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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ERNEST LEE WALTON,

Defendant and Appellant.

B208512

(Los Angeles County
Super. Ct. No. TA093890)

APPEAL from a judgment of the Los Angeles County Superior Court,
David Sotelo, Judge. Reversed.

Helen S. Irza, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson
and Carl N. Henry, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Ernest Lee Walton appeals from a judgment entered after a jury trial in which he was convicted of possession of a controlled substance, and found to have suffered a prior conviction alleged under the “Three Strikes” law. Walton contends that (1) the prosecutor violated his constitutional right to compulsory process by threatening to prosecute a defense witness for perjury; (2) this court should independently review a transcript of a *Pitchess*¹ hearing; and (3) the trial court erred by instructing the jury in a way that it interfered with its ability to request a readback of testimony under Penal Code section 1138.² We conclude that prosecutorial misconduct interfered with Walton’s right to present a witness in his defense, and that the trial court abused its discretion in connection with the *Pitchess* motion. On these bases, we shall reverse. Walton’s third contention is moot and, in any event, meritless.

PROCEDURAL BACKGROUND

A single-count information charged Walton with possession of a controlled substance (cocaine) in violation of Health and Safety Code section 11350, subdivision (a). The information also alleged that Walton was previously convicted of a serious or violent felony under section 667, subs. (b)–(i), and that Walton had suffered three prior convictions for possession of a controlled substance, for which he had served prison terms under section 667.5, subdivision (b). Walton denied the allegations, and pleaded not guilty.

Walton filed a *Pitchess* motion seeking pretrial discovery regarding specific acts of misconduct on the part of the Los Angeles County Deputy Sheriffs who arrested him, in order to permit him effectively to challenge the deputies’ credibility at trial. The trial court granted the *Pitchess* motion and, after conducting an *in camera* review of documents produced by the Sheriff’s Department, reported it had found no discoverable information.

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

² All undesignated statutory references are to the Penal Code.

Walton filed a pretrial motion to suppress the rocks of crack cocaine he had been charged with possessing, on the ground the evidence was obtained as a result of an illegal traffic stop. (§ 1538.5.) An evidentiary hearing was conducted; the motion was argued and denied.³

After trial, the jury returned a verdict of guilty. Walton later admitted the prior allegations were true. He was sentenced to a five-year prison term, consisting of a two-year middle term (doubled to four years, under section 667). The court also imposed a one-year enhancement for one of the prior prison terms to which Walton had admitted, and dismissed the other two priors. He received 10 days presentence custody credits.

FACTUAL BACKGROUND

The prosecution's evidence at trial

Deputy Sheriffs Francois Chang and Robert Lopez were on patrol on November 2, 2007, at approximately 2:00 a.m. They observed a car driving toward them in a residential alley. The car's headlights were off and the deputies stopped the car for a Vehicle Code violation. The patrol car stopped about three feet in front of the other vehicle; the cars' front bumpers faced one another.

The deputies turned spotlights on the interior of the car where Walton was riding in the front passenger seat. One deputy also turned on the "take-down light" on the patrol car's overhead light bar. According to Chang, these lights are extremely bright, much like those of a baseball stadium at night. Chang testified two streetlights in the alley also gave off some "decent" amber light."

Chang exited the patrol car from the passenger side, and Lopez exited from the driver's side. Chang approached the front of the car from the driver's side, while Lopez approached on the side of the passenger seat. Chang may have had his gun drawn as he approached the car; Lopez did not. The deputies looked into the interior of the vehicle through the front window from about three feet away. They saw a woman in the

³ Walton sought unsuccessfully to suppress statements he made to one of the deputies, under *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602]. That motion is not at issue.

backseat, a man in the driver's seat and Walton in the passenger seat. The deputies did not recall if the vehicle's windows were tinted. Chang saw two or three pebbles of an off-white rock substance on the center console. Based on his experience and training, Chang believed the substance was crack cocaine. Through the passenger window, which was down, Lopez also saw rock cocaine pebbles on the center console.

