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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRELL JOHNSON,

Defendant and Appellant.

B268641

Los Angeles County

Super. Ct. No. BA424514

APPEAL from a judgment of the Superior Court of
Los Angeles County, William N. Sterling, Judge. Affirmed.

Julie Schumer, under appointment by the Court of Appeal,
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Senior
Assistant Attorney General, Michael C. Keller and John Yang,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant Terrell Johnson of two counts of second degree robbery, and it found true a firearm allegation as to each count. The trial court sentenced Johnson to a total term of 35 years and four months in state prison. On appeal, Johnson raises three contentions: (1) the court erred in refusing to grant him a continuance after granting his *Faretta*¹ request that was made after the jury was selected; (2) the prosecutor committed misconduct during her case-in-chief when she elicited testimony from a police officer that suggested Johnson had a criminal record; and (3) the prosecutor's questioning of one of the People's fingerprint experts improperly shifted the burden of proof to Johnson. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. The robbery

In January 2014, Joana Gutierrez and Rafael Rocha worked at Healing Haze, a medical marijuana dispensary in Los Angeles. Gutierrez worked as a cashier and Rocha worked as a security guard. Around 7:30 p.m. on January 29, 2014, Johnson entered the dispensary while Gutierrez and Rocha were on shift. He provided Rocha with a fabricated identification card and a doctor's recommendation. Rocha gave Johnson an application form to fill out for first-time customers. After Rocha (erroneously) verified Johnson's identification card and recommendation, he allowed Johnson to enter the area of the

¹ *Faretta v. California* (1975) 422 U.S. 806 (*Faretta*).

dispensary where the marijuana was stored. Johnson then handed the application form back to Rocha.

Johnson briefly looked around the dispensary, asking Gutierrez questions about some of the marijuana. After Johnson asked Gutierrez to show him a particular strain of marijuana, Johnson turned around and tackled Rocha, knocking Rocha to the ground and causing Rocha to cut his left hand on a piece of glass. Johnson then pulled out a loaded handgun and pointed it at Rocha's face.

Gutierrez tried to run to the owner's office in the back of the dispensary, but Johnson ran after her and forced her to enter the safe room and lie face down on the ground. Johnson also made Rocha move to the safe room and lie face down on the ground. He asked Gutierrez for the combination to the dispensary's safe, but she told him that she did not know it. Johnson then grabbed a plastic trash bag and started to fill it with jars of marijuana and cash from the dispensary's register.

After Johnson finished collecting marijuana and cash, he told Rocha and Gutierrez to count out loud to 10 while he left the dispensary. As Johnson was walking away from the dispensary, he passed the dispensary's owner, Brian Lindbergh. Lindbergh did not realize that Johnson had just robbed the dispensary, but he thought Johnson looked suspicious because he was carrying a full plastic garbage bag. Lindbergh waited until the day after the robbery to call the police.

2. The investigation

The police recovered the application form that Johnson had handled while he was in the dispensary. The police obtained seven fingerprints from the form that matched Johnson. The police also recovered video footage of the robbery from the dispensary's interior security cameras.

After the police identified Johnson as a suspect in the robbery, they asked Gutierrez to identify the person who robbed the dispensary from a six-pack photographic lineup. Gutierrez picked two photographs from the lineup; the first photograph was of Johnson, and the second photograph was of a person who was not a suspect in the robbery.²

3. The trial, verdict, and sentencing

The People charged Johnson with two counts of second degree robbery (Pen.³ Code, § 211). As to each count, the People alleged Johnson personally used a firearm during the commission of the robbery (§ 12022.53, subd. (b)). The People further alleged that Johnson had suffered six prior prison term convictions (§ 667, subds. (a) & (b)) and one serious or violent felony conviction for purposes of the Three-Strikes law (§§ 667.5, subd. (d) & 1170.12, subd. (b)).

