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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

BRADLEY DAVID JOHNSON,

Defendant and Appellant.

E060351

(Super.Ct.No. FSB1303674)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. William Jefferson Powell IV, Judge. Affirmed with directions.

Leonard J. Klaif, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General and Anthony Da Silva and Martin E. Doyle, Deputy Attorneys General, for Plaintiff and Respondent.

## I. INTRODUCTION

Defendant and appellant, Bradley David Johnson, represented himself at a jury trial on charges that he assaulted and kidnapped his girlfriend, Jane Doe. The jury found him guilty as charged in count 1 of assaulting Doe by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(4)), and found he personally inflicted great bodily injury on Doe in count 1 (Pen. Code, § 12022.7, subd. (a)). He was acquitted of kidnapping in count 2, but convicted of the lesser included offense of false imprisonment by menace or violence. (Pen. Code, § 236.)

The court sentenced defendant to 17 years 4 months in prison, after the jury found he had one prior strike and prior serious felony conviction based on a 2005 criminal threats conviction. The court also ordered defendant's driver's license permanently revoked. (Veh. Code, § 13351.5.)

On this appeal, defendant claims the court erroneously granted the People's *Batson/Wheeler*<sup>1</sup> motion, which prevented him from using his seventh peremptory challenge to excuse a female prospective juror, after he peremptorily excused five other female prospective jurors. He also claims the court prejudicially erred in (1) limiting his voir dire of prospective jurors, (2) limiting his cross-examination of Officer Chase Smith, (3) limiting his direct examination of Detective Ernesto Antillon and Sergeant Eddie Gonzalez, (4) limiting his closing argument, and (5) limiting his cross-examination of

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<sup>1</sup> *Batson v. Kentucky* (1986) 476 U.S. 79, 89 (*Batson*); *People v. Wheeler* (1978) 22 Cal.3d 258, 276 (*Wheeler*).

Doe concerning her grant of use immunity from prosecution based on prior altercations she had with defendant. Lastly, he claims the court exceeded its jurisdiction in suspending his driver's license for life.

We remand the matter with directions to the trial court to clarify its records to reflect that the Department of Motor Vehicles (DMV) is authorized to revoke defendant's driver's license for one year (Veh. Code, § 13350), but not for life (Veh. Code, § 13351.5), based on the court's finding that a vehicle was used in the commission of count 2. We affirm the judgment in all other respects.

## II. FACTUAL BACKGROUND

### A. *Prosecution Evidence*

#### 1. Doe's Testimony

Doe and defendant began a dating and sexual relationship in February 2012. Their relationship soured in September 2012, after Doe discovered that defendant had been seeing other women, but they continued to see each other. They never lived together during their relationship. Doe lived in San Bernardino and defendant lived in Highland with his grandmother, Theresa Reyes.

On August 24, 2013, defendant spent the night at Doe's apartment, and on August 25 he and Doe spent several hours together at the beach in Oceanside. At the beach, they had a disagreement about having sex at the beach: defendant wanted to, but Doe did not. Defendant purchased a package of cigarettes for Doe, but hid them from her, she believed, because he wanted to have sex and she did not.

After they left the beach, defendant drove Doe to her sister's house on Mountain View in San Bernardino. By the time they arrived, they were arguing. Doe retrieved her things, went into her sister's house, came back outside, and gave defendant money for the cigarettes he had purchased for her. Defendant said he did not want the money; he wanted Doe to come with him and for the two of them to return to Doe's apartment.

After Doe told defendant she was not going with him, he picked her up and put her into his car. When Doe tried to get out of the car, defendant pulled Doe's hair and drove away. Doe did not try to get out of the car because she was unable to run. Defendant then drove Doe to her apartment, four miles from Doe's sister's house. They were unable to get inside Doe's apartment because Doe had left her keys at her sister's house.

Doe got back into the car with defendant, thinking he was going to take her back to her sister's house. Instead of taking Doe back to her sister's house, defendant drove Doe into the local mountains, while telling her he did not believe she was going to get her apartment keys and that he was going to drop her off where her family would have to pick her up. He took Doe to a small park in San Bernardino or Redlands, and told her to get out of his car. Doe got out and defendant began driving away, but defendant backed up his car, picked up Doe again, put her back into his car, and drove her to Reyes's house in Highland, where he lived.

When they arrived at Reyes's house, Doe began honking defendant's car horn to get Reyes's attention. After Reyes did not respond, Doe ran to the front door and knocked, and Reyes let defendant and Doe inside. Reyes was trying to calm defendant

down and agreed to give Doe a ride back to her apartment. Doe got into the passenger side of Reyes's car while Reyes stood on the driver's side with defendant. Defendant was upset, and Reyes was telling him to go back inside the house. Defendant was not listening to Reyes, and Reyes began to cry.

At that point, defendant "just went crazy." He leaned into the car from behind the driver's seat, pulled Doe's hair, and began striking her. When Doe opened the passenger side door to get out, he ran around the car, "yanked [Doe] down by [her] legs," and pulled her out of the car and onto the ground. He got on top of Doe and repeatedly hit her head for what seemed to Doe "like[] 40 hits." He finally stopped beating Doe, and Doe feigned unconsciousness.

