLIAMS, JR.,

Defendant and Appellant.

D058734

(Super. Ct. No. SCD222772)

APPEAL from a judgment of the Superior Court of San Diego County, David M. Gill, Judge. Affirmed.

In an amended consolidated information, James Williams, Jr., was charged with three drug-related offenses committed on different dates in late 2009 (all further dates are to calendar year 2009 unless otherwise specified): (1) possession of cocaine base for sale on September 18 (count 1: Health & Saf. Code, § 11351.5); (2) simple possession of cocaine base on September 23 (count 2: Health & Saf. Code, § 11350, subd. (a)); and

(3) possession of cocaine base for sale on December 1 (count 3: Health & Saf. Code, § 11351.5). As to counts 1 and 3, the information alleged Williams had suffered a prior drug conviction (Health & Saf. Code, § 11351.5) within the meaning of Health and Safety Code section 11370.2, subdivision (a). As to counts 2 and 3, the information alleged Williams had committed those offenses while released from custody on bail within the meaning of Penal Code section 12022.1, subdivision (b) (undesignated statutory references will be to the Penal Code unless otherwise specified). The information also alleged Williams had suffered four probation denial prior convictions within the meaning of section 1203, subdivision (e)(4), and a 1992 prior strike conviction within the meaning of sections 667, subdivisions (b) through (i) and 1170.12, subdivisions (a) through (d).

The court denied Williams's motion in limine for severance by which he sought separate trials on each of the three counts. A jury thereafter found Williams guilty of all three counts. Following a bifurcated bench trial, the court found true the various enhancement and special allegations.

After speaking with several of the jurors in the presence of the prosecutor after the jurors were excused, defense counsel brought a motion under Code of Civil procedure section 237, subdivision (b), for release of sealed juror contact information for the purpose of obtaining affidavits for a new trial motion based on the denial of Williams's severance motion and juror comments, questioning why counsel did not try to separate the three counts. Jurors indicated they would have had difficulty reaching the guilty verdicts as to counts 1 and 3 if they had been tried separately. The court denied that

motion and then sentenced Williams to an aggregate prison term of 15 years eight months.

Williams appeals, contending (1) the judgment must be reversed because the court's denial of his motion in limine to sever the three joined counts resulted in gross unfairness that had the effect of denying him a fair trial; (2) the court erred when it denied his motion for disclosure of juror contact information; and (3) the court violated his equal protection rights under the federal Constitution and committed reversible error when the defense made a *Batson/Wheeler*¹ objection to the prosecutor's exercise of a peremptory challenge to excuse one of two African-American prospective jurors, and the court ruled the defense had failed to meet its threshold burden of making a prima facie case of group bias discrimination. We affirm the judgment.

FACTUAL BACKGROUND

A. *The People's Case*

On September 18 at around 3:00 a.m., San Diego Police Officer Benjerwin Manansala responded to a report of vandalism. When Officer Manansala arrived, Williams was in the driver's seat of a nearby parked car, with his door open, and another man and a woman were standing behind the car. As he engaged them in conversation, Officer Manansala noticed several pieces of rock cocaine on the roof of the car. Officer Manansala's partner searched Williams incident to arrest and found in his right front

¹ *Batson v. Kentucky* (1986) 476 U.S. 79 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258 (*Wheeler*).

pants pocket a glass crack pipe with a Brillo pad inside it and a chunk of cocaine base that weighed about 7.5 grams, a sufficient quantity for more than 70 usable doses of 0.1 gram each. Williams also possessed \$260 in cash, which included one \$100 bill, seven \$20 bills, and two \$10 bills. Inside the car, Officer Manansala's partner found a big clump of unused Brillo, which is typically used in the smoking of cocaine base, and a stick or club about two-and-a-half or three feet in length that Williams said he used to keep dogs away. The other male detained at the scene possessed three crack pipes. The female had neither drugs nor paraphernalia in her possession.

On September 23 at around 11:00 p.m., San Diego Police Officer Adam Schrom stopped Williams for running a stop sign and driving a car with tinted windows. As Williams's female passenger was subject to a Fourth Amendment waiver, Officer Schrom and his partner searched the front compartment of the vehicle and found in the center console a glass pipe used for smoking cocaine base. During a search incident to arrest, Officer Schrom and his partner found another crack pipe and 0.28 gram of cocaine base in the left pocket of Williams's shorts.

On December 1 at around 4:00 a.m., Officer Schrom again encountered Williams sitting in a parked car. As he approached the car, Officer Schrom illuminated the passenger compartment with his flashlight and saw, in plain view, an open beer can in the center console and, on the dashboard, a screwdriver with 0.23 gram of cocaine base on its tip. When Officer Schrom opened the driver's side door, he saw that Williams was holding a crack pipe, and he also observed in the door handle a plastic baggie that contained about 12 pieces of cocaine base later determined to have a total weight of 4.88

grams. Williams also had in his possession \$700 in cash, which included 34 \$20 bills, three \$5 bills, and five \$1 bills. Williams's female passenger possessed a crack pipe and two small pieces of rock cocaine.

Detective Gary Avalos of the San Diego Police Department testified that street drug dealers carry smaller quantities of cocaine base, typically not more than a couple of grams, and sell it in units of one-tenth or two-tenths of a gram, which would sell on the street for \$20 and \$40, respectively. When the prosecutor presented to Detective Avalos a hypothetical involving the seizure of almost five grams of rock cocaine under circumstances similar to those that Officer Schrom observed on December 1, Detective Avalos stated, "I know, based on my training and experience working in City Heights as a patrol officer, that . . . nobody buys that many rocks and just holds onto [them] for possession." Detective Avalos testified that drug dealers, who are aware there is a severe penalty for getting caught with guns, sometimes carry sticks or clubs in their vehicles for protection.

Detective Avalos indicated that street drug dealers mainly carry smaller denomination bills, and possession of a large number of \$20 bills shows the dealer is making numerous transactions involving \$20 or \$40 "buys." However, people who buy drugs do not have a lot of money and thus do not carry a lot of money. Detective Avalos observed that dealers, unlike users, often refuse to sign a receipt for their cash after it has been impounded because they want to "detach themselves from what they believe [are] indicia of sales."

When presented with hypotheticals that reflected the facts involved in Williams's three arrests, Detective Avalos opined that Williams possessed cocaine base for sale on September 18 and December 1, but Williams possessed cocaine base for personal use on September 23.

