No. 18 - _____

IN THE

Supreme Court of the United States

BRANDON COLBERT,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA

Respondent.

On Petition For Writ Of Certiorari

from the Judgment of the California Court Of Appeal for the Second Appellate District, division two

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A United States Department of Justice investigation concluded that law enforcement in defendant's community systemically engages in racist police practices.

Does the Sixth Amendment right to an impartial jury permit the reviewing court, at *Batson*'s first stage, to conclude that a minority venire member's negative experience with police is a race-neutral reason for the state's peremptory challenge when the venire member insists that, despite that experience, she will be impartial?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Brandon Colbert respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal in *People v. Colbert*, Case No. B276969.

OPINIONS BELOW

The unpublished opinion of the California Court of Appeal is reproduced as Petitioner's Appendix A to this petition. The order of the California Supreme Court denying review is reproduced as Petitioner's Appendix B.

JURISDICTION

The judgment of the California Court of Appeal was filed on May 8, 2018, affirming petitioner's convictions for attempted murder (count 1), two counts of assault with a semiautomatic firearm (counts 4 and 5), and possession of a firearm and ammunition by a felon (counts 7 and 8). (Appendix A.) The California Supreme Court denied review on August 22, 2018. (Appendix B.) This petition for certiorari is due for filing on October 19, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to the United States Constitution states in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ."

The Fourteenth Amendment to the United States Constitution provides: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, section 16, of the California Constitution, provides: "Trial by jury is an inviolate right and shall be secured to all . . . ."

Section 231.5 of the California Code Civil Procedure provides: "A party shall not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of [sex, race, color, religion, ancestry, national origin, ethnic group identification . . .] or similar grounds."

Section 197 of the California Penal Code provides in relevant part: "Homicide is . . . justifiable when committed by any person in any of the following cases: (1) When resisting any attempt to . . . do some great bodily injury upon any person. . . . (3) When committed in the lawful defense of such person, or . . . when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished. . . . "

Section 189.5 of the California Penal Code provides in pertinent part: "[T]he burden of proving circumstances . . . that justify or excuse [a murder] devolves upon the defendant . . . ."

Section 198 of the California Penal Code provides in relevant part: "A bare fear of the commission of any of the offenses . . . to prevent which homicide may be lawfully committed, is not sufficient to justify it. But the circumstances must be sufficient to excite the fears of a reasonable person. . . ."

INTRODUCTION

Brandon Colbert, a young African-American, entered a Lancaster bar accompanied by his girlfriend Ashley Huerta, a white woman. All of the

other bar patrons were white. During a fight that began indoors and resumed in the parking lot, Colbert shot and seriously injured Anthony Gabelman. Colbert admitted shooting Gabelman, and the only issue at trial was whether or not he reasonably acted in self-defense.

Justice Powell wrote that jury service "touch[es] the entire community." (*Batson v. Kentucky* 476 U.S. 79, 87 (1986) (*Batson*.) That simple statement is particular true here. A few months before the offense in this case, the Antelope Valley Sheriff's Department, comprised of the cities of Lancaster and Palmdale, settled a lawsuit brought by the Civil Rights Division of the United States Department of Justice (DOJ). (*United States v. County of Los Angeles,* (C.D. Cal. Case No.15-CV-03174, filed April 28, 2015.). The lawsuit followed the Department's two-year investigation of the Antelope Valley Sheriffs Station. The DOJ produced its findings in a scathing, 45-page report, chronicling widespread and officially-sanctioned racist police practices and harassment of minorities by police.[1] (U.S. Department of Justice, Civil Rights Division, *Investigation of Los Angeles County Sheriff's Department Stations in Antelope Valley*, June

1. The Department of Justice's full report of its findings are publicly available online at https://www.justice.gov/crt/about/spl/documents/antelope_findings_6-28-13.pdf.

28, 2013 (hereinafter, "DOJ Report").)

Unique to this high desert community, the mayor of Lancaster publicly declared war on minorities moving into the area and was alleged to have hired thousands of security guards to harass minority residents. (*NAACP and Community Action League v. City ofPalmdale, et al.* (C.D. Cal. No. CV 11-4817 Feb. 8, 2012).) "As late as 2010 the Antelope Valley had the highest rate of hate crimes of any region in Los Angeles County." (DOJ Report, p. 2.)

Particularly relevant here, the DOJ specifically criticized the Sheriff's Department leadership, who "have allowed unconstitutional policing to persist and *have fueled the distrust of LASD by Antelope Valley's African-American and Latino communities*." (*Id.* at p. 7 [Emphasis added].) In this case, the prosecution exercised two of its first three peremptory challenges to remove otherwise qualified minority venire members who disclosed that family members had had a negative experience with police. Each assured the prosecution that, despite their family member's experience, they would not be biased against the police.

The Court of Appeal concluded that, under established California law, a negative experience with police is recognized to be a "race-neutral"

reason to exercise a peremptory challenge and affirmed the trial court's denial of Colbert's stage-one *Batson* claim. Pet. App. 15a-16a; *citing People v. Booker,* 245 P.3d 366, 389 (Cal. 2011) Although the state also has a legitimate interest in securing a fair and unbiased jury, why the state's interest should be elevated above other Sixth Amendment interests is less clear. Significantly, the prosecution's ability to prove the crimes charged did not depend on the testimony of police officers. Colbert admitted that he shot Gabelman. The crime was captured on surveillance video, played for the jury. The prosecution presented eyewitness testimony from those present at the time of the crime.

If a "negative experience with police," either personally or involving anyone close to you, is automatically disqualifying, then a significant portion of Antelope Valley's minority population is effectively disqualified from an important civic function.

The interests that *Batson* protects are weakened when a judicially-created presumption acts to shield law enforcement from the consequences if its own misconduct and adds insult to injury for minority community members who want to participate in their civic institutions. To defend himself, Colbert must have convinced the jury of the reasonableness of his

claim of self-defense. The unique perspective of similarly situated members of this community can only add to the quality of the deliberations and result in a more correct decision.

STATEMENT OF THE CASE

A. The shooting of Anthony Gabelman.

Brandon Colbert was the only non-white in a Lancaster bar. Some patrons went behind the bar and physically attacked the bartender, Desiree O'Donnell. Royce Gresham came to O'Donnell's aid. O'Donnell testified that Gresham is "a very aggressive dude" and had been "aggressive the whole night." In her view, Gresham's aid actually exacerbated the situation, as he was the one "doin' the pushing."