As she lay in the grass outside Reyes's house, Doe overheard defendant trying to convince Reyes to bring Doe inside the house and "clean her up," but Reyes told defendant she was going to call the police. Defendant left after Reyes told him to leave, and Reyes eventually called 911. Reyes did not testify,<sup>2</sup> but her recorded 911 call was played to the jury. Reyes immediately told the 911 dispatcher, "my grandson beat up this girl and . . . we're at my house." The police and an ambulance arrived, and Doe was taken to the hospital. As a result of the assault, Doe suffered a mild concussion, two black eyes, a one-inch cut above her left eye, a swollen face, and bruised arms.

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<sup>2</sup> Reyes appeared to have avoided service of process to attend court.

## 2. Additional Prosecution Evidence

At the hospital, San Bernardino Police Officer Chase Smith took a statement from Doe, and forensic specialist, Anna Quiroz, took photographs of her injuries. Officer Smith did not record Doe's statement, but wrote a report summarizing it. Later that night, Doe was released from the hospital. A few days later, she met with a Detective Ernesto Antillon, who took additional photographs of her injuries.

Later that night, Officer Smith attempted to contact Reyes's at her house, but there was no answer when he knocked on the door. Officer Smith noticed an eight-inch by eight-inch pool of blood on the grass where Doe said the assault had occurred. Around midnight, Officer Imran Ahmed transported defendant to the police station and saw that defendant had what appeared to be blood on his sandals.

Following the assault, defendant, his mother, and a woman claiming to be defendant's "aunt Alexis" and "Lynn" contacted Doe and tried to dissuade her from testifying. Defendant contacted Doe on three or four occasions, and his mother contacted Doe on five or six occasions. The woman claiming to be "aunt Alexis" and "Lynn" last contacted Doe only one or two days before trial.

### *B. Defense Case*

Defendant did not testify in his own defense, but called several law enforcement officers who were involved in investigating the incident.

1. Detective Ernesto Antillon

Defendant elicited from San Bernardino Police Detective Antillon that the detective conducted a “[f]ollow up” interview with Doe three days after the incident and observed that she had two black eyes, the whites of her eyes were red, her arms were bruised, and she complained of pain. Doe denied having any fractures or concussions.

The court sustained on hearsay grounds the prosecutor’s objections when defendant asked Detective Antillon (1) what Doe told the detective her doctors told her about her injuries, (2) what Doe told the detective about the incident, and (3) what the detective wrote in his report about what Doe told him about the incident. In each instance, defendant did not establish that Doe’s hearsay statements to the detective were inconsistent with her trial testimony. (Evid. Code, § 1235.) The court also sustained the prosecutor’s objection when defendant asked the detective whether Doe’s injuries constituted “great bodily injuries,” on the ground the question called for a legal opinion.

The court stopped defendant’s direct examination of Detective Antillon after defendant repeatedly asked the detective what he had written in his report, even though the court admonished defendant, several times, that his questions called for hearsay and constituted improper impeachment because there was no showing that the report contained statements inconsistent with the detective’s testimony. Defendant was unable to present a videotaped recording of the detective’s interview with Doe, because the court stopped his examination of the detective and because he was unprepared and failed to lay a proper foundation with the detective to play the videotape.

## 2. Officer Chase Smith

In the People's case-in-chief, Officer Smith testified he went to St. Bernardine Medical Center around 11:00 p.m. on August 25, 2013, in response to a call that a woman had been physically assaulted and kidnapped. At the hospital, he spoke to Doe, took an unrecorded statement from her in which she identified defendant as her attacker, and wrote a report summarizing her statement. He observed that Doe was injured: her face was swollen and she had a cut above her left eye. Quiroz took photographs of Doe's injuries. Later that night, Officer Smith went to Reyes's house and tried to contact her, but there was no answer when he knocked on the door. He noticed an eight-inch by eight-inch pool of blood on the grass near the driveway in front of the home.

Defendant called Officer Smith in his defense case and questioned him about what Doe told him at the hospital. Officer Smith did not record Doe's statement, even though he had a tape recorder with him. Doe told the officer (1) she believed the park defendant took her to was in Redlands but she was not sure, (2) at the park, defendant grabbed her by her arms and forced her back into his car, (3) she pretended to be unconscious while defendant was assaulting her outside Reyes's house, and (4) in assaulting her, defendant punched her 10 to 13 times in the face.

Officer Smith did not take a photograph of the pool of blood he saw outside Reyes's house because he did not have a camera. He explained that the police department had a limited number of cameras; the cameras are first allotted to forensic specialists and sergeants; as a patrol officer, he was not allotted one; and none was

available when he went to Reyes's house. Defendant later called Quiroz, who corroborated Officer Smith's testimony concerning the unavailability of cameras in the San Bernardino Police Department.

3. Sergeant Eddie Gonzalez

Defendant also called Sergeant Gonzalez of the San Bernardino County Sheriff's Department's Highland station. Sergeant Gonzalez went to Reyes's house on the night of the incident and was the first law enforcement officer at the scene. He found Doe lying face down in a pool of blood, unresponsive. He did not attempt to verify Doe's identity by referring to her driver's license. He briefly spoke with Doe and Reyes, but did not interview them or write a report documenting the conversations, because the San Bernardino Police Department was contacted and investigated the incident. Reyes told Sergeant Gonzalez that Doe and defendant came to her house together; Doe and defendant got into a fight; Reyes sent defendant "to his house in the mountains"; and Reyes did not wish to be involved.