On the first court day after the jury was selected, Johnson moved to represent himself under *Faretta*. The court granted Johnson's *Faretta* motion after explaining that the motion was untimely and that it would only grant the motion if Johnson agreed to proceed immediately to trial, which Johnson agreed to do.⁴ After the People called their first three witnesses, Johnson requested a continuance, which the court denied.

² Gutierrez later identified Johnson at trial as the person who robbed Healing Haze. Rocha could not identify Johnson at trial as the suspect in the robbery.

³ All undesignated statutory references are to the Penal Code.

⁴ We describe the circumstances surrounding Johnson's *Faretta* motion in greater detail below.

After both sides rested, Johnson moved for a mistrial based on the prosecutor's questioning of the People's fingerprint expert and the detective who assembled the six-pack photographic lineup. The court denied the motion. The next day, the jury convicted Johnson of both robbery counts and found true both firearm allegations.

In a bifurcated proceeding, Johnson admitted his prior convictions. He then filed two motions: one for a new trial and one requesting the court to strike his prior serious felony conviction under *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*). The court denied both motions. The court then sentenced Johnson to a total term of 35 years and 4 months in state prison.

Johnson filed a timely appeal.

DISCUSSION

1. The court properly refused to grant Johnson's request for a continuance after granting his *Faretta* motion.

Johnson contends the trial court violated his due process rights when it refused to grant him a continuance after granting his request to represent himself. Relying primarily on *People v. Maddox* (1967) 67 Cal.2d 647 (*Maddox*), Johnson argues that once the court granted his request to represent himself, the court was required to grant him a reasonable continuance to allow him to prepare for trial. Johnson also contends the court violated his statutory right to a five-day continuance to prepare for trial under section 1049. As we will explain, the court did not err in refusing to grant Johnson a continuance; the court properly conditioned its grant of Johnson's untimely request to represent himself on his agreement to proceed immediately to trial. (See

People v. Espinoza (2016) 1 Cal.5th 61, 80–82 (*Espinoza*); *People v. Clark* (1992) 3 Cal.4th 41, 110-111 (*Clark*), overruled on another ground in *People v. Pearson* (2013) 56 Cal.4th 393, 462.)

1.1. Relevant background

On the first court day after the jury was selected, Johnson moved to represent himself pursuant to *Faretta*. Johnson told the court that he was not “secure” and “satisfied” with his trial counsel because she was not the same attorney who had represented him at the preliminary hearing and he only had a limited opportunity to see her perform before trial. The court and Johnson then had the following conversation about Johnson’s request:

The Court: Well you have the right to represent yourself, but the question is are you ready to proceed with this case right now? Because I’m not going to grant a continuance. So you have to continue – the trial is going to start. If you’re going to represent yourself, it has to start this morning. [¶] We’ve already picked a jury. I’ve read the instructions. Are you asking to start trial as soon as I go through your *Faretta* waivers with you? Then you’ll be representing yourself today?

Johnson: If that’s so, yes, I guess I will have to. It’s hard for me because I know that she’ll have to turn over everything to me. And as well, you know, go over the information for myself. But if the court wants that, then I guess I would have to.

The Court: Well, it’s not timely. I mean, it should have happened before. I’ve got a jury. We already picked a jury. We’ve invested this time. And I’m willing to let you fill out the *Faretta* waivers. If you qualify, which it sounds like you do, I’ll – I’m willing to let you – it would be your

right to represent yourself, but it would have to be with the understanding that as soon as you give the waivers and I grant the pro per status, we're going to start trial.

The court then provided Johnson a waiver form, which Johnson signed and initialed. After the court explained Johnson's constitutional rights and the content of the waiver form, but before the court granted Johnson's *Faretta* motion, Johnson requested a continuance to allow him to "have adequate defense." The court again explained that Johnson's request to represent himself was untimely, and that it could deny the request on that ground. The court told Johnson that the only way it would grant his *Faretta* motion would be if Johnson agreed to proceed immediately with the trial. The court explained that unless Johnson "surprise[d]" the court with something that would warrant a continuance, the court was not willing to continue the case if it were to grant Johnson's *Faretta* motion.⁵

The court explained that it believed Johnson's trial counsel was competent and advised Johnson that he should continue to let her represent him. Johnson's counsel also advised Johnson not to represent himself. The court then reiterated that it would not grant Johnson a continuance if he decided to represent himself. Johnson confirmed that he still wanted to represent himself, and the court granted his *Faretta* motion and appointed him standby counsel.