After the deputies detained the vehicle's occupants in the patrol car, Chang searched the car for narcotics. He found an additional "usable" amount of the off-white substance on the floorboard in the front passenger area near where Walton's feet had been, the rear floorboard and in the glove compartment. Meanwhile, Lopez conducted a patdown search of Walton, but found no illegal substances. Lopez "*Mirandized*" Walton. According to Lopez, Walton told him that the car's driver, Darryl Harris, gave Walton money to purchase rock cocaine from a house in Compton, and said he and Harris had planned to "get high" from the rock cocaine. The deputies arrested Walton and Harris, and allowed the woman to drive the car away. A criminologist analyzed the rocks seized from the center console. He opined that it was .18 grams of rock cocaine.

The defense case

Walton testified in his own defense. He told the jury Harris had driven up while he was waiting for a bus and offered him a ride, which Walton accepted. Walton did not pay attention to anything in the car; he simply got in believing he was headed home. The windows of Harris's car had a dark "limousine tint."

Walton thought Harris turned into the alley to avoid a police roadblock. He believed that the car's lights had remained on because the dashboard lights were illuminated when they were in the alley. The patrol car was about 25 feet away from Harris's car when the deputies turned on the spotlight. Chang exited the car with his gun drawn, and ran to the driver's door. Lopez did not draw his gun.

Walton claimed Lopez did not read him his *Miranda* rights. Rather, Lopez put Walton in the back of the patrol car and asked him whether he had anything illegal on him, like guns or drugs; Walton denied that he did. Walton also denied having told Lopez he bought drugs with Harris's money so the two of them could get high. Walton

denied knowing that there had been drugs in Harris's car. He said he had neither purchased nor offered to purchase drugs, and that Harris never gave him any cash to do so.

DISCUSSION

1. Witness intimidation

Walton contends the prosecutor committed misconduct and violated his right to compulsory process by threatening and intimidating a potential witness. We agree.

The gist of Walton's motion to suppress the cocaine he was charged with possessing was his claim that the incriminating evidence was seized as a result of an illegal traffic stop. A pivotal issue at the hearing on that motion was whether the headlights of the car Harris was driving were on or off when the deputies stopped the car in the alley. At the outset of the hearing (while Harris was still in the courtroom), Walton's attorney informed the trial court he had spoken with Harris's appointed panel attorney, Seymour Cohen. He had told Cohen "what we're doing," and had given him the court's number and asked him to respond "right away." But, Walton's attorney had not heard from Cohen by the time the hearing began. Harris was instructed to exit the courtroom and wait in the hall. Testimony was taken.

Chang testified the headlights of the car were off at the time the suspects were detained. Walton testified that the car's headlights had been turned on when the car was stopped. He recalled that this was so because the dashboard lights remained illuminated.

At the conclusion of the testimony, Walton's attorney restated his intention to call Harris as a witness. Cohen still had not called, however, and Walton's counsel wanted "to err[] on the side of caution speaking to him before calling [Cohen's] client . . ." to testify. In an offer of proof as to the testimony he expected to elicit, Walton's attorney said Harris would testify he had been driving the car (the windows of which were tinted),

at the time of the stop, that the car's headlights had been turned on, and that any drugs found in the car belonged to him.⁴

After a colloquy off the record, the trial court stated that: (1) Walton's "apparent" co-defendant, Harris (who remained outside the courtroom) was his next potential witness; (2) Harris had already pleaded guilty to narcotics possession in connection with the incident involving Walton, and placed on probation under "Proposition 36"; and (3) Walton anticipated Harris would testify that the vehicle's lights were on when the deputies made the traffic stop. At that point, the prosecutor requested that the trial court appoint another attorney to advise Harris, in light of Cohen's continued unavailability. Her stated concerns were twofold:

"No. 1, [Harris's] being on Prop 36 and he gets on the stand that the lights were off, we file a probation violation based on that, which we would find to be perjurious testimony. And had our officer testify as it is in the report that his lights were indeed off and he testified that they were on, that certainly is committing a felony. It is [a] nondrug related felony and that puts him at risk of violating his probation, which being a nondrug related violation would subject him to state prison."

Walton posed no objection to the prosecutor's statement.