4. Deputy Donald Zehms

San Bernardino County Sheriff's Deputy Zehms arrived at Reyes's house as Doe was being put in an ambulance. He did not write a report. Doe told Deputy Zehms that she was at a house in San Bernardino with defendant when he forced her into a car, drove her around San Bernardino, and assaulted her while driving around. Doe did not provide many details, but once he determined that Doe had initially been taken from a house in

San Bernardino, he called for the San Bernardino Police Department to meet Doe at the hospital.

5. Theresa Lynn DeAvila

DeAvila testified she was defendant's girlfriend, and went to Reyes's house around 9:30 to 10:00 p.m. on the night of the incident to see defendant. In the driveway, Doe was sitting in defendant's car, and she told Doe she was defendant's girlfriend. The women began arguing; DeAvila claimed Doe struck her in the mouth and she fought back in self-defense. DeAvila said she hit Doe in her nose and mouth, and both she and Doe were bleeding. The fight ended after DeAvila "took off running," and defendant left after he was unable to break up the fight. Doe was lying in the driveway when DeAvila left.

The prosecutor impeached DeAvila with the transcript of a recorded telephone conversation between DeAvila and defendant, while defendant was in custody, in which defendant told DeAvila that "two girls" beat up Doe and asked DeAvila to contact the women to see whether one of the girls would testify.

*C. Rebuttal*

District Attorney Investigator Steven Shumway attempted, unsuccessfully, to serve Reyes with a subpoena at her house in Highland and at another house in Lake Arrowhead. Investigator Shumway listened to defendant's recorded telephone calls made from the county jail. In at least one call, defendant spoke with DeAvila and asked her to contact at least one of two females to have them testify on his behalf, and he would post bail for the women. Defendant also told DeAvila he had mailed a letter to Reyes's house,

that “all the information, would be in that letter,” and to visit him and “go over the details” after she read the letter.

### III. DISCUSSION

#### A. *The Court Properly Granted the People’s Batson/Wheeler Motion*

Defendant claims the trial court erroneously granted the People’s *Batson/Wheeler* motion, after he attempted to use the seventh of his 10 peremptory challenges to excuse a female prospective juror—Prospective Juror No. 20, seated as Juror No. 9. We conclude the motion was properly granted.

##### 1. Relevant Background

Each side could use 10 peremptory challenges during jury selection. (Code Civ. Proc., § 231.) Defendant used five of his first six peremptory challenges to excuse female prospective jurors. The prosecutor objected when defendant tried to use his seventh peremptory challenge to excuse a sixth female prospective juror, Prospective Juror No. 20.

Outside the presence of the jury, the court found there were gender-neutral reasons for defendant’s excusals of two of the six female prospective jurors, namely, Nos. 4 and 27. The court noted that Prospective Juror No. 4 said she could not be fair, and No. 27 said she always assumed people told the truth under oath.

The court found “no discernable reason” for defendant’s peremptory excusals of Prospective Juror Nos. 8, 31, 44, or 20. The court thus found that the prosecutor made “a prima facie case the defendant is exercising peremptory challenges based on gender in a

case where the named victim is female,” and asked defendant whether he would like to be heard. Defendant explained that he recognized Prospective Juror No. 20 as a member of a family with whom his family had engaged in an unspecified “domestic dispute.” Still outside the presence of the venire, the court called Prospective Juror No. 20 into the courtroom and asked her whether she knew defendant and whether her family had been involved in any domestic dispute with defendant’s family. Prospective Juror No. 20 denied knowing defendant, and said she had “never had any domestic disputes.” The court then found defendant was using his peremptory challenges to excuse female prospective jurors based on gender, and found his gender-neutral justification for excusing Prospective Juror No. 20 “wholly fabricated” and “just a lie.” The court noted that Prospective Juror No. 20 “appeared baffled” when asked about the domestic dispute between the families.

## 2. Analysis

The state and federal Constitutions prohibit the use of peremptory challenges to excuse prospective jurors on the basis of their gender. (*J.E.B. v. Alabama ex rel. T.B.* (1994) 511 U.S. 127, 129; *People v. Jurado* (2006) 38 Cal.4th 72, 104.) Such impermissible use of peremptory challenges violates the equal protection clause of the federal Constitution (*Batson, supra*, 476 U.S. at p. 97), and the right to a jury trial drawn from a representative cross-section of the community under article I, section 16 of the California Constitution (*Wheeler, supra*, 22 Cal.3d at pp. 276-277; see also Code Civ. Proc., § 231.5 [codifying *Batson/Wheeler* rule]). These principles apply regardless of

which party uses the peremptory challenge. (*People v. Willis* (2002) 27 Cal.4th 811, 813.)

A trial court employs a familiar three-step inquiry in determining whether a *Batson/Wheeler* violation has occurred: “First, the opponent of the strike must make out a prima facie case by showing that the totality of the relevant facts gives rise to an inference of discriminatory purpose in the exercise of peremptory challenges. Second, if the prima facie case has been made, the burden shifts to the proponent of the strike to explain adequately the basis for excusing the juror by offering permissible, nondiscriminatory justifications. Third, if the party has offered a nondiscriminatory reason, the trial court must decide whether the opponent of the strike has proved the ultimate question of purposeful discrimination.” (*People v. Scott* (2015) 61 Cal.4th 363, 383; *Johnson v. California* (2005) 545 U.S. 162, 168.)