⁵ The written *Faretta* waiver form admonished Johnson of the many dangers and disadvantages of not having a professional attorney represent him during the trial. The waiver form also stated that Johnson understood that no continuance of the trial would be allowed without a showing of good cause, and that such requests made just before trial would likely be denied.

The following day, after the People and Johnson made their opening statements, and after the People called their first three witnesses, Johnson requested a continuance. Johnson did not explain for what purpose he wanted a continuance. The court denied the request, explaining that Johnson had not shown any reason why a continuance at such a late stage in the trial was necessary.

After the jury returned its verdict, Johnson moved for a new trial, in part based on the court's refusal to grant him a continuance after granting his *Faretta* motion. The court denied Johnson's motion.

1.2. Analysis

Generally, the decision whether to grant a continuance is within the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1037 (*Jenkins*).) Although a court may abuse that discretion by refusing to grant a continuance after granting a timely *Faretta* motion, the same principles do not apply to an untimely *Faretta* motion. (*Espinoza, supra*, 1 Cal.5th at p. 80.) Instead, a court may "condition the grant of an untimely *Faretta* motion on a defendant's ability to immediately proceed to trial." (*Ibid*; see *id.* at pp. 81-82; *Clark, supra*, 3 Cal.4th at pp. 110-111; *People v. Valdez* (2004) 32 Cal.4th 73, 103 (*Valdez*) [because the defendant's *Faretta* request was untimely, "the court acted within its discretion in concluding that defendant could represent himself only if he was ready to proceed to trial without delay"].)

Here, the trial court properly conditioned its grant of Johnson's *Faretta* motion on Johnson's ability to proceed immediately to trial. After Johnson made his request to represent himself, the court stated that Johnson's request was untimely because it was made after the jury had been selected

and that the court could deny the request on that ground.⁶ However, the court repeatedly explained it would grant Johnson's *Faretta* motion if Johnson agreed to proceed immediately to trial. The court stated it would only grant a continuance if Johnson were able to demonstrate that it would be reasonable to continue the case mid-trial. Before the court granted his *Faretta* motion, Johnson confirmed that he understood he would have to proceed immediately to trial if he were to represent himself.

Johnson argues that under *Maddox*, the trial court was required to grant him a reasonable continuance once it granted his *Faretta* motion. In *Maddox*, a decision that predates *Faretta*, the California Supreme Court reversed the defendant's conviction because the trial court refused to grant the defendant a continuance after it granted his request to represent himself. (*Maddox, supra*, 67 Cal.2d at pp. 652-655.) The court explained: "It is true that [a defendant who represents himself] 'is not entitled either to privileges and indulgences not accorded attorneys or to privileges and indulgences not accorded defendants who are represented by counsel.' [Citation.] But neither is he entitled to *less* consideration than such persons. In particular he must be given, if he requires it, as much time to prepare for trial as an attorney; and if a reasonable continuance is necessary for this purpose, it must be granted upon timely request. To deny him that opportunity would be to render his right to appear in propria persona an empty formality, and in effect deny him the right to counsel." (*Id.* at p. 653.)

⁶ In his opening brief, Johnson concedes that his *Faretta* motion was untimely and that the court could have denied it on that ground. (See *People v. Hamilton* (1988) 45 Cal.3d 351, 369.)