After confirming that Harris had an appointed panel attorney, the court stated, "[l]et's do this, just to make life simple for everybody. Let's go ahead and find out who the bar panel attorney is for purposes of felonies and whether or not he or she might be available to consult with Mr. Harris." The clerk paged attorney Alexander Griggs. Griggs was apparently summoned by the court and charged with the responsibility of advising Harris in Cohen's absence. The parameters of Griggs's appointment, and the extent to which (or whether) the prosecutor's "concerns" were shared with Griggs before

⁴ The court stated testimony regarding ownership of the drugs exceeded the scope of the motion, at least as to whether the deputies had probable cause to make the stop.

he met with Harris are unknown; there is no transcript of it. Griggs met with Harris during a short recess.

When the court reconvened, Griggs and Harris appeared together in court. Griggs informed the court:

“I had an opportunity to discuss with [Harris] the implication of testifying. And while as co-arrestee at the same event who always suffered jeopardy, I don’t believe [Harris] has [a] Fifth Amendment right there. But I do believe he has as much if—and I don’t believe the prosecutor at this point is in a position to say whether or not [her] office would elect to do so, but if any result of [Harris’s] testimony would then be something that the district attorney’s office would consider to be perjurious, it may potentially subject [Harris] to further jeopardy which he really wants no part of that. Based on that [Harris] will be asserting his Fifth Amendment right to remain silent to testifying. And that goes as to the [suppression] motion and to the trial.”

In response, the court said that, “of course, his invocation will be honored.” Harris left the courtroom. After the parties concluded their arguments, the trial court found Chang a credible witness, and found that no unreasonable conduct in violation of the Fourth Amendment had occurred. The motion was denied.⁵

⁵ Later in the hearing, the prosecutor attempted “to clarify” the record as to the statements she made when Harris was still a potential witness, to be “sure [she] didn’t misspeak.” She stated: “My purpose of pointing out to the court and counsel what I saw as potential problems . . . if Mr. Harris were to testify and perjury. I just wanted to point out where there was a potential that might expose him to additional penalty. And my only concern at that point was counsel be present and available to advise him. Not that I was making any threats and not that I was making any indication of what my office would do. And I just want to clarify. For the record I was in no way trying to dissuade him. My only concern trying to point out where there was potential for liability, and that being the reason why I felt counsel was needed. I just wanted to make that clear, your honor, because I felt that to be important.” Once again, Walton posed no objection.

a. No forfeiture

The Attorney General contends Walton waived the right to raise the question of prosecutorial misconduct on appeal by his failure timely to object or to attempt to cure any prosecutorial impropriety. This contention lacks merit.

Ordinarily, to preserve a claim of prosecutorial misconduct for appeal, a defendant must interject a timely and specific objection as to each instance of misconduct *and* seek a curative admonition. (*People v. Riggs* (2008) 44 Cal.4th 248, 298; *People v. Stanley* (2006) 39 Cal.4th 913, 952.) However, the general rule does not apply where, as here, the claim of prosecutorial misconduct is premised on an allegation of witness intimidation. In such cases the issue is preserved even if the defendant failed to raise the claim below, because such alleged misconduct “involves a question of fundamental fairness” that could not “readily have been cured by the trial court’s intervention.” (*People v. Lucas* (1995) 12 Cal.4th 415, 457 (*Lucas*).)

b. Prosecutorial misconduct

A defendant’s constitutional right to present a defense is violated when a prosecutor materially influences the testimony of a potential witness through intimidation. (*In re Martin* (1987) 44 Cal.3d 1, 29–30 (*Martin*).) Intimidation may take various forms, including telling a defense witness he or she will be prosecuted for perjury or any crime he or she reveals while testifying, or threatening a witness that he or she will suffer adverse consequences in his or her own criminal case or investigation. (*Id.* at pp. 30–31.)