As this three-step inquiry reflects, there is a rebuttable presumption that a party is properly exercising its preemptory challenges, and the burden is on the party opposing the peremptory challenge to demonstrate that its proponent is attempting to use it for an impermissibly discriminatory purpose. (*People v. Dement* (2011) 53 Cal.4th 1, 19.) The opponent of the strike must show that “it was more likely than not that the challenge was improperly motivated.” (*People v. Trinh* (2014) 59 Cal.4th 216, 240-241.) On appeal, we uphold the trial court’s ruling on a *Batson/Wheeler* motion if substantial evidence supports the court’s factual conclusions. (*People v. Lenix* (2008) 44 Cal.4th 602, 613, 626-627; *People v. Alvarez* (1996) 14 Cal.4th 155, 196-197 [“whether the [party

opposing the strike] bore his burden of a prima facie showing of the presence of purposeful discrimination and, if he succeeded, whether the [party defending the strike] bore his consequent burden of a showing of its absence, are themselves examined for substantial evidence: they are each reducible to an answer to a purely factual question . . . .”].)

Defendant claims the People failed to make a prima facie showing, on the first step of the *Batson/Wheeler* inquiry, that he was attempting to excuse female Prospective Juror No. 20 on the basis of her gender. We disagree.

“A prima facie case of racial [or gender] discrimination in the use of peremptory challenges is established if the totality of the relevant facts “gives rise to an inference of discriminatory purpose.” [Citation.]” (*People v. Scott, supra*, 61 Cal.4th at p. 384.) In determining whether the requisite prima facie showing was made, we consider the entire record before the court at the time the motion was made (*ibid.*), bearing in mind that “certain types of evidence may be especially relevant: “[T]he party may show that his opponent has struck most or all of the members of the identified group from the venire, or has used a disproportionate number of his peremptories against the group. He may also demonstrate that the jurors in question share only this one characteristic—their membership in the group—and that in all other respects they are as heterogeneous as the community as a whole” (*People v. Bonilla* (2007) 41 Cal.4th 313, 342).

Substantial evidence supports the court’s conclusion that the People made a prima facie showing that defendant was attempting to exclude female Prospective Juror No. 20

on the basis of her gender. Before he attempted to use his seventh peremptory challenge to excuse female Prospective Juror No. 20, defendant used five of his first six peremptory challenges to excuse other female prospective jurors.

And, as the court found, there appeared to be “no discernable reason,” other than their gender, to excuse female Prospective Juror No. 20 and *three of the other five* female prospective jurors whom defendant previously excused: Prospective Juror Nos. 8, 31, and 44.<sup>3</sup> Defendant argues the court “simply and quickly found a prima facie case without any thought or analysis.” But that is not the case. The trial court carefully considered whether there were any ostensible gender-neutral reasons for excusing each of the prospective jurors defendant previously excused; defendant offered the court no reason for his peremptory excusals of Prospective Juror Nos. 8, 31, and 44.

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<sup>3</sup> Prospective Juror No. 8 was married to a police officer; her “hobby” was raising her seven-year-old son; she worked for the County of San Bernardino; knew a lot of people in the legal community because of her husband’s work; and had been the victim of a robbery “a long time ago,” but no charges were filed.

Prospective Juror No. 31 was married and expecting her first child; was a full-time mathematics teacher; did not know anyone who worked in the legal community or anyone who had been the victim of a crime or accused of a crime; and believed she could be fair and impartial.

Prospective Juror No. 44 was divorced, lived alone, and had three adult sons and grandchildren. Her hobbies were “being a grandma and the activities that go with that.” She had been a registered nurse for 39 years, specializing in wound care and “acute rehabilitation.” Her son and daughter-in-law had had their vehicle stolen twice.

Prospective Juror No. 20 was married with a 12-year-old daughter; her husband was a “stay-at-home dad”; and she had worked as the director of operations for an appliance and electronics distribution company. Like Prospective Juror No. 8, she had also been the victim of a robbery “a long time ago,” and the perpetrator was never caught. She did not know anyone who had been accused of a crime and believed she could be fair and impartial.

The burden thus shifted to defendant to state a gender-neutral reason for excusing Prospective Juror No. 20, and he failed to do so. (*People v. Montes* (2014) 58 Cal.4th 809, 852 [justifications for challenged peremptories need only be given if the court finds a prima facie showing of purposeful discrimination].) After speaking to Prospective Juror No. 20, the court found that defendant’s proffered gender-neutral justification for excusing her—that he had seen her before and her family had been engaged in some unspecified “domestic dispute” with his family—was “wholly fabricated” and was “just a lie.” Substantial evidence supports this conclusion: Prospective Juror No. 20 denied knowing defendant, denied having seen him before, and denied having been involved in any domestic dispute with his family.

“So long as the trial court makes a sincere and reasoned effort to evaluate the nondiscriminatory justifications offered [for excusing a prospective juror], its conclusions are entitled to deference on appeal. [Citation.]” (*People v. Burgener* (2003) 29 Cal.4th 833, 864.) And here, the court made a sincere and reasoned effort to evaluate defendant’s proffered gender-neutral justification for excusing Prospective Juror No. 20, and reasonably found it not credible. Thus, the People’s *Batson/Wheeler* motion was properly granted, and the court properly refused to allow defendant to peremptorily excuse Prospective Juror No. 20.