B. The Defense Case

Arthur Fayer, a director of education and program manager at a nonprofit alcohol and drug treatment program under contract with the County of San Diego, testified someone could possess between five and seven grams of cocaine base for personal use with no intent to sell it. He indicated he once personally consumed between seven and 10 grams of cocaine base daily. However, some people might possess as little as one-tenth of a gram of cocaine base with intent to sell it.

Fayer opined that some users might buy a large amount of cocaine base after suddenly getting a large sum of money and then "put it away and use it sparingly or however they can." He indicated that with a volume discount, someone could buy 7.5 grams of cocaine base for about \$300.

When defense counsel presented hypotheticals to Fayer and asked him whether he believed Williams possessed cocaine base for sale or personal use on September 18 and December 1, Fayer replied that it could "go either way."

Williams testified that he bought 7.56 grams of cocaine base in the early morning hours of September 18, and his intent was to smoke it, not sell it. He left the house with \$500 and spent \$225 to buy the drugs. He bought a large amount because he did not want to have to keep coming back to buy more.

Williams also testified he was with a woman in a car on September 23 and possessed 0.28 gram of cocaine base when he was stopped by the police. He had about \$400 or \$500 in his pocket, but that money was not confiscated because "when they charge you with possession, they don't take your money." Williams indicated he was stopped again in the early morning hours on December 1 in the company of another female, in the same area, and admitted he bought and possessed drugs with the intent to smoke some in the car to "[m]ake sure [he] had real drugs." Williams also indicated he was going to take the drugs back to his residence and "have a little party."

On cross-examination, Williams acknowledged he had been convicted of possession of cocaine base for sale in January 1993. The people who were with him on September 18, September 23, and December 1 were crack cocaine users, like himself. Williams testified he did not have to share the drugs and stated, "If I wanted to give them some, that was one thing. But when I had to, when I bought it, just break them off some." When the prosecutor asked Williams whether he had been unwilling to sign the receipt on the two occasions when his cash was impounded because he was "[p]aranoid to associate [himself] with drug proceeds," Williams responded, "No, sir," and stated he was "[p]aranoid [about] getting caught, period."

DISCUSSION

I

DENIAL OF WILLIAMS'S IN LIMINE SEVERANCE MOTION

Williams claims the judgment must be reversed because the court's denial of his motion in limine to sever the three joined counts resulted in gross unfairness that had the

effect of denying him a fair trial. In support of this claim, he asserts the jury used the two possession-for-sale counts "to bolster each other" and to draw an "illegitimate inference" that he "had a bad character, and a propensity to sell cocaine base." He also maintains that joinder, combined with his acknowledgment on cross-examination that he was convicted in 1993 of possession for sale of cocaine base (Health & Saf. Code, § 11351.5), created a "spill-over effect" with the result that he was "grossly prejudiced by having one sales count spill over to the other." Williams also relies on his trial counsel's postverdict report to the court that "jurors [took counsel] to task for not doing his job and getting separate trials, saying the various instances showed a 'character' or 'disposition' for drug sales."² Williams's claim is unavailing.

A. Background

The amended consolidated information charged Williams with the commission of three drug offenses in late 2009. Count 1 charged him with possession—on September 18—of cocaine base for sale. Count 2 charged him with simple possession of cocaine base on September 23. Count 3 charged him with possession of cocaine base for sale on December 1.

1. Williams's motion and the parties' arguments

The defense thereafter filed a motion in limine opposing consolidation of the three charges and seeking separate trials on each of the three counts. In his motion, Williams

² Defense counsel's postverdict oral report to the court on May 11, 2010, about what he claimed some of the jurors said to him in the hallway after they were excused was the basis for Williams's unsuccessful request for disclosure of juror contact information, which is one of the subjects (discussed, *post*) of the instant appeal.

argued the charges should not be jointly tried because the alleged offenses occurred on three separate dates during a two-and-a-half-month period, each offense was separate and distinct and involved different witnesses, and the evidence was not cross-admissible because the evidence pertaining to each incident was inadmissible in the trials of the charges based on the other incidents. Williams also claimed a joint trial would prejudice his federal constitutional rights to a fair trial and to remain silent because in the event he chose to testify on his own behalf as to one count but not the others, the jury might impermissibly infer he was guilty of the counts as to which he chose to remain silent, and thus he would "be coerced into testifying" as to all three counts and "effectively lose his right to remain silent." In addition, Williams claimed, if the three charged offenses were joined, the jury might impermissibly use the evidence relating to one offense to infer that he had a criminal disposition to commit the others, and the jury also might "cumulate the evidence of the various crimes charged and find guilt, when if considered separately, it would not so find."

In support of joinder of the three charged offenses, the prosecution argued that section 954 (discussed, *post*) expresses a legislative preference for joint trials of similar offenses charged against a single defendant, and the court should deny the defense request to sever the counts because the charged offenses were of the same class in that all three counts involved "either the possession for sale or simple possession of cocaine base," they were connected by cross-admissible evidence, and Williams could not show prejudice that would justify severance.

2. *Ruling*

The court denied Williams's severance motion. The court reasoned that "the counts are properly joined because they're similar crimes and . . . there's not a great period of time involved here," the prosecution was not "bootstrapping" a weak charge by mixing it with a strong charge, and thus there was no spillover effect because there was "no obvious great disparity in terms of the strength of the evidence between these three counts." Referring to the possession for sale counts, the court stated that the main thrust of the defense appeared to be that Williams knowingly possessed the cocaine base, but did so for his personal use, not for sale. Noting that "the cases make it clear that the law strongly favors consolidation," the court found the defense had not carried its burden of showing a "substantial danger of undue or unfair prejudice or denial of a fair trial by trying these three charges together."

B. *Applicable Legal Principles*

The law prefers consolidation (or joinder) of related charged offenses for trial because joinder, " 'whether in a single accusatory pleading or by consolidation of several accusatory pleadings, ordinarily avoids needless harassment of the defendant and the waste of public funds which may result if the same general facts were to be tried in two or more separate trials [citation], and in several respects separate trials would result in the same factual issues being presented in both trials.' " (*People v. Ochoa* (1998) 19 Cal.4th 353, 409; see also *Alcala v. Superior Court* (2008) 43 Cal.4th 1205, 1220 (*Alcala*) ["[B]ecause consolidation or joinder of charged offenses ordinarily promotes efficiency, that is the course of action preferred by the law."].)