Since *Maddox* was decided, however, the California Supreme Court has on several occasions expressly approved the practice of conditioning the grant of an untimely *Faretta* motion on the defendant's ability to proceed immediately to trial. (See *Espinoza, supra*, 1 Cal.5th at p. 80; *Jenkins, supra*, 22 Cal.4th at p. 1039; *Clark, supra*, 3 Cal.4th at pp. 110-111; *Valdez, supra*, 32 Cal.4th at p. 103.) That is exactly what the court did here. Thus, the court was not required to grant Johnson a continuance once it granted his *Faretta* motion; rather, the court had the discretion to deny a request for a continuance once it granted Johnson's motion. (*Espinoza, supra*, 1 Cal.5th at pp. 80-82.)

The court acted within that discretion when it denied Johnson's request for a continuance made the day after the court granted his *Faretta* motion. As discussed above, the court explained, and Johnson confirmed that he understood, that Johnson would have to proceed immediately to trial if the court were to grant his *Faretta* request. Before granting Johnson's *Faretta* motion, the court also explained that it would only grant a continuance if Johnson demonstrated a sufficient justification to continue the case mid-trial. When Johnson requested a continuance the day after the court granted his *Faretta* motion, he did not explain why he needed the continuance. Because Johnson failed to demonstrate why the case should be continued mid-trial, the court properly denied Johnson's request for a continuance. (See *Espinoza, supra*, 1 Cal.5th at pp. 81-82.)

Johnson also contends that under section 1049, the trial court was required to allow him five days to prepare a defense once it granted his *Faretta* motion. Section 1049 provides: "After his plea, the defendant is entitled to at least five days to prepare for trial." Although this statute does not appear on its face to apply to Johnson's situation, since Johnson (through his pre-trial attorneys) was allowed more than five days to prepare for trial

after he entered a plea of not guilty, at least two cases have held the statute applies in a context similar to the one presented here—i.e., that a court must afford a defendant at least five days to prepare for trial once it grants the defendant’s *Faretta* motion. (See *Maddox*, *supra*, 67 Cal.2d at p. 653; *People v. Wilkins* (1990) 225 Cal.App.3d 299, 308-309 (*Wilkins*).)

To be sure, none of the California Supreme Court cases cited above that expressly approve the practice of a trial court conditioning a grant of a *Faretta* motion on the defendant’s agreement to proceed immediately to trial expressly overrule the portions of *Maddox* and *Wilkins* applying section 1049. (See *Espinoza*, *supra*, 1 Cal.5th at pp. 80-82; *Jenkins*, *supra*, 22 Cal.4th at pp. 1037-1040; *Clark*, *supra*, 3 Cal.4th at pp. 110-111; *Valdez*, *supra*, 32 Cal.4th at pp. 101-103.) Nevertheless, since *Espinoza*, *Clark*, *Jenkins*, and *Valdez* were decided after *Maddox* and *Wilkins*, we have some doubts about whether section 1049 would apply to an untimely *Faretta* request.

We do not need to decide that issue, however, because we conclude Johnson waived his statutory right to a five-day continuance under section 1049. The right to at least five days to prepare for trial under section 1049 may be waived. (*People v. Severino* (1953) 122 Cal.App.2d 172, 181-182, overruled on another ground in *People v. Smith* (1955) 44 Cal.2d 77, 80–81; *Cody v. Justice Court* (1965) 238 Cal.App.2d 275, 289.) A defendant’s agreement to proceed to trial in an amount of time shorter than the five-day period afforded by section 1049 waives the defendant’s rights under that statute. (See *Severino*, *supra*, 122 Cal.App.2d at pp. 181-182 [defendant and his counsel agreeing to proceed to trial in less than five days waived the defendant’s rights under section 1049].) Here, Johnson confirmed that his case would not be continued simply because he was granted pro per status, and he expressly agreed to proceed

immediately to trial before the court granted his *Faretta* motion. By doing so, he waived his right to a five-day continuance under section 1049.

2. Johnson forfeited his claim of prosecutorial misconduct stemming from the prosecutor’s questioning of the investigating officer.