A defendant must establish three elements to prevail on a claim of witness intimidation. First, he must demonstrate misconduct by the prosecutor. (*Lucas, supra*, 12 Cal.4th at pp. 456–457.) The defendant need not show the government acted in bad faith or with an improper motive. (*Martin, supra*, 44 Cal.3d at p. 31.) Rather, he need only show the prosecutor “engaged in activity that was wholly unnecessary to the proper performance of his duties and was of such a character as ‘to transform [a defense witness] from a willing witness to one who would refuse to testify’ [Citations.]” (*Ibid.*)

Second, the defendant must prove “interference,” *viz.*, a causal link between the prosecutorial misconduct and his inability to present witnesses on his own behalf. To satisfy this element the defendant need not prove the challenged conduct was the “direct or exclusive” cause. (*Martin, supra*, 44 Cal.3d at p. 31.) Rather, he need only show the alleged misconduct was a “substantial cause” of the witness’s refusal to testify. (*Ibid.*) A prosecutor’s misconduct may be deemed a substantial cause of a witness’s refusal to testify if the refusal to testify follows closely on the heels of the government’s use of “significant coercive force.” (*Ibid.*)

Finally, the defendant must show the testimony he was unable to present would have been material and favorable to his defense. (*Lucas, supra*, 12 Cal.4th at p. 457.)

We agree with Walton that the prosecutor committed misconduct and intimidated Harris by asserting unequivocally that she would find any testimony by him that the headlights had been turned on when his car was stopped “to be perjurous” and “a felony,” and threatened her office would “file a probation violation based on that,” and that such testimony posed a risk to Harris of a term in state prison.

There is no question that intimidation may occur when a prosecutor warns a witness directly or through the witness’s agent or attorney that his anticipated testimony would be self-incriminating. While a prosecutor is free to seek to impeach a witness who testifies inconsistently, it is wholly improper to threaten that witness with reprisal in the form of a perjury prosecution in advance of testifying. (Cf., *People v. Hill*, (1998), 17 Cal.4th 800, 835.)

We recognize that, here, the prosecutor’s statements were not made in the presence of Harris or his counsel. Rather, the threat was made solely in the presence of the trial court, Walton, and Walton’s attorney, and the record does not reflect that the precise content or intimidating nature of those statements was directly communicated to Harris.

Nevertheless, on this record, we infer that the thrust of those threats was conveyed to Harris. That inference supports the further inference that those threats were a “substantial cause” of Harris’s refusal to testify on Walton’s behalf. (See *Martin, supra*,

44 Cal.3d at p. 31.) The prosecutor announced that if Harris testified his lights were off, her office would “file a probation violation” based on what it would deem to be “perjurious testimony,” placing Harris “at risk of violating his probation” and a term in state prison. “Threatening a defense witness with a perjury prosecution . . . constitutes prosecutorial misconduct that violates a defendant’s constitutional rights. [Citation.] (*Hill, supra*, 17 Cal.4th at p. 835). Such “blatantly unethical behavior . . . threaten[s] to undermine the entire adversarial process.” (*Ibid.*) While we do not know exactly what was said to Griggs when he was called in to meet with Harris, we do know that immediately after he and Harris discussed “the implication of testifying,” Harris decided that “if any result of his testimony would . . . be something that the district attorney’s office would consider to be perjurious, it may potentially subject him to further jeopardy which he really want[ed] no part of” In light of this statement, made in the presence of and immediately after Grigg’s consultation with Harris, and specifically referencing the possibility the district attorney might prosecute Harris for perjury, we must conclude that the prosecutor’s coercive threats were conveyed to Harris, who was thereby compelled to refuse to testify.

Walton has also demonstrated a causal link between the prosecutor’s misconduct and his inability to present Harris’s favorable testimony. Harris’s refusal to take the stand was announced immediately upon his return to the courtroom. At that point Griggs told the court that after he explained the “implication of testifying” to Harris, Harris decided he “really want[ed] no part of” any possible prosecution for perjury, and would assert his right to remain silent. It is a reasonable inference from this, that Griggs conveyed the import of the prosecutor’s threat to Harris who was, up to that point, prepared to testify. Walton need not prove the prosecutor’s remarks were the direct or exclusive factor in Harris’s decision not to testify. “[A]ll that need be shown is a strong suggestion the comments were the cause. [Citations.] [T]his record strongly suggests Harris was influenced not to testify by the prosecutor’s . . . references to the perjury charge [she planned to file] against him.” (*People v. Bryant* (1984) 157 Cal.App.3d 582, 590; see also *Martin, supra*, 44 Cal.3d at p. 31 [prosecutorial misconduct may be deemed

a substantial cause if it carries significant coercive force and is soon followed by a witness's refusal to testify].)