Section 954 provides that "[a]n accusatory pleading may charge two or more different offenses connected together in their commission . . . or two or more different offenses of the same class of crimes or offenses, under separate counts, . . . provided, that the court in which a case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the accusatory pleading be tried separately. . . ." Offenses committed at different times and places are "connected together in their commission" within the meaning of section 954 when there is a common element of substantial importance among them. (*People v. Matson* (1974) 13 Cal.3d 35, 39.)

If the statutory requirements under section 954 for joinder of charged offenses are met, a defendant claiming the trial court erred by denying his motion to sever the joined charges has the burden to clearly establish that joinder poses a substantial danger of prejudice. (*People v. Soper* (2009) 45 Cal.4th 759, 773 (*Soper*)). A defendant seeking severance of properly joined charges " ' "must make a *stronger* showing of potential prejudice than would be necessary to exclude other-crimes evidence in a severed trial." ' " (*Id.* at p. 774, quoting *Alcala, supra*, 43 Cal.4th at p. 1222, fn. 11.)

In determining whether a trial court abused its discretion in declining to sever properly joined charges, " 'we consider the record before the trial court when it made its ruling.' [Citation.] Although our assessment 'is necessarily dependent on the particular circumstances of each individual case, . . . certain criteria have emerged to provide guidance in ruling upon and reviewing a motion to sever trial.' " (*Soper, supra*, 45 Cal.4th at p. 774.)

"First, we consider the cross-admissibility of the evidence in hypothetical separate trials." (*Soper, supra*, 45 Cal.4th at p. 774.) If evidence underlying the properly joined charges in question would be cross-admissible under Evidence Code section 1101,³ "that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges." (*Soper*, at pp. 774-775; *People v. Bradford* (1997) 15 Cal.4th 1229, 1315-1316 [first step in assessing whether a combined trial would have been prejudicial " 'is to determine whether evidence on each of the joined charges would have been admissible, under Evidence Code section 1101, in separate trials on the others. If so, any inference of prejudice is dispelled.' "].)

However, "complete (or so-called two-way) cross-admissibility is not required. In other words, it may be sufficient, for example, if evidence underlying charge 'B' is admissible in the trial of charge 'A'—even though evidence underlying charge 'A' may not be similarly admissible in the trial of charge 'B.' " (*Alcala, supra*, 43 Cal.4th at p. 1221.) "Moreover, even if the evidence underlying these charges would *not* be cross-admissible in hypothetical separate trials, that determination would not itself establish

³ Evidence Code section 1101, subdivision (a) "prohibits admission of evidence of a person's character, including evidence of character in the form of specific instances of uncharged misconduct, to prove the conduct of that person on a specified occasion." (*People v. Ewoldt* (1994) 7 Cal.4th 380, 393.) Subdivision (b) of that section "clarifies, however, that this rule does not prohibit admission of evidence of uncharged misconduct when such evidence is relevant to establish some fact other than the person's character or disposition." (*Ewoldt*, at p. 393, fn. omitted.) Specifically, Evidence Code section 1101, subdivision (b) provides that nothing in that section "prohibits the admission of evidence that a person committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident . . .) other than his or her disposition to commit such an act."

prejudice or an abuse of discretion by the trial court in declining to sever properly joined charges." (*Soper, supra*, 45 Cal.4th at p. 775; see also *Alcala*, at p. 1221 ["Our decisions . . . make clear that even the complete absence of cross-admissibility does not, by itself, demonstrate prejudice from a failure to order a requested severance. We repeatedly have found a trial court's denial of a motion to sever charged offenses to be a proper exercise of discretion *even when the evidence underlying the charges would not have been cross-admissible in separate trials.*"].)

If we determine that evidence underlying properly joined charges would *not* be cross-admissible, we then consider whether the benefits of joinder were sufficiently substantial to outweigh the possible spillover effect of the other-crimes evidence on the jury in its consideration of the evidence of defendant's guilt of each of the joined charges. (*Soper, supra*, 45 Cal.4th at p. 775.) "In making *that* assessment, we consider three additional factors, any of which—combined with our earlier determination of absence of cross-admissibility—might establish an abuse of the trial court's discretion: (1) whether some of the charges are particularly likely to inflame the jury against the defendant; (2) whether a weak case has been joined with a strong case or another weak case so that the totality of the evidence may alter the outcome as to some or all of the charges; or (3) whether one of the charges (but not another) is a capital offense, or the joinder of the charges converts the matter into a capital case. [Citations.] We then balance the potential for prejudice to the defendant from a joint trial against the countervailing benefits to the state." (*Ibid.*, fn. omitted.)

1. *Standard of review*

The denial of a motion to sever charged offenses which are properly joined under section 954 is reviewed for abuse of discretion, and the ruling will be reversed only if the court has abused its discretion. (*People v. Osband* (1996) 13 Cal.4th 622, 666.) Such an abuse of discretion may be found when the court's ruling " 'falls outside the bounds of reason.' " (*Ibid.*)

C. *Analysis*

We conclude Williams has not met his burden of establishing that the court abused its discretion or violated his federal constitutional right to a fair trial by denying his severance motion. Williams does not challenge the Attorney General's showing that the three counts in question were properly joined because both simple possession of cocaine base and possession of cocaine base for sale are crimes of the same class within the meaning of section 954.

Regarding the cross-admissibility factor, we conclude that evidence underlying both count—based on the September 18 incident—and count 3—pertaining to the December 1 incident—would be cross-admissible under Evidence Code section 1101, subdivision (b) (see fn. 3, *ante*) in hypothetical separate trials with respect to the issue of whether Williams possessed the cocaine base with intent to sell it. (See *People v. Ewoldt*, *supra*, 7 Cal.4th at p. 402 ["The least degree of similarity (between the uncharged act and the charged offense) is required in order to prove intent."].) The evidence underlying both counts 1 and 3 would also be cross-admissible in a hypothetical separate trial on the count 2 simple possession charge to establish Williams's knowledge that the substance he

possessed on September 23 was cocaine base. (See Evid. Code, § 1101, subd. (b).) Although evidence underlying the simple possession charge would not be cross-admissible in hypothetical separate trials on counts 1 and 3 with respect to the issue of whether Williams possessed the cocaine base with intent to sell it, "that determination would not itself establish prejudice or an abuse of discretion by the trial court in declining to sever [the] properly joined charges." (*Soper, supra*, 45 Cal.4th at p. 775; see also *Alcala, supra*, 43 Cal.4th at p. 1221 ["complete (or so-called two-way) cross-admissibility is not required"].)