Johnson next contends the prosecutor committed misconduct during her case-in-chief when she elicited testimony from the investigating officer that suggested Johnson had a criminal record—specifically, that the officer retrieved Johnson’s photograph used in the six-pack photographic lineup shown to Gutierrez from a database that contained “prior booking photographs,” “fingerprints,” and “arrest records.” Johnson argues it was improper for the prosecutor to ask the officer what type of information was contained in the database because the prosecutor knew the question would elicit inadmissible evidence. As we explain below, Johnson forfeited this claim because he did not timely object to the prosecutor’s question.

2.1. Relevant background

Detective Salvador Loera of the Los Angeles Police Department (LAPD) investigated the robbery. He testified about how he assembled the six-pack photographic lineup that was shown to Gutierrez. After identifying Johnson as a suspect in the robbery, Detective Loera pulled Johnson’s photograph from a database used by the LAPD called “LACRIS.” The prosecutor then asked Detective Loera, “What kind of information would be contained in your LACRIS system, in addition to someone’s photograph?” Detective Loera responded, “It has prior booking photographs. It has fingerprints. And it has arrest records in there.” Johnson did not object to the prosecutor’s question or to

Detective Loera's response while Detective Loera was on the stand.

After the evidence phase of trial was completed, Johnson moved for a mistrial, objecting for the first time to Detective Loera's testimony about the type of information stored in the LACRIS system. Johnson argued the testimony improperly attacked his character and constituted inadmissible evidence of his criminal background. The court responded, "Well, let me tell you, I was waiting for an objection, and I considered admonishing them on my own. But I really wasn't comfortable doing that because I really wasn't sure what your strategy was." The court then denied Johnson's motion. However, the court told Johnson that it would admonish the jury not to consider Detective Loera's testimony about the type of information stored in LACRIS as evidence of Johnson's prior bad behavior.

Later, the court admonished the jury as follows: "I just want to advise you, you did hear some testimony about the six-pack photo show up, and how the detective put those photos in, how he obtained them. And I'm just going to advise you, you're not to consider anything at all about the defendant's past and how he might or might not have found those photos as proof of anything other than as it goes to the identification and whether the identification is trustworthy or not. [¶] It's not evidence of any kind that the defendant would be likely to commit the crimes charged. You're not to consider it for any purpose related to that. You can only consider it in terms of the weight and probative value of the identification made on the six-pack, but for no other reason."

After the jury returned its verdict, Johnson moved for a new trial, based in part on Detective Loera's testimony about the contents of the LACRIS system. The court denied Johnson's motion.

2.2. Analysis

The People argue Johnson forfeited his claim of prosecutorial misconduct because Johnson did not raise a timely objection to the prosecutor's question about the contents of the LACRIS system or to Detective Loera's response, and he did not make a timely request to admonish the jury not to consider Detective Loera's response. We agree.

"Generally, 'a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion-and on the same ground-the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety.'" [Citation.] (*People v. McDermott* (2002) 28 Cal.4th 946, 1001 (*McDermott*)). This rule does not apply, however, if the defendant's objection or request for admonition would have been futile or would not have cured the harm caused by the misconduct. (*Ibid.*)

Here, Johnson did not timely object to the prosecutor's question about what type of information was stored in the LACRIS system. Instead of objecting at the time the question was asked and the response was made, Johnson waited until after Detective Loera finished testifying and both sides had rested to raise the issue for the first time in a motion for a mistrial. Johnson therefore forfeited his claim of prosecutorial misconduct. (See *McDermott, supra*, 28 Cal.4th at p. 1001.)