Gresham twice shoved Colbert's girlfriend to the ground. The third time that Gresham shoved Ashley, Colbert raised a firearm and pointed it at Gresham. Gresham slammed Colbert to the ground.

Colbert holstered his firearm, then he and Ashley ran out of the bar through the front door and headed to the parking lot, located behind the bar. Gresham testified that, when he saw Colbert run out the front door, he ran out the back door, which opens onto the parking lot. Anthony Gabelman had not been involved in the altercation. He followed Gresham

out the back door, thinking that Gresham would "probably cause more problems for himself" and intending to bring Gresham back inside.

As Colbert walked to his vehicle, Gresham and Gableman emerged from the bar. A third white man also was near them in the parking lot. Daniel Grey, an African American, testified that he was seated in an outdoor patio, and when he heard a commotion in the parking lot, he went to see what was happening.

Surveillance video of the confrontation depicts that Colbert was outnumbered and undersized. Gray testified to a sharp verbal exchange, in which Colbert asked, "What's your problem?" Colbert removed his firearm and initially held it at his side as he backed up. The men advanced towards Colbert, and Colbert raised his firearm and fired a single shot, hitting and seriously wounding Gabelman in the stomach.

At trial, Colbert admitted shooting Gabelman but claimed that he shot in self-defense. The only disputed fact at trial was whether or not Colbert's fear of great bodily injury was reasonable. The jury convicted Colbert of the attempted murder of Gabelman and two counts of assault with a semiautomatic firearm. The only issue issue raised on appeal was the denial of his *Batson* motion.

B. The jury selection proceedings.

The trial court began voir dire with a written questionnaire, provided by the Court, asking each prospective juror to provide their personal details and to respond to a series of twenty questions. Several questions asked about contacts with the criminal justice system. One question asked if "you or anyone close to you" have had contact with law enforcement, either positive or negative. The final question asked, "Can you think of any reason why you could not arrive at a fair and impartial verdict in this matter?" Each attorney then questioned the panel.

When the prosecution exercised its third peremptory challenge, defense counsel made a *Batson*/*Wheeler* motion, arguing that the prosecution exercised two of its three peremptory challenges to remove members of a cognizable group.[2] (2RT 614-615.) The two venire members at issue are:

Prospective Juror No. 6 (Badge #7696) is a retired nurse from Palmdale. She is married to an electrician, and they have two sons and a stepdaughter.

2. *See People v. Wheeler,* 583 P.2d 748 (Cal. 1978) [exercising peremptory challenges on the sole ground of group bias violates California's constitutional right to trial by jury drawn from a representative cross section of the community].

Eight years earlier, her son was convicted of growing mushrooms. She saw the drugs that the police confiscated and believes that the police officer exaggerated the quantity involved. Her son was granted probation on the condition that he pay a fee. Although he was employed, he could not afford to pay the fee, and the trial court ordered him imprisoned for a month.

In response to the prosecution's questioning, she assured the prosecutor that, despite that incident involving her son, she still could be fair to law enforcement and would not hold them to a higher standard of proof than proof beyond a reasonable doubt. She added that the incident happened eight years ago. Asked if it is going to be harder for law enforcement "to prove that they're being truthful," she responded, "No."

Prospective Juror No. 8 (Badge #6716) is a single female from Palmdale and works as an innovation coordinator for Antelope Valley Transit Authority. She previously worked for a civil law firm for six years, where she began as a receptionist and then as an executive assistant.

She stated that four years earlier, her brother was detained by a Loss Prevention Officer and was charged with strong-arm robbery. Her brother currently is on probation and reports to the probation office in this

courthouse. She felt that the charging was aggressive because the prosecutor sought a strike, even though it was her brother's first offense. The trial court explained that, "some charges are considered strike charges. That is not up to the judge. That is not up to the lawyers . . . . That is what the Legislature created." In response to the prosecution's further questioning, she stated that her only complaint about how her brother's case was handled was the strike allegation and that, "with the judge explaining that some charges are just strike charges, now I understand. . . . Now I understand that." Asked if she would hold her brother's experience against the officers, she responded, "Absolutely not," adding that she could be "one hundred percent" fair.

C. The *Batson* ruling and appeal.

The trial court found that the defense failed to meet its burden to demonstrate "a strong likelihood" of discriminatory intent. Defense counsel pointed to the fact that, of the three peremptory challenges, the prosecutor struck one African-American and one Hispanic from the jury. Before ruling, the trial court invited the prosecution "to state anything . . . as to any argument or evidence for the record as to whether the defense has

made a prima facie case or any reasons for your exercise of your peremptory challenge?" The prosecutor voiced her concern about Juror No. 6's mistrust of law enforcement. The prosecution stated that her reason for striking Juror No. 8 was her concern that the prosecution's own office had charged her brother with a strike.

The trial court denied the motion. Because the trial court had applied an incorrect "strong likelihood of discriminatory intent" standard, the Court of Appeal applied de novo review. *See Johnson v. California*, 545 U.S. 162, 171-72 (2005) [overturning California's "strong likelihood" standard as too onerous] The Court of Appeal affirmed, citing to controlling authority holding that, "A prospective juror's relative's negative experience with the criminal justice system is a race-neutral reason for a peremptory challenge." (Pet. App. 15a, citing *People v. Booker, supra,* 245 P.3d 366, 389, fn. 13 (2011) and *People v. Lenix,* 187 P.3d 946, 965 (Cal. 2008).

REASONS FOR GRANTING THE WRIT

A. When the trial court fails to conduct three discrete stages of inquiry under *Batson*, a California reviewing court will search the record for substantial evidence to uphold the peremptory strike, in contravention to this Court's instruction in *Johnson v. California.*

The three stages of the *Batson* inquiry are deliberately designed to elicit answers. *Johnson v. California, supra*, 545 U.S. 162, 172. In this case, the trial court conflated the steps of the *Batson* inquiry when, before it made a stage-one ruling, it invited the prosecution "to state anything . . . as to any argument or evidence for the record as to whether the defense has made a prima facie case or any reasons for your exercise of your peremptory challenge?"[3] The Court of Appeal noted that, "it is established that trial courts occasionally find no prima facie case but still ask the prosecutor to state reasons for exercising a peremptory challenge." Pet. App. 15a-16a, citing *People v. Taylor,* 229 P.3d 12, 47-48 (2010). Significantly, the trial court invited the prosecution to voice its reasons *before* it ruled, rather than after. As a consequence, whether the prosecution's reasons were stated strictly for the record or to affect the

3. Colbert notes that another petition for certiorari currently is pending before this Court in a California capital case where a similar procedure was followed. *Warren Justin Hardy v. California* (No. 18-6309, filed October 12, 2018).

court's ruling is unclear. The danger would be that the prosecution's statements would influence the ruling without having been subjected to the rigorous scrutiny that occurs at stage three.