Having considered the cross-admissibility factor, we next consider the three remaining factors (discussed, *ante*) recognized by the courts to be relevant to an assessment of whether the benefits of joinder of the charged offenses were sufficiently substantial to outweigh the possible spillover effect of the other crimes evidence on the jury in its consideration of the evidence of a defendant's guilt of each of the joined charges. (*Soper, supra*, 45 Cal.4th at p. 775.) First, although possession of cocaine base for sale is a more serious offense than simple possession of cocaine base, it is not a crime particularly likely to inflame the jury against Williams.

Second, nothing in the trial record itself indicates that a weak case was joined with a strong case or another weak case so that the totality of the evidence altered the outcome as to some or all of the charges. We are cognizant of Williams's claim that prejudice is demonstrated by "the jury's own remarks after the verdict, indicat[ing] they found it easier to convict with multiple sales charges, and . . . criticiz[ing] defense counsel for allowing a joint trial." However, we conclude the court's charge to the jury dispelled any

potential substantial prejudice in this case. The court instructed the jury under CALCRIM No. 2302 on the elements of possession for sale of a controlled substance, under CALCRIM No. 2304 on the elements of simple possession of a controlled substance, and under CALCRIM No. 220 on the People's burden to "prove each element of a crime beyond a reasonable doubt." Of particular importance, the court gave CALCRIM No. 375 regarding the People's evidence that Williams committed another possession-of-cocaine-base-for-sale offense that was not charged in this case. That instruction admonished the jurors, "Do not consider this evidence for any other purpose except for the limited purpose of determining whether the defendant had the intent to sell and whether the defendant knew the substance was a controlled substance." It also admonished the jurors, "*Do not conclude from this evidence that the defendant has a bad character or is disposed to commit a crime.*" (Italics added.) Equally important was the court's instruction under CALCRIM No. 3515 that "[e]ach of the counts charged in this case is a separate crime *You must consider each count separately and return a separate verdict for each one.*" (Italics added.) "Jurors are presumed able to understand and correlate instructions and are further presumed to have followed the court's instructions." (*People v. Sanchez* (2001) 26 Cal.4th 834, 852.) Here, in the absence of evidence that would rebut the presumption, we presume the jurors understood and followed the foregoing instructions, which clearly informed them of their duty to consider each of the three counts separately, not draw what Williams refers to as "an illegitimate inference" regarding his " 'character' or 'disposition' to commit the [charged] offenses," and to find Williams not guilty of a given charge unless the People proved

each element of the crime beyond a reasonable doubt. None of the statements jurors allegedly made to defense counsel is sufficient to rebut the presumption that the jurors followed the instructions given by the court.⁴

Last, after balancing the potential for prejudice to Williams against the countervailing benefits to the state (see *Soper, supra*, 45 Cal.4th at p. 775), we conclude the benefits of joinder were sufficiently substantial to outweigh the possible spillover effect of the other crimes evidence on the jury in its consideration of the evidence of defendant's guilt of each of the joined charges. Officer Schrom, one of the prosecution's principal witnesses, was involved in both the September 23 incident and the December 1 incident. Another principal prosecution witness, San Diego Police Department Criminalist Amy McElroy, weighed and tested the drugs seized during all three incidents. The ability of key prosecution witnesses like Officer Schrom and Criminalist McElroy, and defense witness Arthur Fayer to testify in a single trial served the state's interest in judicial efficiency and economy that substantially outweighed any potential prejudice to Williams. Accordingly, we conclude Williams's claim that the court's denial of his motion in limine to sever the three joined counts resulted in gross unfairness that had the effect of denying him a fair trial, is unavailing.

⁴ Regarding the last of the remaining factors, it is undisputed that none of the charges involved a capital offense and joinder of the charges did not convert the matter into a capital case. (See *Soper, supra*, 45 Cal.4th at p. 775.)

II

DENIAL OF JURY CONTACT INFORMATION MOTION

Williams also contends the court erred "on multiple levels" when it denied his motion under Code of Civil Procedure section 237 for disclosure of juror contact information that his counsel intended to use to obtain affidavits for a new trial motion. The motion would have been based on the claim that some of the jurors made postverdict remarks to defense counsel, indicating Williams was denied a fair trial as a result of the court's denial of his motion for severance of the three joined charges in this case. Williams maintains the court improperly held him to an obsolete standard of diligence under *People v. Rhodes* (1989) 212 Cal.App.3d 541 (*Rhodes*), which was decided three years before Code of Civil Procedure section 237 (the statute that currently governs disclosure of juror contact information) was enacted in 1992 and held that a convicted defendant's counsel was entitled to such information if the disclosure motion was accompanied by "a sufficient showing to support a reasonable belief that . . . diligent efforts were made to contact the jurors through other means" (*Rhodes*, at pp. 551-552.) Williams faults the court's reliance on *Rhodes* because the *Rhodes* language requiring diligence in contacting jurors through other means "reflects procedures under old law, whereby it was considered less intrusive for attorneys to let jurors go home [and] then contact them later." He asserts "[t]here is no doubt this is absolutely forbidden and a misdemeanor now."

Williams also maintains the court interpreted Code of Civil Procedure section 206, subdivision (g)—which authorizes a defense postverdict petition for access to juror

contact information under section 237 of that code "for the purpose of developing a motion for new trial or any other lawful purpose"—in an overly restrictive manner to mean that such information could be disclosed only for the purpose of investigating a potential claim of juror misconduct.

Williams seeks either reversal of the judgment entirely, or, in the alternative, reversal and remand to the trial court for a hearing reflecting current law and a determination "whether a proper 'other' purpose for disclosure (outside the ambit of Evidence Code section 1150⁵) existed in [this] case." We conclude Williams's claim that the court erred in denying his motion is unavailing.

A. Background

1. Williams's motion

On May 11, 2010, the day after the jury returned its verdicts, defense counsel brought an oral motion for release of sealed juror contact information for the purpose of obtaining affidavits for a new trial motion based on the denial of Williams's severance motion and postverdict comments some of the jurors made to him questioning why he did not try to separate the three counts. The prosecutor opposed the motion, acknowledging "it would have been tougher to convict on all three counts if they were tried separately," but stating he "completely disagree[d]" with defense counsel's interpretation of what the

⁵ Evidence Code section 1150, subdivision (a) (hereafter Evidence Code section 1150(a)) "bars admitting evidence showing the effect of statements or events on the mental processes of a juror, but does permit admitting 'any otherwise admissible evidence' to show that statements were made or events occurred." (*People v. Jones* (1998) 17 Cal.4th 279, 316.)

jurors said. The prosecutor added that the jurors "absolutely did not assert that [Williams] would not be guilty had we tried [the three counts] separately." The court set the matter for hearing on July 23, 2010, the date also set for sentencing.