#### B. *The Court’s Time Limitation on the Parties’ Jury Voir Dire Was Not Prejudicial*

Defendant claims the court unreasonably limited his voir dire of the jury, and that “[t]his was a serious error requiring reversal.”

Before jury voir dire began, the court explained the procedures to be followed in conducting the voir dire. The court told the parties it would conduct “most of the voir dire,” which would take approximately two hours, then defendant and the prosecutor would each have 30 minutes to question prospective jurors.

The court elaborated: “I am giving both sides 30 minutes of voir dire time. So you can spend it all talking to one juror or you can spend 30 seconds talking to 60 jurors. But you have 30 minutes total during voir dire. [¶] This is not football time where the clock stops if you are not talking. It starts and keeps running even during long pauses. So be aware both of you have 30 minutes. It seems to me to be appropriate given the nature of these charges. Should there be some issue we do run into, a poison pill kind of a juror, I will stop the clock and talk to that juror longer, but just be aware, 30 minutes.”

After the court conducted its initial voir dire, it allowed defendant to question the prospective jurors for 40 minutes before excusing the venire for a break. During the break and outside the presence of the venire, the court told defendant he had been allowed to question the venire for 40 minutes, rather than 30, and he was out of time. Defendant was not allowed to question the prospective jurors further.

Code of Civil Procedure section 223 allows the court to specify an aggregate amount of time each party may question prospective jurors in a criminal case. The court has a duty to restrict voir dire within reasonable bounds in order to expedite the trial. (*People v. Avila* (2006) 38 Cal.4th 491, 536.) An order limiting a party’s time to question individual prospective jurors is reviewed for an abuse of discretion. (*People v. Carter*

(2005) 36 Cal.4th 1215, 1250-1251.) Reversal is required only if a miscarriage of justice occurred. (Code Civ. Proc., § 223; Cal. Const., art. VI, § 13.) That is, reversal is limited “to those cases in which the erroneous ruling affected defendant’s right to a fair and impartial jury.” (*People v. Carpenter* (1997) 15 Cal.4th 312, 354.)

In our view, the court’s 30 minute time limit on each party’s right to question the prospective jurors was too restrictive, even though the case was not especially complex and involved only two charges. Generally speaking, the court should have allowed each party at least an hour to question prospective jurors, in order to probe them for potential biases and determine whether they could competently serve. Still, the 30-minute time limit did not adversely affect defendant’s right to a fair and impartial jury. As it said it would do, the court conducted “most of the voir dire” and thoroughly questioned all of the prospective jurors regarding their backgrounds, potential biases, and knowledge of the case, the parties, and the witnesses before allowing the parties to question the prospective jurors.

In view of the court’s voir dire, the 30-minute time limit did not prevent defendant from making reasonable inquiries into the fitness of prospective jurors to serve. (*People v. Carter, supra*, 36 Cal.4th at p. 1251.) “The right to voir dire, like the right to peremptorily change [citation], is not a constitutional right but a means to achieve the end of an impartial jury. [Citation.]” (*People v. Wright* (1990) 52 Cal.3d 367, 419.) “[C]ounsel’s right is only to a *reasonable* examination of prospective jurors—reasonable in length, in method, in purpose, and in content.’ [Citation.]” (*Ibid.*)

Additionally, the court ended up allowing defendant to question prospective jurors for 40 minutes, not 30, and defendant did not use his time wisely. As the court pointed out after it terminated defendant's voir dire, most of defendant's questions, "either tr[ie]d to pre-instruct the jury on the law or [were] questions [defendant] already knew the answer to, such as whether people had served on the jury before, whether they can be fair and impartial." The court also noted there was a lot of "dead air," around 20 to 30 seconds, between many of defendant's questions. It thus appears that defendant did not need more than 40 minutes to question the prospective jurors, and had he been allowed more time he would not have used it effectively.

*C. The Termination of Defendant's Cross-examination of Officer Smith Was Harmless*

1. Relevant Background

The court terminated defendant's cross-examination of Officer Smith after defendant kept referring to the victim by her true name, despite the court's standing order and repeated admonishments to refer to the victim as Jane Doe. During the cross-examination, the court repeatedly admonished defendant to refer to the victim as Jane Doe. After defendant called the victim by her true name for the fourth time, the court warned defendant that his cross-examination would be terminated if he did so again. After defendant referred to the victim by her true name for the fifth time, the court terminated the cross-examination.

Defendant later called Officer Smith during his defense case and was allowed to examine the officer until he ran out of questions. As he did during his cross-examination

of the officer, defendant directly questioned the officer concerning Doe's unrecorded statement to him at the hospital. Defendant established that Officer Smith did not record the statement even though he had a tape recorder with him; that Doe told him defendant struck her 10 to 13 times; and that no one photographed the pool of blood the officer observed outside Reyes's house.

## 2. Analysis

Defendant claims the court had no authority to order that the alleged victim be referred to as "Jane Doe" throughout the trial and prejudicially erred in terminating his cross-examination of Officer Smith after he repeatedly referred to the victim by her true name. We agree that the court had no authority to order that the victim be referred to as Jane Doe because she was not the victim of an enumerated sex offense. (Pen. Code, §§ 293, 293.5; Gov. Code, § 6254, subd. (f)(2).) Nonetheless, the court's termination of defendant's cross-examination of Officer Smith was not prejudicial.