Had the trial court not applied an incorrect legal standard, the court might have found a prima facie case. The prosecution exercised two of its three peremptory challenges to remove a minority. Although both venire members had criticized the handling of their relatives' criminal case, both also assured the prosecution that, despite that experience, they would be fair impartial. If the trial court's inquiry had not been foreclosed at stage one, then the record might have been developed as to why the prosecution chose to believe that the venire member could not be impartial, rather than to credit their assurances of impartiality. A venire member's assurance of impartiality plus a statistical disparity could rise to a prima facie case. *See, e.g., State v. Cook*, 312 P.3d 653, 657 (Wash. App. 2013) [despite negative experience with police, striking 50 percent of the members of one racial group raises inferences of discrimination]. Similarly, had Colbert been in California federal court, where a statistical disparity of 55 percent has been deemed sufficient to raise an inference of discrimination, the court might have found a prima facie case. *Turner v. Marshall*, 63 F.3d 807, 813

(9th Cir. 1995).

When the *Batson* inquiry is scrambled and the record is mixed, selecting one of the venire member's statements that would support the prosecution's expressed concern puts the cart before the horse. In reversing California's "strong likelihood" standard at stage one, this Court cautioned against imposing a burden of persuasion on the defendant at stage one. The Court explained:

> The first two *Batson* steps govern the production of evidence that allows the trial court to determine the persuasiveness of the defendant's constitutional claim. 'It is not until the third step that the persuasiveness of the justification becomes relevant-the step in which the trial court determines whether the opponent of the strike has carried his burden of proving purposeful discrimination.'

Johnson v. California, supra, 545 U.S. 162, 171, citing *Purkett v. Elem*, 514 U.S. 765, 767 (1995) (per curiam).

Without a sincere and reasoned inquiry into the credibility of the prosecution's reasons, the one fact that supports the strike should not dominate all other facts and considerations. When the trial court fails to follow *Batson*'s discrete steps, the reviewing court should ask instead whether or not the defendant had advanced facts sufficient to permit the trial court reasonably to infer a discriminatory intent. When the record is mixed, as it is here, that standard is easily met.

B. This case is appropriate case for review because the importance of the constitutional violation in this case does not hinge on a speculative or bald assertion of disparate impact but rests instead on an objective and comprehensive public report that quantifies the impact of exclusion on the community, the judiciary, and the defendant in this case.

This Court repeatedly has instructed that the procedural mandates of *Batson* are designed to protect interests beyond those of the defendant. *Johnson v. California, supra,* 545 U.S. 162, 171-72. The overriding goal is nothing less than "in eradicating discrimination from our civic institutions" and maintaining "public confidence in the fairness of our system of justice." *Id*. at p. 172; quoting *Batson, supra,* 476 U.S. 79, 87; *see also Miller-El v. Dretke,* 545 U.S. 231, 238 (2005) ["The very integrity of the courts is jeopardized when a prosecutor's discrimination 'invites cynicism respecting

the jury's neutrality' and undermines public confidence in adjudication."].

At the same time, the state, like other litigants, has a legitimate interest in securing "a fair and impartial jury," which sometimes dictates that a peremptory removal is justified. *See, J.E.B. v. Alabama*, 511 U.S. 127 (1994). Peremptory challenges themselves, however, "are not constitutionally protected fundamental rights; rather they are but one state-created means to the constitutional end of an impartial jury and a fair trial." *Georgia v. McCollum*, 505 U.S. 42, 57 (1992). In *J.E.B. v. Alabama* this Court tested peremptory challenges based on gender stereotypes by asking whether they "provide substantial aid to a litigant's effort to secure a fair and impartial jury." *J.E.B. v. Alabama, supra,* 511 U.S. 127, 137; *see also Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 620 (1991) ["[The] sole purpose [of the peremptory challenge] is to permit litigants to assist the government in the selection of an impartial trier of fact."].)

Thus, "the State's privilege to strike individual jurors through peremptory challenges is subject to the commands of the Equal Protection Clause." *See Batson, supra*, 476 U.S. 79, 89. However, when the reviewing court upholds a state's peremptory strike exercised to remove a venire

member of a cognizable group, without knowing if that is the stated reason is the actual reason and without identifying how the strike aids the state's legitimate interest in securing an impartial jury, the Court elevates the state's privilege of peremptory challenges to the level of a constitutionally protected interest.

For several reasons, the values embodied in the Sixth Amendment are not served by the ruling in this case. First, when a minority venire member reveals a distrust of the police, the natural concern is that an unfounded resentment could unfairly burden the state's ability to prove its case. With further inquiry, however, Colbert could have demonstrated that police misconduct fueled distrust, and that nearly every minority in Lancaster is close to someone who has had a negative experience with police.

Second, jury service can provide marginalized minority citizens the "significant opportunity to participate in civic life." *Powers v. Ohio*, 499 U.S. 400, 409 (1991); *see also J.E.B. v. Alabama*, *supra,* 511 U.S. 127, 128; *Batson, supra*, 476 U.S. 79, 87. Certainly, participation in the civic life can be a step towards healing for a community struggling with racism.

Citizens make sacrifices to serve. In addition to taking time from

work, "we subject jurors to lengthy, privacy-invading voir dire examinations, requiring them to answer questions that would be considered inappropriate and demeaning in other contexts." *See* Albert W. Alschuler, *The Supreme Court and the Jury: Voir Dire Peremptory Challenges, and the Review of Jury Verdicts*, 56 U. Chi. L. Rev. 153, 154-55 (1989). Today, the internet has made jury service even more intrusive by easy access to venire members' social media, which has become routine in some jurisdictions. As yet, few practical limits have developed. *See* Melanie D. Wilson, *Juror Privacy in the Sixth Amendment Balance*, 2012 Utah L. Rev. 2023, 2045 (2012); Erika L. Oliver, *Researching Jurors on the Internet: The Ills of Putting Jurors on Trial and the Need to Shift the Focus Back to the Defendant*, 34 U. La Verne L. Rev. 251, 264–65 (2013); Eric P. Robinson, *Virtual Voir Dire: The Law and Ethics of Investigating Jurors Online*, 36 Am. J. Trial Advoc. 597, 627 (2013).