Williams thereafter filed his written noticed motion under Code of Civil Procedure section 237, subdivision (b) for release of the sealed juror contact information. Williams renewed his argument that he needed the juror contact information to "develop issues in support of a motion for new trial." Williams asserted that, as he had argued in his in limine severance motion, "the jury did use evidence in one count"—count 3—such as "drugs, money, pipes, [B]rillo, push rods, and early morning hours in East San Diego, to infer criminal disposition and find him guilty on the other count"—count 1. Furthermore, he argued, the postverdict juror statements to his counsel "support[ed] the good cause needed to warrant the release of juror information" because the statements "indicate[d] that the jury did not reach the factual finding that [Williams] was guilty beyond a reasonable doubt on count[1] but rather was guilty based on the cumulative impermissible use of evidence and was contrary to the law."

In support of his motion, Williams attached the declaration of his trial counsel, who stated in part:

"5. After the verdict several of the jurors stayed to discuss the case with counsel outside the courtroom.

"6. I asked the jurors if the jury had made a separate finding of fact as to whether [Williams] was guilty on count [1] and count [3], possession of controlled substance for sale.

"[7]. Several of the jurors[] said they used evidence of count [3] to convict my client on count [1]. One of the jurors stated they would

have had a very difficult if not impossible task of find[ing] [Williams] guilty if the charges were tried separately. Another juror questioned why I did not request the charges on separate days be tried separ[a]tely.

"[8]. Another juror stated she felt pressure from other jurors based on impermissible use of evidence on count[3] to infer [Williams] had a character disposition to commit count [1] and therefore was probabl[y] guilty."

2. *The People's opposition*

The prosecution filed written opposition arguing that Williams's motion and supporting affidavit failed to make a prima facie showing of good cause for the release of the information as required by Code of Civil Procedure section 237, subdivision (b), because the requisite good cause, as defined in *Rhodes, supra*, 212 Cal.App.3d at p. 552, requires a "sufficient showing to support a reasonable belief that *jury misconduct* occurred." (Italics added.) Here, the prosecution argued, Williams's claim of good cause "impermissibly relie[d] solely on information of several jurors' mental process[es] in reaching their verdicts" in violation of Evidence Code section 1150(a). The prosecution added:

"How a particular juror used any piece of evidence to reach his or her own ultimate decision of guilt on any count or what potential pressure any juror may have felt in coming to his or her ultimate decision is not for a court to review. [E]vidence Code [s]ection 1150(a) expressly prohibits inquiry into a juror's mental process. [Williams] makes no outward allegation of *juror misconduct* but instead bases his 'good cause' claim on the perceived mental process[es] of several jurors. Defense has failed to make a sufficient showing to support a reasonable belief that *jury misconduct* occurred." (Italics added.)

3. *Hearing and ruling*

On July 23, 2010, during the hearing on Williams's motion, the prosecutor indicated he was privy to the postverdict juror statements on which Williams was relying, but his recollection of the substance of those statements differed:

"Your Honor, . . . about the only thing I agree with the characterizations that [defense counsel] is making is the fact that one of the jurors did in fact ask him why he didn't try the counts separately. What they said at that point was simply the case would have been *more difficult* had each count been tried separately; *they did consider all of the evidence in making their decision.*" (Italics added.)

The prosecutor added that "even if the Court believe[d] everything" defense counsel was saying, defense counsel still had failed to show good cause.

Defense counsel agreed with the prosecutor that the jurors had stated it would have been more difficult for them to reach a guilty verdict on count 1 if they had not heard the evidence regarding count 3, and he repeated his recollection that they asked him, "Why didn't . . . you do your job and separate the charges and try them separately?"

The court asked defense counsel, "Well, they didn't give any indication, though, that they hadn't applied the proof beyond a reasonable doubt standard, did they?"

Defense counsel replied, "Well, I . . . didn't query any further." He then told the court:

"If I get a statement out of them that . . . Count 1 wouldn't have been proved beyond a reasonable doubt, or they seriously would have questioned that had Count 3 not been there, I think that's an affidavit that if I can bring to the Court —"

The court then interjected the comment, "Well, but, how does that get you around the language of [section] 1150(a) of the Evidence Code? I think, at most, that brings it

squarely within the provisions of [Evidence Code section] 1150(a). That's exactly why we have that privilege, I think."

Following additional argument, and applying the *Rhodes* test for "good cause,"⁶ the court told defense counsel, "I don't think in what you've presented . . . [that] there's a basis for m[y] having a *reasonable belief that jury misconduct occurred*." (Italics added.) The court indicated that if it accepted the prosecutor's recollection of what the jurors said, there would be no basis for having a reasonable belief that jury misconduct occurred because "[t]hey emphasized that they ha[d] considered [counts 1 and 3] separately and they have applied the proof beyond a reasonable doubt standard."

Defense counsel responded, "I didn't hear them make that statement. What I heard was they had difficulty with Count 1 and Count 3 and questioned my integrity [for] having them tried together." The following exchange then took place between the court and defense counsel, at the end of which the court denied Williams's motion on the ground he had failed to establish good cause under the *Rhodes* test:

"[THE COURT]: *The fact they had difficulty with [counts 1 and 3]—we expect jurors to have difficulty with cases. I mean, by definition, I hope the cases that go to trial where we spend several days trying it to a jury are cases that are going to present some*

⁶ *Rhodes* held that, "upon timely motion, counsel for a convicted defendant is entitled to the list of jurors who served in the case, including addresses and telephone numbers, if the defendant sets forth a *sufficient showing to support a reasonable belief that jury misconduct occurred*, that diligent efforts were made to contact the jurors through other means, and that further investigation is necessary to provide the court with adequate information to rule on a motion for new trial." (*Rhodes, supra*, 212 Cal.App.3d at p. 552, italics added.) We refer to the portion of the holding in *Rhodes* requiring the defendant to set forth a "sufficient showing to support a reasonable belief that jury misconduct occurred" as the *Rhodes* test for "good cause."

difficulty to the jurors. If it's a slam dunk case, then we shouldn't be here. So that *doesn't show any juror misconduct*.