Finally, Walton demonstrated materiality. Walton's offer of proof as to Harris's anticipated testimony was that Harris "was the driver of the vehicle, that he had his lights on, and that any drugs found in the vehicle were his [Harris's]." This testimony would have been material and favorable to buttress Walton's testimony both that the car's headlights were on when the stop was made—in direct contradiction of the deputies' claim that the lights were off—and to the issue of Walton's guilt in possessing drugs. Testimony from the car's driver that the headlights were on as he drove through the alley would buttress Walton's testimony that he remembers that the lights were on because the dashboard was illuminated. Such testimony would be important, not just to corroborate Walton's testimony, but also to contradict the testimony of the deputies, the prosecutor's two primary witnesses. (See *Martin, supra*, 44 Cal.3d at p. 42 [finding materiality "plainly" shown where defense witness's testimony "would have squarely contradicted the testimony of . . . the crucial prosecution witness"].) In addition, Harris's testimony that the drugs belonged to him, if believed, would clearly buttress Walton's claim that he did not know there was cocaine in the car when he accepted Harris's offer of a ride home.

We conclude that Walton carried his burden to show interference with his right to present the testimony of a witness. He established prosecutorial misconduct, showed a causal link between that misconduct and Harris's refusal to testify, and demonstrated the materiality of that testimony to his motion and his ultimate defense.

We reject the Attorney General's argument that Walton suffered no prejudice as a result of the witness intimidation, because Harris's testimony would have been "merely cumulative." While Walton testified he believed the headlights were on when the car was stopped, his offer of proof was that Harris would have testified definitively that the car's headlights were in fact on. Such testimony would not have been cumulative. As Walton points out, it is possible that he saw the dashboard lights on even though only the car's parking lights were on. Testimony from the car's driver himself, regarding his recollection that he had not turned off the lights, would have been more definitive,

qualitatively different, and presumably of greater weight than that of his passenger. Moreover, Harris's corroborating testimony would have bolstered the defendant in what was ultimately a credibility contest between the deputies' recollections of the events, and Walton's.⁶

2. *Pitchess* motion

Before trial, Walton asked the trial court to review personnel records of deputies Chang and Lopez under *Pitchess*. The trial court granted that motion as to information regarding false arrests or statements, and complaints of dishonesty or perjury against the deputies. The court conducted an in camera review, and concluded there was no discoverable material to be disclosed.

Walton has asked that we independently review the sealed transcript of the trial court's in camera proceedings to determine whether the court properly exercised its discretion in denying the discovery he sought. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229–1232; *People v. Guevara* (2007) 148 Cal.App.4th 62, 67–68.) We review denial of a *Pitchess* discovery motion for abuse of discretion. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 992; *Mooc, supra*, 26 Cal.4th at p. 1228.)

We have conducted an independent review of the sealed reporter's transcript of the in camera hearing, and have reviewed the trial court's decision regarding the discoverability of material in the deputies' personnel files. We conclude the trial court's decision was an abuse of discretion, and thus reverse its ruling. (*Mooc, supra*, 26 Cal.4th at p. 1232.)

The premise of Walton's *Pitchess* motion was to uncover acts of misconduct on the part of the arresting officers which would enable him to challenge their credibility at trial. Walton claimed the lights of Harris's car were on when the car was stopped. The deputies' claim to the contrary was the stated basis for the detention. Walton sought to use the discovery in a motion to suppress evidence on which the charges against him

⁶ Prejudice is also obvious because had the motion to suppress been granted on the basis that the headlights were on, this action would have been dismissed, and there would have been no trial.

were based. The sealed transcript reveals at least one complaint against Chang relevant to the issue of an illegal search and seizure. On remand, that complaint must be disclosed.⁷

3. *Instructional error*

Walton’s final contention is that the trial court instructed the jury in such a way that it interfered with its ability to request a readback of testimony under section 1138. Our conclusion that prosecutorial misconduct requires reversal renders this issue moot. Nevertheless, we will address the contention in the unlikely event the issue should arise again on retrial.

Section 1138 provides, “[a]fter the jury have retired for deliberation, if there be any disagreement between them as to the testimony, or if they desire to be informed on any point of law arising in the case, they must require the officer to conduct them into court. Upon being brought into court, the information required must be given in the presence of, or after notice to, the prosecuting attorney, and the defendant or his counsel, or after they have been called.”