The harm to the minority citizen ultimately turned away is humiliation and often anger, as jurors feel the court has wasted their time. Preventing that harm, when unnecessary, is a goal of a properly conducted *Batson* inquiry.

A [prospective juror in the box] excluded from jury service

> because of race suffers a profound personal humiliation heightened by its public character. The rejected juror may lose confidence in the court and its verdicts, as may the defendant if his or her objections cannot be heard [on appeal].

Powers v. Ohio, supra, 499 U.S. 400, 413–414.

Finally, we charge juries with representing the views of their community, which is more effectively accomplished only if the diversity of the panel reflects the community. "[P]eople necessarily bring their backgrounds, life experiences, and various perspectives into the jury room, and therefore, it is important that groups not be excluded at the venire stage." *See* Nancy S. Marder, *Juries, Justice & Multiculturalism*. Southern California Law Review 2002 [Vol. 75:65, p. 666]; see also *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975).

In this unique community, having twelve unbiased people on the jury is not enough. A minority living in Lancaster might have an understanding to contribute to deliberations that others do not. Specifically, they might be able to empathize, or not, with Colbert's claim that he fired a shot because he feared imminent and great injury to himself. The resulting verdict

would be more broadly accepted as reliable.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

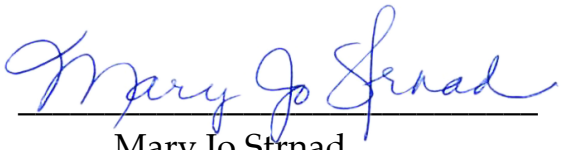
MARY JO STRNAD
for Brandon Colbert
Supreme Court Bar No. 306754

October 18, 2018

CERTIFICATE OF WORD COUNT

Pursuant to Rule 33.1(g)(i) of the Rules of Court of the United States Supreme Court, I, Mary Jo Strnad, counsel for petitioner Brandon Colbert, hereby certify that I prepared Mr. Colbert's Petition for Writ of Certiorari on behalf of Mr. Colbert using Nisus Writer Pro and have generated a word count using Nisus Writer Pro's word count tool. I hereby certify that according to Nisus Writer Pro's word count tool, Mr. Colbert's Petition for Writ of Certiorari contains 3,806 words, excluding tables, and is in compliance with Rule 33.1(g)(i) of the Rules of Court of the United States Supreme Court.

Executed this 22nd day of December, 2018. I certify under penalty of perjury of the laws of the State of California that the foregoing is true and correct to the best of my knowledge.



Mary Jo Strnad
(State Bar No. 126175)

PETITIONER'S APPENDIX A
California Court of Appeal Opinion

Filed 5/8/18

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

BRANDON LEE COLBERT,

Defendant and Appellant.

B276969

(Los Angeles County
Super. Ct. No. MA066931)

APPEAL from a judgment of the Superior Court of Los Angeles County. Andrew E. Cooper, Judge. Affirmed in part and reversed in part with directions.

Mary Jo Strnad, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Rene Judkiewicz, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Brandon Lee Colbert of one count of willful, deliberate, and premeditated attempted murder (Pen. Code, §§ 664, 187, subd. (a); count 1),[1] two counts of assault with a semiautomatic firearm (§ 245, subd. (b); counts 4 & 5), one count of possession of a firearm by a felon (§ 29800, subd. (a)(1)), and one count of possession of ammunition (§ 30305, subd. (a)(1)). As to counts 1 and 4, the jury found true the great bodily injury enhancement (§ 12022.7). As to count 1, the jury also found true various firearm enhancements (§ 12022.53, subds. (b)-(d)). As to counts 4 and 5, the jury found true one firearm enhancement.[2] (§ 12022.5, subd. (a).)

Defendant admitted three prior prison allegations.

Defendant was sentenced to a determinate prison sentence of 22 years eight months and an indeterminate prison sentence of life plus 25 years to life. He was awarded 397 days of custody credit. Various fines were also imposed.

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1. All further statutory references are to the Penal Code unless otherwise indicated.
2. Defendant was acquitted of count 2 charging attempted murder. Counts 3 (attempted murder), 6 (assault with a semiautomatic firearm), and 9 (mayhem) were dismissed.

Defendant timely filed a notice of appeal. He argues that the trial court erroneously denied his Batson/Wheeler motion.[3] In his supplemental appellate brief, he asks that we reverse the three firearm enhancements imposed and remand the matter back to the trial court with directions to exercise its discretion under amended sections 12022.5 and 12022.53. (People v. Robbins (2018) 19 Cal.App.5th 660; People v. Woods (2018) 19 Cal.App.5th 1080.)

We conclude that the trial court did not err in denying his Batson/Wheeler motion and therefore affirm the judgment. However, defendant is entitled to a new sentencing hearing at which the trial court can consider whether to strike the firearm enhancements pursuant to the discretion conferred by section 12022.53. We therefore reverse the sentences on the enhancements and remand the matter to the trial court for the sole purpose of allowing the trial court to exercise its discretion as to whether to strike the firearm enhancements under sections 12022.5 and 12022.53.

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3. *Batson v. Kentucky* (1986) 476 U.S. 79, 89 (*Batso*n); *People v. Wheeler* (1978) 22 Cal.3d 258, 276–277 (*Wheeler*).

FACTUAL BACKGROUND

On September 9, 2015, into the early morning hours of September 10, 2015, bartender Desiree O'Donnell (O'Donnell) was at her job at the Britisher, a bar in Lancaster. Patrons at the bar included Royce Gresham (Gresham), Anthony Gabelman (Gabelman), and Gabelman's friend Heather. Gabelman was socializing, drinking, and playing pool. Daniel Gray (Gray) arrived at the bar at around 9:00 or 9:30 p.m. Ashley Huerta (Huerta) and her African-American companion, identified in court as defendant, were also at the bar.

Two female customers got very drunk. When one of them started a fight with another female customer, O'Donnell made the instigator leave. The kicked-out customer's friend became unruly. Consequently, O'Donnell stopped serving alcohol to her. The woman got into an argument with O'Donnell. She went behind the bar and hit O'Donnell. The bartender struck back. Gresham tried to split them apart. Another customer, Scott, jumped in front of O'Donnell and told her stop. Customers, including Huerta, came to O'Donnell's aid. Huerta was knocked down and landed on the floor.