"[DEFENSE COUNSEL]: Difficulty in finding guilt on Count 1 until they were able to accumulate the evidence on Count 3, is what they said. By using that evidence, they were—

"[THE COURT]: *The jury instructions make it clear they have to consider each count separately; have to reach a separate verdict as to each count.*

"[DEFENSE COUNSEL]: *And that's the violation that we're counting on, Your Honor, is that they didn't do that.*

"[THE COURT]: I don't see—I *don't have any reasonable suspicion that that was violated, so the motion is denied.*" (Italics added.)

B. *Applicable Legal Principles*

After the recording of a jury verdict in a criminal case, the court's record of personal juror identification information (names, addresses, and telephone numbers) is sealed. (Code Civ. Proc., § 237, subd. (a)(2).) On a petition filed by a defendant or his or her counsel, a trial court may in its discretion grant access to such information when necessary to the development of a motion for new trial or "any other lawful purpose." (Code Civ. Proc., § 206, subd. (g).)

A petition for access to personal juror identification information must be supported by a declaration citing facts "sufficient to establish good cause" for the release of the information. (Code Civ. Proc., § 237, subd. (b).) If the petition and declaration establish a prima facie showing of good cause, the trial court must set the matter for hearing. (*Ibid.*) If the matter is set for hearing, the petitioner must provide notice "to the parties in the criminal action" and the court must provide notice to each juror whose

personal identification information is sought. (*Id.*, subd. (c).) An affected juror may appear at the hearing to oppose release of the information. (*Ibid.*) If the court determines not to set the matter for hearing, it is required to set forth the reasons and make an express finding either of a lack of a prima facie showing of good cause or the presence of a compelling interest against disclosure. (Code Civ. Proc., § 237, subd. (b).)

In an uncodified declaration made as part of the 1995 amendment of Code of Civil Procedure section 206, the Legislature stated that jurors who have served on a criminal case have completed their civic duty. The Legislature also stated the procedures in Code of Civil Procedure sections 206 and 237 were designed "to balance the interests of providing access to records of juror identifying information for a particular, identifiable purpose against the interests in protecting the jurors' privacy, safety, and well-being, as well as the interest in maintaining public confidence and willingness to participate in the jury system." (Stats. 1995, ch. 964, § 1, p. 7375.) The courts have long recognized their inherent power to strike this balance. (*Townsel v. Superior Court* (1999) 20 Cal.4th 1084, 1091-1096; *Rhodes, supra*, 212 Cal.App.3d at pp. 548-552.)

In this context, to demonstrate the statutorily required good cause, a defendant must make a sufficient showing under the *Rhodes* test (see fn. 6, *ante*) "to support a reasonable belief that jury misconduct occurred." (*Rhodes, supra*, 212 Cal.App.3d at p. 552.) "Even though *Rhodes* was decided before the . . . present enactment [of section 237] requiring a showing of good cause, the *Rhodes* test survived" the enactment. (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 990; see also *People v. Wilson* (1996) 43 Cal.App.4th 839, 852 [affirming trial court's denial of defense counsel's request for

personal juror identification information because "no showing whatsoever was made o[f] any type of juror misconduct".)

The alleged juror misconduct must be " 'of such a character as is likely to have influenced the verdict improperly.' " (*People v. Jefflo* (1998) 63 Cal.App.4th 1314, 1322, quoting Evid. Code, § 1150(a).) Good cause does not exist where the allegations of jury misconduct are speculative, conclusory, vague or unsupported. (*People v. Wilson, supra*, 43 Cal.App.4th at p. 852; *Rhodes, supra*, 212 Cal.App.3d at pp. 553-554.) Furthermore, a trial court may properly consider whether the evidence offered in support of the petition would be excludable under Evidence Code section 1150(a) on the ground it reveals the mental processes by which jurors reached the verdict. (See *People v. Jones, supra*, 17 Cal.4th at pp. 316-317; *Rhodes, supra*, at pp. 553-554.)

A trial court's denial of a petition for access to juror identification information is reviewed for abuse of discretion. (*People v. Jones, supra*, 17 Cal.4th at p. 317.)

C. *Analysis*

We conclude the court did not abuse its discretion in denying Williams's motion for release of the sealed juror contact information because his motion and the supporting declaration of his trial counsel failed to cite facts "sufficient to establish good cause" for the release of the information as required by Code of Civil Procedure section 237, subdivision (b). As already discussed, to establish the requisite good cause under the applicable *Rhodes* test, Williams had the burden of setting forth "a sufficient showing to support a reasonable belief that jury misconduct occurred." (*Rhodes, supra*, 212

Cal.App.3d at p. 552; see also *People v. Carrasco*, *supra*, 163 Cal.App.4th at p. 990; *People v. Wilson*, *supra*, 43 Cal.App.4th at p. 852.)

Williams failed to meet that burden, as the court correctly found. In his written motion, Williams claimed that postverdict statements by some of the jurors provided good cause for release of the sealed juror contact information for the purpose of obtaining affidavits for a new trial motion based on the court's denial of his in limine severance motion because the statements indicated the jury "did not reach the factual finding that [he] was guilty beyond a reasonable doubt" on count[1,] but rather was guilty based on the cumulative impermissible use of evidence"; and, thus, the verdict was contrary to the law and grounds for a new trial under Penal Code section 1181. During the hearing, Williams's counsel clearly suggested the jury committed misconduct by violating the court's instructions requiring it to consider each count separately and reach a separate verdict as to each count.

Where a party seeks a new trial based upon jury misconduct, the court first must determine whether the evidence presented for its consideration is admissible. (*People v. Duran* (1996) 50 Cal.App.4th 103, 112 (*Duran*).)

Here, the evidence presented for the court's consideration was set forth in the declaration of Williams's trial counsel, who stated that he asked some of the former jurors whether "the jury had made a separate finding of fact as to whether [Williams] was guilty on count [1] and count [3]," the two counts charging him with possession of cocaine base for sale. Counsel also stated in his declaration that several of the jurors "said they used evidence of count [3] to convict [Williams] on count [1]"; one of the jurors stated he or

she "would have had a very difficult if not impossible task of find[ing] [Williams] guilty if the charges were tried separately"; and another juror "felt pressure from other jurors based on impermissible use of evidence on count [3] to infer [Williams] had a character disposition to commit count [1] and therefore was probabl[y] guilty."