### (a) *The Jane Doe Order*

Penal Code section 293.5 authorizes courts to protect the privacy and identities of the victims of enumerated sex offenses by ordering that they be referred to as Jane Doe or John Doe. (*People v. Ramirez* (1997) 55 Cal.App.4th 47, 52-53.) The statute provides, in pertinent part, that: "Except . . . for cases in which the alleged victim of a sex offense, as specified in subdivision (e) of Section 293, has not elected to exercise his or her right pursuant to Section 6254 of the Government Code [to have his or her name withheld from disclosure under the California Public Records Act], the court, *at the request of the*

*alleged victim*, may order the identity of the alleged victim in all records and during all proceedings to be either Jane Doe or John Doe, if the court finds that such an order is reasonably necessary to protect the privacy of the person and will not unduly prejudice the prosecution or the defense.” (Pen. Code, § 293.5, italics added.)

Penal Code section 293 allows victims of certain specified sex offenses to request that their names not become matters of public record, and subdivision (e) of that section states: “For purposes of this section, sex offense means any crime listed in paragraph (2) of subdivision (f) of Section 6254 of the Government Code.” The alleged victim here, Jane Doe, was not the alleged victim of any sex offense. Rather, she was the alleged victim of a kidnapping and an assault. As such, Jane Doe had no right to request that her name not become a matter of public record under Penal Code section 293. Nor was the court authorized, under Penal Code section 293.5, to order the parties to refer to her as Jane Doe throughout the trial. In light of the Legislature’s purpose in enacting Penal Code section 293.5 (see *People v. Ramirez, supra*, 55 Cal.4th at p. 53), the phrase “*at the request of the alleged victim*,” as used in the statute, can only mean the alleged victim of a sex offense listed in Government Code section 6254, subdivision (f)(2).

(b) *The Terminating Sanction Was Harmless*

Even though the court was not authorized to order that the alleged victim be referred to as Jane Doe, any error terminating defendant’s cross-examination of Officer Smith did not prejudice defendant. “Within the confines of the confrontation clause, the trial court retains wide latitude in restricting cross-examination that is repetitive,

prejudicial, confusing of the issues, or of marginal relevance. [Citations.] Thus, unless the defendant can show that the prohibited cross-examination would have produced ‘a significantly different impression of [the witnesses’] credibility’ [citation], the trial court’s exercise of its discretion [in restricting the cross-examination] does not violate the Sixth Amendment.” (*People v. Frye* (1998) 18 Cal.4th 894, 946.)

After the court terminated defendant’s cross-examination of Officer Smith for referring to Jane Doe by her true name, defendant called Officer Smith to testify in his defense case and was allowed to question the officer until he ran out of questions—despite defendant’s long pauses and repetitive and otherwise objectionable questions. Defendant points to no relevant evidence that he was unable to elicit from the officer. Thus, no prejudice appears.

*D. The Court Properly Controlled Defendant’s Direct Examinations of Detective Antillon and Sergeant Gonzalez*

Defendant next claims the court unreasonably terminated his direct examination of Detective Antillon and “rudely interrupted” him during his direct examination of Sergeant Gonzalez. We disagree.

The trial court has “inherent as well as statutory discretion to control the proceedings to ensure the efficacious administration of justice.” (*People v. Gonzalez* (2006) 38 Cal.4th 932, 951; Pen. Code, § 1044; Evid. Code, § 765.) Evidence Code section 765 affords the trial court broad discretion to control the interrogation of witnesses. (*People v. Chenault* (2014) 227 Cal.App.4th 1503, 1514.) On appeal, we

review the court's exercise of its authority under Evidence Code section 765 for an abuse of discretion. (*People v. Tafoya* (2007) 42 Cal.4th 147, 175.) And here, the court properly controlled defendant's direct examinations of Detective Antillon and Sergeant Gonzalez.

In questioning the detective about his interview with Doe, defendant kept asking the detective what Doe told him her doctors told her about her injuries, even though the questions called for hearsay and the court properly sustained the prosecutor's hearsay objections to the questions. Defendant complains that Doe was allowed to testify on her direct examination that her doctors told her she had a concussion, but defendant did not object to the question on hearsay or other grounds.

Defendant also asked the detective whether Doe's injuries constituted great bodily injury, which called for an improper legal conclusion, and tried to play a videotape of the detective's interview with Doe without authenticating the videotape. Finally, the court terminated the examination after defendant kept asking the detective what he wrote in his report, without showing that the report contained any inconsistent statements or using it to refresh the detective's recollection. In terminating the examination, the court did not abuse its discretion. Defendant was continually asking improper questions.

In questioning Sergeant Gonzalez, defendant kept asking whether the sergeant verified that Doe gave him her real name by checking her driver's license. The court admonished defendant that he was not to elicit Doe's real name and to ask relevant questions. Defendant told the court he was trying to prove that Doe gave the sergeant a

false name. Defendant complains that the court “rudely interrupted” him at this point, which caused him to end the examination, but the court simply told defendant that it was “not going to give you advice or lead you by the hand with this witness. Ask relevant questions in compliance with my orders or rest.” The admonition was appropriate. Defendant was not asking proper questions, and it appeared he was trying to interject Doe’s real name into the proceedings. Finally, after defendant asked the sergeant, for the third time, whether Reyes told him she did not want Doe in her house, the court sustained the prosecutor’s “asked and answered” objection. At that point, defendant said he had “[n]o further questions.” The court did not “cut off” the examination.