Gresham aggressively pushed Huerta multiple times. Defendant came between Huerta and Gresham. At some point, defendant held a

gun and was pointing it. Defendant approached Gresham in a threatening manner. To avoid getting hit, Gresham dropped defendant on the floor. Defendant squeezed out from under Gresham and ran out of the bar. Gresham followed him to the back patio.

Feeling like the situation was getting out of control, Gabelman headed out the back patio of the bar. He saw people outside.

At around 12:45 a.m., Gray was on the bar's patio. Because he heard yelling, he went to the bar's rear parking lot.

Defendant said something to Gabelman, who might have replied, "'Excuse me?'" That was the first time Gabelman saw defendant. Gray heard the defendant say, "'What the f*** you guys looking at?'" or "'Do we have a problem?'" Immediately afterward, defendant shot Gabelman in the stomach. He also shot Gresham, who was next to Gabelman. Everyone scattered.

Gresham ended up on a gurney. Gabelman needed emergency surgery for his life-threatening injury.

On September 10, 2015, after 10:00 p.m., a police officer spotted defendant. When the officer illuminated defendant with his patrol lights, defendant rode off on his motorcycle. He subsequently got off of his motorcycle and ran. He went over a wall and jumped a fence into

someone's yard. The officer's partner ran after defendant, who ended up on top of a roof. He eventually came down. A gun was recovered nearby.

Defendant stipulated that he was the shooter.

DISCUSSION

Batson/Wheeler Motion

In his opening brief, defendant contends that he is entitled to a new trial on the grounds that the trial court applied an erroneous legal standard to his Batson/Wheeler motion and wrongly concluded that he had not met the low threshold to initiate a Batson inquiry.

I. *Procedural Background*

During voir dire, the prosecutor exercised six peremptory challenges removing prospective jurors, including the two prospective jurors at issue, Prospective Juror No. 7696 and Prospective Juror No. 6716.

A. Prospective Juror No. 7696

Prospective Juror No. 7696 said that she was a retired nurse married to an electrician. In response to Question No. 13 of a questionnaire that the trial court gave to all of the prospective jurors, she indicated that one of her two sons was in jail for one month and on probation for three years for growing mushrooms because a neighbor

reported hearing a shot, even though no shot had been fired. The responding police officers said untruthfully that Prospective Juror No. 7696's son had a lot of mushrooms and a large amount of money. But, she knew that her son only had a few mushrooms, which she documented with photographs, and he worked as a supermarket assistant manager. He had to be in jail for one month because he could not afford to be released. When asked if this experience would affect her ability to be fair and impartial, she answered "'No.'"

In response to questionnaire Question No. 12, which asked "Have you or any member of your family or close personal friends ever been the victim of a crime?," Prospective Juror No. 7696 reported that six years ago, two men broke into her home and fought with the same son. One of the men had a knife. The son removed a big sword from a wall and ran after the invaders.

The following day, defense counsel asked Prospective Juror No. 7696 to assume the following: She felt the prosecution did not prove its case beyond a reasonable doubt, but it was a Friday and she was tired and wanted to go home, where she expected family guests. Counsel then asked whether she would hold strong and vote not guilty. She replied, "Uh-huh, I do." Alternatively, defense counsel asked, "If you

are the only one who feels he's guilty, everyone feels he's not guilty, will you promise that you won't vote with the group just so that you can go home?" She replied, "Right."

Later Prospective Juror No. 7696 answered in the affirmative to the prosecutor's question whether she thought the police lied about her son because she saw something different. The prosecutor then asked, "Can you be fair to the law enforcement that testifies in this case?" She answered, "Sure." The prosecutor next asked whether it would be harder for police officers to prove that they are truthful. She said, "No."

The prosecutor told the prospective jurors as a group that she wanted to be held to the standard of proof required by law, which she explained was that she had to prove that defendant was guilty beyond a reasonable doubt. The prosecutor asked if any of the prospective jurors would hold her to a higher standard than the law requires.

Addressing Prospective Juror No. 7696, the prosecutor noted that "there [was] a hesitation," and asked her why. The trial court read the jury instruction defining reasonable doubt and invited the prosecutor to ask her question again. She did, asking Prospective Juror No. 7696 whether she would hold the prosecutor to the standard in the trial court's instruction or whether she would hold her to a higher standard.

The prosecutor asked, "In other words, do you feel that reasonable doubt is beyond all imaginary doubt based on your own personal experience with your son?" After the prospective juror answered "No," the prosecutor asked if she would hold her to the standard required by law. When the juror answered, "Yes," the prosecutor commented, "And you hesitated. Can you explain why you hesitated?" Prospective Juror No. 7696 answered, "Because . . . of what happened to my son."

The prosecutor then asked if Prospective Juror No. 7696 could set aside what happened to her son. She replied, "It happened eight years ago. I already put that—."

The prosecutor exercised a peremptory challenge to remove Prospective Juror No. 7696.

B. Prospective Juror No. 6716

Prospective Juror No. 6716, an African-American woman, said that she was single and childless. For the past 15 years, she worked for the Antelope Valley Transit Authority. Previously, she worked for six years at a civil law firm, where she was first a receptionist and eventually a paralegal.

In response to Question No. 13 of the trial court's questionnaire, she reported that her parents told her that four years earlier, her

brother had been charged with "strong-armed" robbery. She was not sure the charge was dropped because she "wasn't really involved at the time." She went to court once, "just to see" her brother and "hear the charges." When asked if she knew enough about the case to have an opinion as to whether her brother was treated fairly, Prospective Juror No. 6716 replied that she did not know enough about the case, but she found "they were trying to give him a strike," even though that was his first offense. She added, "I felt like that was a little aggressive."

The trial court responded that "some charges are considered strike charges," and that it is up to the lawyers, not the judge, to file such charges. The trial court asked, "So maybe that is what you're referring to?" Prospective Juror No. 6716 answered, "Possibly, yeah."

When the trial court asked if she could think of any reason that she could not be fair and impartial in this case, she replied, "No reason."

The prosecutor asked follow-up questions about Prospective Juror No. 6716's brother. She said that her brother's case was in the same courthouse as the instant matter. She believed that he received probation. The following colloquy occurred:

"[THE PROSECUTOR]: [D]o you feel he was treated fairly?