Assuming the former jurors would have submitted affidavits consistent with defense counsel's representations about the contested postverdict statements some of them allegedly made, such evidence would have been inadmissible under Evidence Code section 1150(a), and thus insufficient to support a reasonable belief that jury misconduct occurred. Evidence Code section 1150(a) provides:

"Upon an inquiry as to the validity of a verdict, any otherwise admissible evidence may be received as to statements made, or conduct, conditions, or events occurring, either within or without the jury room, of such a character as is likely to have influenced the verdict improperly. *No evidence is admissible to show the effect of such statement, conduct, condition, or event upon a juror either in influencing him to assent to or dissent from the verdict or concerning the mental processes by which it was determined.*" (Italics added.)

Our courts have held that Evidence Code section 1150(a) permits jurors to testify to " 'overt acts,'—that is, such statements, conduct, conditions, or events as are 'open to sight, hearing, and the other senses and thus subject to corroboration.' " (*In re Stankewitz* (1985) 40 Cal.3d 391, 398; *Duran, supra*, 50 Cal.App.4th at p. 112.)

Here, Williams's claim of good cause for release of the juror contact information impermissibly rests on evidence reflecting on the mental processes of several former jurors in reaching their verdicts. Evidence that a former juror made a postverdict statement that he or she used evidence of one count to convict the defendant of another

count, or would have had a "a very difficult if not impossible task" of reaching a guilty verdict if "the charges were tried separately," as averred in paragraph 6 of the second page of Williams's counsel's declaration, is not evidence of an overt act that would be subject to corroboration. (See *In re Stankewitz*, *supra*, 40 Cal.3d at p. 398.) Rather, it is evidence that impermissibly reflects on the juror's mental processes in reaching a verdict. (See Evid. Code, § 1150(a).) The same is true of evidence that a former juror subjectively "felt pressure" from other jurors or used certain evidence to infer the defendant had a certain character disposition and, thus, was probably guilty," as averred in paragraph 8 of Williams's counsel's declaration.

To the extent Williams seeks to use the evidence of postverdict statements made by some of the jurors to indirectly challenge the court's denial of his motion in limine to sever the three counts, we have already concluded the court did not err in making that ruling.

In light of our conclusion that Williams has failed to meet his burden of establishing good cause for release of the juror contact information as required by Code of Civil Procedure section 237, subdivision (b), we need not reach the merits of his additional claim that the court improperly held him to an obsolete standard of diligence under *Rhodes*, *supra*, 212 Cal.App.3d 541.

III

DENIAL OF WILLIAMS'S BATSON/WHEELER MOTION

Last, Williams, who is African-American, claims the court violated his equal protection rights under the federal Constitution and committed reversible error when the

defense objected under *Batson/Wheeler* to the prosecutor's exercise of a peremptory challenge to excuse prospective juror No. 7 (hereafter juror No. 7)—one of two African-American prospective jurors—and the court ruled the defense had failed to meet its threshold burden of making a prima facie case of group bias discrimination. We reject this claim.

A. *Background*

After the prosecutor exercised a peremptory challenge to excuse juror No. 7, defense counsel made a *Batson/Wheeler* objection. The parties agreed that juror No. 7 was the only African-American male on the panel and that seated juror No. 10 was an African-American female. The court stated, "Well, *I don't think at this point the threshold has been satisfied. But if [the prosecutor] wants to state something on the record, I'll give him that opportunity* while things are fresh in everybody's mind." (Italics added.) The court observed that "[juror No. 7] has survived several challenges and we all understand that the—you know, the mix sort of changes as challenges occur."

The prosecutor stated, "I'd also note that several times I passed and was happy with the jury," and then gave the following reasons for having exercised the peremptory challenge to excuse juror No. 7:

"Your Honor, there were several things about [juror No. 7] that I didn't necessarily like as far as a potential juror. Um, one being that he continually avoided making eye contact with me. And I have been trying for the last two days to make eye contact, establish eye contact with him as I have basically with every juror seated just to see if they're willing to make eye contact with me. He continually looks at the floor, refuses to make eye contact with me.

"I noted that he lives alone and that he's a fairly young individual. Um, I kind of take that as an individual who's not married, doesn't have kids, doesn't have a real stake in the community.

"And, then, kind of the thing, ah, [w]hat really got to me yesterday was during the questioning of the Oceanside former police officer, the Harbor Patrol officer, um, [defense counsel] was questioning the harbor officer and asking him if he could set aside all those years of experience and be fair and impartial. And I noted there was an audible scoff from [juror No. 7], kind of a—he looked down and kind of under his breath went (indicating). You know, made it—and I don't know that anybody caught that but me because I was sitting so close to him. And I was kind of watching to see what his reaction would be at that point.

"And then the last thing that I noted yesterday was that when we were discussing—either today or yesterday—when we were discussing quantities of drugs—I think [defense counsel] was again talking about quantities of drugs—[juror No. 7] had previously said he had absolutely no experience with illegal substances, with crack cocaine. And what he said today interested me that he said it would depend on if those rocks were broken up into smaller pieces. And for somebody who doesn't have any familiarity with crack cocaine to key in on that specific thing, smaller quantities of rocks, ah, would maybe potentially give more weight to a sales charge as opposed to a possession charge, I thought that established, at least in my mind—a bell went off that maybe he has some familiarity with crack cocaine that he's not sharing with us. Or with illegal substances.

"And, so, for those reasons, you know, I think it was a toss up with him because he did express some—some ability to, you know, assess the evidence as a whole and, you know, sit back and just listen to the evidence and make an opinion. But . . . those stated reasons were the reasons that I decided to let . . . him go today."

The court then ruled there was no threshold showing that the prosecutor's use of a peremptory challenge to excuse juror No. 7 was racially motivated.

B. *Applicable Legal Principles*

The use of peremptory challenges to excuse prospective jurors solely on the basis of group bias based on membership in a racial group violates both the state and federal Constitutions. (*Batson, supra*, 476 U.S. at p. 89; *Wheeler, supra*, 22 Cal.3d at pp. 276-277.)