Here, at the conclusion of closing arguments, the court advised the jury as follows:

“Ladies and gentlemen, before you hear the instructions of the deputy, a couple of things you should know about. If you do request a read back—and you have the right to have read back. One thing. The reporter that was here yesterday was a visiting reporter. She works for LA County Superior Court, so as a visiting wandering reporter she could be in Pomona or Lancaster. I don’t know. If you want read back we have to find her and get her here. You would be waiting for

⁷ This court has determined that one complaint against Chang, No. 128833, dated June 3, 2004, properly should have been disclosed. The record is not clear regarding the existence of other complaints. On remand, the trial court shall order disclosure to the defense of citizen complaint, No. 128833. The court shall also determine whether there are any additional citizen complaints which raise issues related to claims against Chang regarding false arrest, false statements, and complaints of dishonesty or perjury that also must be disclosed. (See *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1023–1024.)

that. If you do want read back from yesterday’s testimony keep in mind you will have to wait for it, so continue to deliberate.”

Walton maintains this advisement constituted reversible error, because the court placed itself in a position in which it might be unable to comply with section 1138 within a reasonable time, and speculate to the jury that its right to read back could be subject to a significant or indefinite delay. The attorney general contends the claim lacks merit because the court never actually refused to reread testimony.⁸

It is settled law that a trial court may not instruct a jury in a manner that interferes with its right or ability to request readback of witness testimony. (*People v. De La Roi* (1944) 23 Cal.2d 692, 701–702.) It is also settled that the trial court may inform the jury of the estimated time it will take to read back requested testimony after deliberations have begun, or to inform jurors of the manner in which a readback may be conducted. (See *People v. Gurule* (2002) 28 Cal.4th 557, 649–650, *Hillhouse, supra*, 27 Cal.4th at pp. 504–507.)

Walton contends the trial court’s advance advisement was impermissible because it was speculative as to how long a readback might take, and because the court could have taken steps to control the situation and ensure the reporter remained nearby during deliberations, so it could timely comply with a readback request, had one been made. He claims the jury was discouraged from making such a request because it was unclear how long it would take to be fulfilled.

Walton maintains this case closely resembles *De La Roi, supra*, 23 Cal.2d 692. There, prior to deliberations, the trial court explicitly told jurors they could not receive any visitors, could not send out communications during deliberations, and had already received “all that is to be said in this case” (*Id.* at p. 701, italics omitted.) The Supreme Court found such a blanket denial of communication an “obviously . . . improper” instruction. (*Ibid.*) Under section 1138, the jury could have sent out a

⁸ Although Walton failed to object to the trial court’s readback instruction, his failure to do so does not constitute forfeiture of the issue on appeal. (See *People v. Hillhouse* (2002) 27 Cal.4th 469, 506.)

communication whenever it saw fit to do so, and had the right to have testimony read back. (*Ibid.*)

De La Roi does not control. First, unlike *De La Roi*, the trial court explicitly informed the jury, both at the start and after trial, of its right to a readback of testimony. Second, there is no indication in the record that the jury might have requested a readback, but was discouraged from doing so by the court's advisement. Walton cites no authority—and we are aware of none—to support his contention that the trial court was required to order a visiting court reporter to “remain on call in the area” while the jury deliberated, rather than going on to transcribe other cases. “Merely informing the jury of the time it may take for rehearing testimony is not impermissible jury coercion.” (*Hillhouse, supra*, 27 Cal.4th at p. 506.) Here, the court did no more than straightforwardly inform the jury that, if it wanted “read back [the court would] have to find [the reporter] and get her here,” and the jury “would be waiting for that.” Accordingly, the jurors were admonished to “continue to deliberate,” if they had to wait for “read back from . . . testimony.” On this record, no error occurred.

DISPOSITION

The judgment is reversed. The matter is remanded for a new hearing on the motion to suppress, and a new trial. Pursuant to Business and Professions Code section 6086.7, subdivisions (a)(2) and (b), the clerk is ordered to send a certified copy of this opinion to the State Bar and to Deputy District Attorney Jennifer Bainbridge upon return of the remittitur.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

MALLANO, P.J.

CHANEY, J.