"[PROSPECTIVE JUROR NO. 6716]: Like I said, initially, I felt like the one strike was too much. With the judge explaining that some charges are just strike charges, now I understand. So—
"[THE PROSECUTOR]: Charges are either strikes or not strikes.
"[PROSPECTIVE JUROR NO. 6716]: Now I understand. Prior to that, no.
"[THE PROSECUTOR]: Ultimately do you think he was wrongfully arrested or mistreated in any way by law enforcement?
"[PROSPECTIVE JUROR NO. 6716]: That is kind of hard to tell because you kind of get two different stories. [¶] I heard my brother's story, and I heard the story—he was detained by loss prevention. I heard that story. So I don't know. [¶] . . . [¶] Because, obviously, I want to believe my brother, but I want to believe the reports.
"[THE PROSECUTOR]: Yeah, you want to believe your brother because it is your brother, obviously. You feel a sense of loyalty, and that
8
makes sense. [¶] Either it was Lancaster or Palmdale Sheriff's Department. Do you remember which one it was that was involved?
"[PROSPECTIVE JUROR NO. 6716]: I believe it was Palmdale.
"[THE PROSECUTOR]: I believe it is all Lancaster in this case. There is movement between the two departments. [¶] Do you feel you would hold it against any—
"[PROSPECTIVE JUROR NO. 6716]: Absolutely not.
"[THE PROSECUTOR]: Do you feel like you could be fair to both sides in this case, knowing—
"[PROSPECTIVE JUROR NO. 6716]: One hundred percent."

C. Other Prospective Jurors Removed by the Prosecution

Four other prospective jurors were removed through the prosecutor's exercise of peremptory challenges: (1) Prospective Juror No. 0693 had a brother-in-law convicted of the offense of driving under the influence, and this juror had been charged with the same offense

three or four years earlier; (2) Two of Prospective Juror No. 6459's cousins had been incarcerated for domestic violence, and she believed that one, whose case had been in the same courthouse as the instant case, was treated unfairly because he told her so; (3) Prospective Juror No. 4110 stated that she held a grudge against law enforcement or prosecutors because she had a 10-year-old conviction for driving under the influence that she felt she did not deserve; and

(4) Prospective Juror No. 0567, who had been convicted of driving under the influence more than eight years before, indicated that when deciding the issue of guilt, the question of punishment would be in the back of his mind "because sometimes the judgment is not good."

D. African-American Jurors Accepted by the Prosecution

The prosecutor accepted two African-American prospective jurors.

E. Trial Court's Denial of Defendant's *Batson/Wheeler* Motion

Over defense counsel's objection, the prosecutor exercised its peremptory challenge against Prospective Juror No. 6716. At a sidebar conference, defense counsel specified that he was making a Batson/Wheeler objection that the prospective juror, an African-American, was a member of a cognizable group. Defense counsel argued that the previously removed Prospective Juror No. 7696 appeared to be

Hispanic and had a heavy Hispanic accent, and that she therefore also belonged to a cognizable group. The trial court noted that it could not tell Prospective Juror No. 7696's ethnicity, though she had an accent, and that the trial court wrote the letter "w" for "white."

The trial court instructed defense counsel that to make his record, he was required to show, "from all the circumstances of this case, a strong likelihood that the person challenged, which is in this case [Prospective Juror No. 6716], was challenged for a group association rather than for a specific bias."

Defense counsel noted that defendant and Prospective Juror No. 6716 were African-American, and he thought that Prospective Juror No. 7696 was Hispanic; the entire venire appeared to have six to seven African-Americans. The trial court asked counsel if he wanted to state anything further. He replied that he did not.

The trial court then invited the prosecutor "to state anything . . . as to any argument or evidence for the record as to whether the defense has made a prima facie case or any reasons for [the prosecutor's] exercise of [her] peremptory challenge[s]." The prosecutor responded that the defense did not make a prima facie showing. The trial court

replied, "I haven't made the ruling." The trial court then said that it was asking if the prosecutor wanted to state anything for the record.

The prosecutor said that she did not know the ethnicity of Prospective Juror No. 7696. Acknowledging that Prospective Juror No. 7696 appeared to have an accent, the prosecutor thought that the juror's "big concern was that the police lied" about her son. The prosecutor said that the prospective juror did not rise to the level of cause because "even though on the first day of jury selection, she said she couldn't be fair, yesterday she did say she could be fair." The prosecutor said that she clearly had concerns about this prospective juror's mistrust of law enforcement.

Regarding Prospective Juror No. 6716, the prosecutor noted that she mentioned twice the issue of a "strike" with respect to her brother, who had been prosecuted in the same courthouse as this case. The prosecutor thought it was unclear to the prospective juror if her brother was currently on probation out of this courthouse.

The trial court noted that the prosecutor accepted two African-American prospective jurors. It then announced its ruling as to Prospective Juror No. 7696: "From all the circumstances in this case and the court's consideration, the court is not finding a prima facie

case. The court is convinced that the moving party has failed to overcome the presumption that the peremptory challenge to [Prospective Juror No. 7696] was exercised upon constitutionally-permissible grounds."

Upon the trial court's invitation, the prosecutor then discussed Prospective Juror No. 6716. She stated: "The second portion of the issue with [Prospective Juror No. 6716] was her concern over the issue of a strike and her brother's robbery case out of this courthouse and . . . my office, her evaluation that, essentially, my office deemed him appropriate for a strike. [¶] She did acknowledge not understanding of what that meant after the court explained that certain charges are strikes, and certain charges are not. But I do also have a concern that that is something that will weigh on her during her deliberation process."

The trial court thereafter stated that it was denying defendant's *Batson/Wheeler* motion based on the statements already made by the court.

F. Final Jury Composition

After the jurors were selected, the trial court noted for the record that four African-Americans were seated on the final jury panel. It did not comment on how many Hispanic jurors were on the final jury panel.

As is relevant to the issues raised in this appeal, we note that Prospective Juror No. 3750 remained on the jury. He stated that he had been convicted of second degree robbery 18 years earlier and of evading law enforcement eight or nine years earlier. He fought his first conviction for four-and-one-half years, resulting in its dismissal. While he felt that he was treated unfairly, he blamed the victim for wrongdoing. Regarding his second conviction, he felt no animosity against the prosecutor's office or law enforcement; he said that he felt that his evading offense was deserved and that the police had been doing their job.