*E. The Court Did Not Unreasonably Terminate Defendant’s Closing Argument*

During his closing argument, defendant twice suggested to the jury that it should consider the punishment he would receive if convicted. First he told the jury: “If I—I’m proved guilty on any of these charges, I am looking at 10 years.” After sustaining the prosecutor’s “improper” argument objection, the court told defendant: “[Y]ou have been warned about this several times throughout the trial. The jury was just ordered by me not to consider penalties or punishment, sympathy, any of those improper bases for deciding the case. Should you violate this order one more time, I will deem you to have rested your closing argument and I will have you sit down.” Later during his closing argument, defendant told the jury: “I tell you, ladies and gentlemen, that this is my life on the line. This is very serious.” The court sustained the prosecutor’s “relevance” objection and,

after reminding defendant of its previous orders, told him to sit down, ended his closing argument, and excused the jury for the lunch break.

Defendant admits that his statement about facing 10 years in prison was improper, but argues his statement that, “my life [is] on the line,” was proper, and even if it was improper it was “only marginally so and not sufficiently serious a violation as to warrant ending his closing argument.” We disagree. “It is settled that in the trial of a criminal case the trier of fact is not to be concerned with the question of penalty, punishment or disposition in arriving at a verdict as to guilt or innocence.” (*People v. Allen* (1973) 29 Cal.App.3d 932, 936, fn. omitted; *People v. Nichols* (1997) 54 Cal.App.4th 21, 24.) Defendant’s reference to his “life” being “on the line” plainly and improperly suggested to the jury that it should consider the punishment he might face in determining his guilt.

Additionally, the trial court has a duty to limit closing argument to relevant and material matters (Pen. Code, § 1044; *People v. Edwards* (2013) 57 Cal.4th 658, 743) and has broad discretion in controlling the duration and scope of closing argument (*Herring v. New York* (1975) 422 U.S. 853, 862 [court has broad discretion to terminate argument when continuation would be repetitive or redundant, and to ensure that the argument does not impede the fair and orderly conduct of the trial]). Defendant made improper references to his potential punishment throughout the trial, beginning with his opening statement and continuing through his closing argument. Thus, the court acted within its discretion in ending defendant’s closing argument after he again violated the court’s order not to refer to his punishment if convicted.

*F. The Court Properly Precluded Defendant from Impeaching Doe With Her Use Immunity Agreement*

Before trial, the People granted Doe use immunity from prosecution for two incidents that occurred before August 25, 2013—one in February 2013 and the other in June or July 2013—in which Doe was allegedly violent toward defendant. Also before trial, the court granted the prosecutor’s motion in limine to preclude defendant from *presenting evidence* of Doe’s alleged prior acts of violence on the ground the acts were irrelevant unless defendant was claiming he struck Doe in self-defense during the August 25 incident. At the time of the motion, defendant declined to reveal whether he would claim he struck Doe in self-defense or that someone else struck her. In his opening statement, defendant said he would prove Doe was “receiving immunity for her testimony,” and the court overruled the prosecutor’s relevancy objection “at this point.”

Then, after Doe testified, the prosecutor moved to preclude defendant from cross-examining about the immunity agreement and the prior acts of violence for which Doe had been granted immunity. The court granted the motion on the ground the immunity agreement and alleged prior acts were irrelevant “until such time as the defendant testifies about self defense or imperfect self defense.” Ultimately defendant did not claim he acted in self-defense; he presented the testimony of his current girlfriend, Theresa DeAvila, who claimed *she* assaulted Doe in self-defense after Doe struck her outside Reyes’s house.

Defendant now claims he should have been allowed to impeach Doe with her use immunity agreement. He argues the fact “she was testifying with a grant of immunity protecting her from prosecution for past alleged assaults against [him gave] her a motive to lie; to blame [him] for an attack he did not commit because of her anger around prior incidents.”

We conclude the court did not abuse its discretion in precluding defendant from impeaching Doe with her immunity agreement. (*People v. Avila, supra*, 38 Cal.4th at p. 578 [trial court rulings excluding evidence on relevance and Evid. Code, § 352 grounds reviewed for abuse of discretion].) If defendant was going to claim that *someone else* fought with Doe and caused her injuries—as he ultimately did—then allowing him to impeach Doe with her use immunity agreement and her alleged prior acts of violence *toward him* may well have confused the issues and been more prejudicial than probative on the question of Doe’s credibility in testifying that defendant attacked her and caused her injuries. (Evid. Code, §§ 780, subd. (f) [existence of bias, interest, or motive relevant to witness credibility], 352 [relevant evidence may be excluded if its probative value is substantially outweighed by the probability it will confuse the issues].)

#### G. *No Cumulative Error*

Defendant claims the cumulative effect of the court’s errors requires reversal. Not so. As we have explained, any error in terminating defendant’s cross-examination of Officer Smith was harmless because the court allowed defendant to directly examine the officer in his defense case until he ran out of questions, and defendant points to no

evidence that he was not allowed to elicit from the officer. Thus here, there is no cumulative prejudicial error requiring reversal. (*People v. Charles* (2015) 61 Cal.4th 308, 337-338.)