There are three steps in establishing a *Batson/Wheeler* claim. First, the defendant must make a prima facie case by showing that the totality of the relevant facts gives rise to an inference of racially *discriminatory* purpose. (*Johnson v. California* (2005) 545 U.S. 162, 168; see *People v. Alvarez* (1996) 14 Cal.4th 155, 193 (*Alvarez*) [a prosecutor is presumed to have exercised peremptory challenges in a constitutional manner, and the defendant bears the burden of making an initial prima facie showing of purposeful discrimination].) Second, if the defendant meets his burden of making such a prima facie showing, the burden shifts to the People to show "permissible race-neutral justifications" for the challenge. (*Johnson*, at p. 168.) Last, if the People meet their burden of tendering a race-neutral explanation, the trial court then must decide whether the defendant has proven "purposeful racial discrimination." (*Ibid.*)

The California Supreme Court has explained that "[t]he proper focus of a *Batson/Wheeler* inquiry . . . 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." (*People v. Reynoso* (2003) 31 Cal.4th 903, 924.) "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." (*Ibid.*)

The prosecutor's explanation need not rise to a level that justifies the exercise of a challenge for cause. (*People v. Williams* (1997) 16 Cal.4th 635, 664.) "[A]dequate justification by the prosecutor may be no more than a 'hunch' about the prospective juror [citation], so long as it shows that the peremptory challenges were exercised for reasons other than impermissible group bias and not simply as 'a mask for race prejudice.'" (*Ibid.*)

1. *Standard of review*

When a trial court denies a *Batson/Wheeler* motion based on its finding that no prima facie case of group bias was established, the reviewing court considers the record of the voir dire and affirms the ruling if it is supported by substantial evidence. (*People v. Jenkins* (2000) 22 Cal.4th 900, 993.) The reviewing court "accord[s] particular deference to the trial court as fact finder, because of its opportunity to observe the participants at first hand." (*Id.* at pp. 993-994.)

C. *Analysis*

1. *Claim of mootness*

As a preliminary matter, we reject Williams's contention that since the prosecutor, during the hearing on Williams's *Batson/Wheeler* objection, discussed at the court's request his reasons for excusing juror No. 7, it is "irrelevant" whether the defense made a

prima facie case of *Batson/Wheeler* error and, thus, "the analysis on appeal proceeds to whether there was a plausible race-neutral reason for challenging [juror No. 7] and whether substantial evidence supported those reasons." In support of this contention, Williams relies on *People v. Thomas* (2011) 51 Cal.4th 449, 473-474 (*Thomas*).

Williams's reliance on *Thomas* is misplaced. There, the Attorney General agreed that because the prosecutor presented his reasons for exercising the peremptory challenge, the issue of whether defense counsel established a prima facie case was immaterial. (*Thomas, supra*, 51 Cal.4th at p. 474.) Here, unlike in *Thomas*, the Attorney General argues the prosecutor's presentation of his reasons for excusing juror No. 7 did *not* render moot the question of whether Williams made a prime facie case of *Batson/Wheeler* error. Furthermore, as the California Supreme Court explained in *People v. Welch* (1999) 20 Cal.4th 701, "when . . . the trial court states that it does not believe a prima facie case has been made, and *then* invites the prosecution to justify its challenges for purposes of completing the record on appeal, the question whether a prima facie case has been made is *not mooted*, nor is a finding of a prima facie showing implied." (*Id.* at p. 746, italics added; see also *People v. Taylor* (2010) 48 Cal.4th 574, 616 ["We have found it proper for trial courts to request and consider a prosecutor's stated reasons for excusing a prospective juror even when they find no prima facie case of discrimination; indeed, we have encouraged this practice."].) Here, like the trial court in *Welch*, the court stated it did not believe the defense had made a prima facie case, and *then* it invited the prosecutor to justify his exercise of the peremptory challenge. We conclude the issue of

whether Williams made a prima facie case is not moot and a finding of a prima facie showing is not implied. (*People v. Welch*, at p. 746; *People v. Taylor*, at p. 616.)

2. *Merits*

Having reviewed the record of the voir dire, we conclude substantial evidence supports the court's ruling that the defense failed to meet its threshold burden under *Batson/Wheeler* of making a prima facie case of impermissible group bias discrimination. Although Williams "is himself African-American, . . . that fact alone does not establish a prima facie case of discrimination." (*People v. Kelly* (2007) 42 Cal.4th 763, 780.) Significantly, the record shows the prosecutor twice passed on the opportunity to exercise a peremptory challenge to excuse juror No. 7, each time expressing his satisfaction with the composition of the jury notwithstanding his presence on it. These facts strongly suggest race was not a motive for the challenge. (See *Kelly*, at p. 780 ["Here, the prosecutor used only one peremptory challenge against an African-American. He passed the alternate jurors once with two African-American jurors remaining, and he never challenged the other African-American juror. The fact that the prosecutor accepted the jury panel once with both African-American jurors on it, and exercised the single challenge only after defense counsel exercised his own challenge, strongly suggests that race was not a motive behind the challenge."].)

In addition, as Williams acknowledges, a female African-American was seated on the jury when the prosecutor accepted its ultimate composition. This fact also strongly supports the court's finding that Williams failed to meet his burden of showing race was a motive behind the prosecutor's decision to excuse juror No. 7. (See *People v. Taylor*,

supra, 48 Cal.4th at p. 614 ["That the prosecutor excused a single African-American prospective juror, without more, does not support the inference the excusal was based on race, especially given defendant's acknowledgment during the hearing that another African-American woman then was seated on the jury."].) Although this fact is not conclusive, it is an indication the prosecutor acted in good faith when he challenged juror No. 7. (See *People v. Ward* (2005) 36 Cal.4th 186, 203 ["While the fact that the jury included members of a group allegedly discriminated against is not conclusive, it is an indication of good faith in exercising peremptories, and an appropriate factor for the trial judge to consider in ruling on a *Wheeler* objection."].)

We need not reach the merits of Williams's claim that a comparative analysis of the voir dire responses given by other prospective jurors who were ultimately seated supports his *Batson/Wheeler* claim. (See *People v. Bonilla* (2007) 41 Cal.4th 313, 350 ["Whatever use comparative juror analysis might have in a third-stage case for determining whether a prosecutor's proffered justifications for his [or her] strikes are pretextual, it has little or no use where the analysis does not hinge on the prosecution's actual proffered rationales, and we thus decline to engage in a comparative analysis here."].)

For all of the foregoing reasons, we conclude the court did not err in ruling that Williams failed to meet his threshold burden under *Batson/Wheeler* of making a prima facie case of impermissible group bias discrimination.

DISPOSITION

The judgment is affirmed.

NARES, Acting P. J.

WE CONCUR:

McDONALD, J.

IRION, J.