II. *Batson/Wheeler* Motions

The exercise of even a single peremptory challenge solely on the basis of race or ethnicity offends both our United States and California Constitution. (People v. Gutierrez (2017) 2 Cal.5th 1150, 1157 (Gutierrez).) Accordingly, the "[e]xclusion of even one prospective juror for reasons impermissible under Batson and Wheeler constitutes structural error, requiring reversal." (Gutierrez, supra, at p. 1158.)

A rebuttable presumption exists that a peremptory challenge was exercised properly. The burden rests on the party opposing the peremptory challenge to demonstrate impermissible discrimination. (People v. Bonilla (2007) 41 Cal.4th 313, 341.) A peremptory challenge of a juror need not be supported by cause; it may be based on even trivial reasons or hunches, including body language, the manner of answering questions, or demeanor. (People v. Reynoso (2003) 31 Cal.4th 903, 917; People v. Cornwell (2005) 37 Cal.4th 50, 70, disapproved on other grounds in People Doolin (2009) 45 Cal.4th 390, 421, fn. 22.)

A claim that an opposing party improperly discriminated in exercising peremptory challenges is analyzed in a three-step process. (Gutierrez, supra, 2 Cal.5th at p. 1158.) First, the party asserting the claim must demonstrate a prima facie case by showing that "the totality of the relevant facts gives rise to an inference of discriminatory purpose." (Ibid.) The moving party satisfies the first step by producing sufficient evidence permitting the trial judge to draw an inference that discrimination has occurred. (Ibid.)

In meeting the first step of showing an inference of discriminatory excusal of a prospective juror, the party making the

Batson/Wheeler motion must make as complete a record as feasible. (People v. Montes (2014) 58 Cal.4th 809, 853.) "Certain types of evidence are relevant in determining whether a defendant has carried his burden of showing an inference of discriminatory excusal, such as whether the prosecutor '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,' whether the excused jurors had little in common other than their membership in the group, and whether the prosecutor engaged in 'desultory voir dire' or no questioning at all. [Citation.]" (People v. Cunningham (2015) 61 Cal.4th 609, 664; see also People v. Harris (2013) 57 Cal.4th 804, 834–835.) Other facts that can be called to the attention of the trial court ruling on a defendant's Batson/Wheeler motion are that the defendant is a member of the excluded group and the victim is a member of the group to which the majority of the remaining jurors belong. (People v. Harris, supra, at p. 835.) Where only a few members of a cognizable group have been excused and no indelible pattern of discrimination appears, it is impossible as a practical matter to draw the requisite inference that discrimination occurred. (People v. Garcia (2011) 52 Cal.4th 706, 747.) Moreover, in analyzing if the party asserting discrimination has

established a prima facie case, the trial court may consider nondiscriminatory reasons "'apparent from and "clearly established" in the record . . . '"" that necessarily dispel any inference of bias. (People v. Zaragoza (2016) 1 Cal.5th 21, 43.)

Second, if the trial court finds that the movant met the threshold for demonstrating a prima facie case, the burden shifts to the opponent of the motion to give an adequate nondiscriminatory explanation for the challenges. (Gutierrez, supra, 2 Cal.5th at p. 1158.) The opponent must provide "'a 'clear and reasonably specific' explanation of his 'legitimate reasons' for exercising the challenges.'" (Ibid.) "'Unless a discriminatory intent is inherent in the prosecutor's explanation,'" the reason will be deemed neutral. (Purkett v. Elem (1995) 514 U.S. 765, 768.)

Third, if the opponent of the Batson/Wheeler motion gives a neutral explanation for exercising a peremptory challenge, the trial court must then decide whether the movant has proved purposeful discrimination. (Gutierrez, supra, 2 Cal.5th at p. 1158.) To prevail, the movant must show that it was "more likely than not that the challenge was improperly motivated." (Johnson v. California (2005) 545 U.S. 162, 170.) This inquiry focuses on the

subjective genuineness of the reason, not the objective reasonableness. (People v. Reynoso, supra, 31 Cal.4th at p. 924.)

Ordinarily, we review a trial court's ruling on a Batson/Wheeler motion for substantial evidence. (People v. McDermott (2002) 28 Cal.4th 946, 970.) However, if a trial court relies on the """strong likelihood""" standard in ruling that a defendant failed to make out a prima facie case of discrimination in the prosecutor's exercise of a peremptory challenge, the reviewing court must review the record de novo to determine whether the record supports an inference that the prosecutor excused the prospective juror on the basis of race. (People v. Zaragoza, supra, 1 Cal.5th at pp. 42–43.)

Where a trial court denies a Batson/Wheeler motion after finding no prima facie case of discrimination, the reviewing court should uphold the denial where the record suggests grounds on which the prosecutor might reasonably have challenged the jurors in question. (People v. Guerra (2006) 37 Cal.4th 1067, 1101, disapproved on another point in People v. Rundle (2008) 43 Cal.4th 76, 114.)

III. Analysis

Applying de novo review, we conclude that the totality of the relevant facts did not give rise to an inference that the prosecutor

removed the two prospective jurors for a discriminatory purpose. In questioning the removed jurors, the prosecutor delved into a topic of relevance—the prospective jurors' possible bias against the prosecution as a result of their stated beliefs that their close relatives were harshly treated by the criminal justice system. A prospective juror's relative's negative experience with the criminal justice system is a race-neutral reason for a peremptory challenge. (People v. Booker (2011) 51 Cal.4th 141, 167, fn. 13; see also People v. Lenix (2008) 44 Cal.4th 602, 628.) Given this record, defendant did not meet the first step of making a prima facie case of discrimination. It follows that the trial court was correct in denying defendant's Batson/Wheeler motion.

Moreover, the appellate record indicates that the prosecutor removed only one African-American prospective juror (Prospective Juror No. 6716) at the time of defendant's Batson/Wheeler motion, and four African-Americans remained on the jury. This type of evidence is relevant in deciding whether a defendant carried his burden in establishing a prima facie case of discrimination. (People v. Cunningham, supra, 61 Cal.4th at p. 664.) Where only a few members of a cognizable group have been excused, and no indelible pattern of discrimination appears, it is difficult to draw an inference of

discrimination. (People v. Bell (2007) 40 Cal.4th 582, 598, disapproved on other grounds in People v. Sanchez (2016) 63 Cal.4th 665, 686 ["'As a practical matter . . . the challenge of one or two jurors can rarely suggest a pattern of impermissible exclusion'"].)