#### H. *Sentencing Error; Driver's License Revocation*

Defendant was convicted in count 2 of false imprisonment by menace or violence, a felony. (Pen. Code, § 236.) At sentencing, the court found that a motor vehicle was used in the commission of count 2, and based on the finding ordered that defendant's "privilege to operate a motor vehicle in California be revoked for life." Defendant claims the court had no authority to order his driving privileges revoked for life, and the judgment must be modified to limit the revocation period of his driver's license to one year. We agree.

Vehicle Code section 13351.5 requires the DMV to *permanently* revoke a person's "privilege to drive a motor vehicle," or driver's license, upon the DMV's receipt of "a duly certified abstract of the record of any court" or judgment showing that the person has been convicted of a felony violation of Penal Code section 245 and "*that a vehicle was found by the court to constitute the deadly weapon or instrument used to commit that offense.*" (Veh. Code, § 13351.5, italics added; *People v. Linares* (2003) 105 Cal.App.4th 1196, 1198.) In contrast, Vehicle Code section 13350 requires the DMV to revoke a person's driver's license *for one year*, upon the DMV's receipt of a duly certified abstract of a court record showing the person was convicted of "[a] felony in the

commission of which a motor vehicle is used . . . .” (Veh. Code, § 13350, subd. (a)(2); *People v. Linares, supra*, at pp. 1199-1200.)

As defendant argues, the court had no authority to order the DMV to permanently revoke his driver’s license based on the court’s finding that a motor vehicle was used in the commission of count 2. (Veh. Code, § 13351.5.) Instead, based on its finding that a vehicle was used in count 2, the court was authorized to order the DMV to revoke defendant’s driver’s license for one year. (Veh Code, § 13350.)<sup>4</sup> The court appears to have confused sections 13350 and 13351.5 of the Vehicle Code and whether the one year or permanent revocation applied.

The People concede the error, but argue “the proper remedy” is to remand the matter to the trial court with directions to consider whether the record supports a finding that a motor vehicle was used in count 1, in which defendant was convicted of violating Penal Code section 245. The People argue that if the trial court makes the finding, it may “reinstate” its original order directing the DMV to permanently revoke defendant’s driver’s license. (Veh. Code, § 13351.5.) If the trial court does not make the finding, the People argue it may then order defendant’s license revoked for one year. (Veh. Code, § 13350.)

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<sup>4</sup> The probation report recommended only that the court order the DMV to “revoke the defendant’s privilege to operate a motor vehicle,” without specifying the length of suspension or the authorizing Vehicle Code section, and further recommended that the court order defendant to surrender his driver’s license to the court pursuant to Vehicle Code section 13550.

The People are mistaken. The record does not support a finding that a vehicle constituted the “instrument” used to commit the Penal Code section 245 offense. To the contrary, the record shows that defendant’s fists, but not a vehicle, was the instrument defendant used to commit the Penal Code section 245 offense. (Veh. Code, § 13351.5.) A finding that defendant *used* a vehicle *in committing* the Penal Code section 245 offense—the finding the People would urge the court to make on remand—would not support an order permanently revoking defendant’s driver’s license pursuant to Vehicle Code section 13351.5.

Finally, the revocation of a person’s driver’s license is a civil, not a criminal sanction (*Moomjian v. Zolin* (1993) 12 Cal.App.4th 1606, 1612) and Vehicle Code sections 13350 and 13351.5 authorize the DMV, not the court, to revoke a person’s driver’s license. Our task is to determine whether the defendant’s *conviction* falls within Vehicle Code section 13350 or 13351.5 and whether the *judgment*, as forwarded to the DMV, is correct. (*People v. Linares, supra*, 105 Cal.App.4th at p. 1199.)

The court’s finding that a vehicle was used in count 2, if duly certified in a court record and forwarded to the DMV, would support an order revoking defendant’s driver’s license for one year, but not for life. (Veh. Code, § 13350.) The abstract of judgment says nothing about whether a vehicle was used in count 1 or 2, or about revoking defendant’s driver’s license, or for how long. The court’s oral pronouncement of sentence could, however, potentially be used to support an order to the DMV revoking defendant’s driver’s license permanently, or for life, and such an order would be

unlawful. (Veh. Code, § 13351.5.) The sentencing minute order states that a vehicle was used in the commission of count 2, and further states that the “[c]ourt orders [DMV] to revoke Defendant’s privilege to operate a motor vehicle,” but the order does not specify the applicable Vehicle Code section or state the length of revocation. In order to avoid confusion, we will remand the matter to the trial court with directions to prepare a supplemental sentencing minute order, clarifying that the DMV is authorized to revoke defendant’s sentence for one year, pursuant to Vehicle Code section 13350, but not permanently or for life, pursuant to Vehicle Code section 13351.5, based on the court’s finding that a vehicle was used in count 2.

#### IV. DISPOSITION

The matter is remanded to the trial court with directions to prepare a supplemental sentencing order clarifying that the DMV is authorized to revoke defendant’s privilege to drive a motor vehicle for one year (Veh. Code, § 13350), but not permanently or for life (Veh. Code, § 13351.5), based on the court’s finding that a vehicle was used in the commission of count 2. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

KING  
J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.