Defendant finds fault with the trial court's request that the prosecutor state her reasons for exercising her peremptory challenges of Prospective Juror Nos. 7696 and 6716. But, it is established that trial courts occasionally find no prima facie case but still ask the prosecutor to state reasons for exercising a peremptory challenge. (People v. Taylor (2010) 48 Cal.4th 574, 612.)

The fact that both Prospective Juror No. 6716 and defendant are African-American does not itself establish a prima facie case of discrimination. (People v. Kelly (2007) 42 Cal.4th 763, 780.)

For the first time on appeal, defendant asserts that his case involved a "black-on-white" crime that was tried "against the backdrop of Lancaster's well-documented and well-publicized racial tensions." Defendant made no such argument to the trial court—he did not assert that the victims were white or that the area suffered from racial tensions. Regardless, even if the victims were the same race as the

majority of the jurors, that fact does not establish a prima facie case of discrimination. (People v. Kelly, supra, 42 Cal.4th at p. 780.)

In support of this argument, defendant asserts that he was accompanied by a white woman at the Britisher and that he was the only nonwhite patron at the bar. Defendant offers no record citation in support. In fact, the record appears to indicate otherwise. Gabelman testified that Gray is black, and Gray was at the Britisher on the night of the shooting.

Citing Miller-El v. Dretke (2005) 545 U.S. 231, 240–241 (Miller-El), defendant argues that statistical disparity alone can give rise to an inference of discrimination, and that while the sample was small in this case, the statistical disparity was high. In Miller-El, the United States Supreme Court held that if a prosecutor's proffered reason for peremptorily striking African- American prospective jurors applied to an otherwise-similar nonAfrican- American juror left on the jury, that evidence was to be considered at the third step of the Batson analysis. (Miller-El, supra, at p. 241.) As defendant acknowledges, Miller-El is inapplicable here, where we are considering the first step (prima facie case) of the Batson analysis.

Defendant next argues that the prosecutor's retention of Prospective Juror No. 3750, presumably a nonminority, and her removal of Prospective Juror No. 6716, an African-American, creates a reasonable inference that the prosecutor had an improper motive for removing Prospective Juror No. 6716. This argument ignores the fact that Prospective Juror No. 3750 never expressed any suspicion or feeling that law enforcement officers or prosecutors unfairly treated him or his family members. In fact, Prospective Juror No. 3750 said that he deserved his conviction for evading police, and that his robbery conviction had been the fault of the victim, not anyone else. In contrast, Prospective Juror No. 6716 specifically blamed the prosecutor who had charged her brother with what she thought was an overly aggressive strike offense.

Finally, we note that the prosecutor removed most of the prospective jurors who either themselves or their family members had had bad experiences with the criminal justice system. She removed Prospective Juror No. 6459 after she shared that she thought her cousin had been treated unfairly by the criminal justice system. She removed Prospective Juror No. 4110 after she said that she held a grudge against law enforcement and prosecutors because of a drunk

driving conviction that she felt that she did not deserve. And, she removed Prospective Juror No. 0567 after he shared that he might think about punishment during the guilt phase "because sometimes the judgment is not good." It follows that we can readily conclude that the prosecutor had a proper motive for dismissing Prospective Juror Nos. 6716 and 7696.

Resentencing on Firearm Enhancements

In his supplemental opening brief, defendant requests that we remand the matter to the trial court to exercise its discretion under sections 12022.5 and 12022.53 to strike any or all of the firearm enhancements. The People do not object to his request.

As set forth in People v. Woods, supra, 19 Cal.App.5th at page 1090: "Under a recent amendment to . . . section 12022.53 . . . trial courts . . . have the power under subdivision (h) of the statute, 'in the interest of justice pursuant to Section 1385 and at the time of sentencing, [to] strike or dismiss an enhancement otherwise required to be imposed by this section.'" (See also People v. Robbins, supra, 19 Cal.App.5th at p. 679.) We agree that defendant

is entitled to a new sentencing hearing on the enhancements. The matter is remanded to the trial court to consider whether to strike any or all of the firearm enhancements.

DISPOSITION

The sentences for the firearm enhancements are reversed. The trial court is directed to exercise its discretion under section 12022.53, subdivision (h). If the trial court elects not to strike or dismiss the enhancements, then the trial court is directed to resentence defendant for the firearm enhancement(s). (§ 12022.53, subd. (d).) In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____,
J. ASHMANN-GERST

We concur:

_____,
P. J. LUI

_____,
J. CHAVEZ

PETITIONER'S APPENDIX B
California Supreme Court denial of review

Court of Appeal, Second Appellate District, Division Two - No. B276969

S249390

IN THE SUPREME COURT OF CALIFORNIA

En Banc

THE PEOPLE, Plaintiff and Respondent,

v.

BRANDON LEE COLBERT, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

PROOF OF SERVICE

I, MARY JO STRNAD, do swear or declare that on this date, October 19, 2018, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

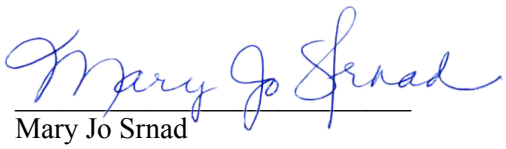
(1) Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D. C. 20530–0001

(2) OFFICE OF THE DISTRICT ATTORNEY for Los Angeles County, 42011 4th Street West, 2nd Floor, Lancaster, CA 93534

(3) The ATTORNEY GENERAL of the State of California, 455 Golden Gate Ave #11000, San Francisco, CA 94102

(4) SUPERIOR COURT FOR THE COUNTY OF LOS ANGELES, 42011 4th Street West, Lancaster, CA 93534

I declare under penalty of perjury that the foregoing is true and correct.
Executed on October 19, 2018, at Seabright, California.



Mary Jo Srnad
Supreme Court Bar No.

PROOF OF SERVICE

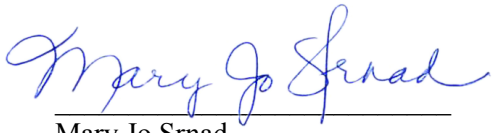
I, MARY JO STRNAD, do swear or declare that on this date,December 22, 2018, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI (Corrected) on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

(1) Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Ave., N.W., Washington, D. C. 20530–0001

(3) The ATTORNEY GENERAL of the State of California, 455 Golden Gate Ave #11000, San Francisco, CA 94102

I declare under penalty of perjury that the foregoing is true and correct.
Executed on December 22, 2018, at Scotts Valley, California.



Mary Jo Srnad
Supreme Court Bar No.