Johnson contends the forfeiture rule should not apply in this case because any objection to the prosecutor's question would have been futile, and an admonition by the court immediately after Detective Loera's response would not have cured the harm caused by the response. We disagree. Had Johnson timely objected to the prosecutor's question, the trial court could have prevented Detective Loera from testifying about the contents of

the LACRIS system. The prosecutor asked Detective Loera “[w]hat kind of information would be contained in your LACRIS system, in addition to someone’s photographs?” Before the prosecutor had asked the question, Detective Loera had not testified about what type of information was stored in the LACRIS system or for what purpose the system had been designed. It was not until Detective Loera responded that the system contained booking photographs, fingerprints, and arrest records—information that would indicate a person has a criminal background or a history of negative interactions with law enforcement—that the jury was exposed to information that improperly suggested Johnson had a criminal record. Thus, had Johnson objected to the question, the court could have sustained the objection before any harm was caused. (See *People v. Boyette* (2002) 29 Cal.4th 381, 424 [“The requirement that an objection to evidence be timely made is important because it ‘allows the court to remedy the situation before any prejudice accrues.’ [Citation.]”].) Indeed, the court later told Johnson when he first raised the issue in his motion for a mistrial that it had been waiting for an objection to the prosecutor’s question and had considered admonishing the jury sua sponte not to consider Detective Loera’s response, further demonstrating that it would not have been futile for Johnson to object to the prosecutor’s question.⁷

⁷ We note that the *Faretta* waiver form that Johnson initialed expressly stated that a self-represented party would be responsible for “making appropriate objections and motions during the course of the trial.”

3. Johnson suffered no harm from the prosecutor's questioning of the People's fingerprint expert.

Finally, Johnson contends the prosecutor also committed prejudicial misconduct during her questioning of one of the People's fingerprint experts. Specifically, he contends the prosecutor's line of questioning and the expert's testimony impermissibly shifted the burden of proof to him to prove his innocence by affirmatively attacking the results of the LAPD's fingerprint analysis. We disagree. Any misconduct stemming from the prosecutor's line of questioning was harmless because the court sustained its own objection to the expert's testimony, struck the testimony, and admonished the jury not to consider the testimony.

3.1. Relevant background

Mynor Acevedo was one of three LAPD fingerprint specialists who testified for the People. During Acevedo's testimony, the prosecutor asked questions concerning the handling of records that were used in a fingerprint analysis after the analysis is completed. The following exchange occurred during that line of questioning:

The Prosecutor: Now, let me ask you, is it common in your line of work, after you have processed a fingerprint package, or after the forensic work has been done, for it to be all contained, all the evidence, all the photographs, contained within one envelope?

Acevedo: Yes.

The Prosecutor: And is that envelope only for prosecution use?

Acevedo: No.

The Prosecutor: Meaning if, let's say, the defendant had an expert that he wanted to appoint or

something of that nature, they would have access to that packet as well?

Acevedo: Yes, ma'am.

The Prosecutor: Would they be limited in any way in their inspection of the evidence, meaning would only the LAFIS-quality prints be given to them?

Acevedo: No, they have full access to the package.

The Prosecutor: So, they would have full access to, let's say, the photographs taken by Ms. Watts?

Acevedo: Yes, ma'am.

The Prosecutor: And they would have access to the ten-print cards that were contained in it?

Acevedo: Yes.

The Prosecutor: And they would have access to the ten-print cards specifically belonging to Terrell Johnson?

Acevedo: Yes.

The Prosecutor: Now, do you keep records of whether or not such a packet is given to a defense expert or investigator?

Acevedo: Yes.

The Prosecutor: Are there any records, based on your observation of that file, as to whether or not that was done in this case?

Acevedo: Yes.

The Court: I'm going [to] sustain my own objection. The jury is admonished to disregard. Let's move on.

Outside the presence of the jury, the court then explained that it sustained its own objection because the prosecutor's line of questioning was "going far afield" and was beyond the scope of Johnson's cross-examination. The court also stated that it sustained its own objection under Evidence Code section 352

because the potential prejudice from Acevedo testifying about the defense expert's examination of the fingerprint packet could substantially outweigh the testimony's probative value. The court explained that the testimony "suggests to the jury . . . what the results of the expert's analysis [were], and the defense is choosing not to call him because he made findings which there's no one here to testify about. So, I'm going to preclude you from going into that."

After both sides rested, Johnson moved for a mistrial, based in part on the prosecutor's questions to Acevedo about whether the fingerprint records from the scene of the robbery were provided to a defense expert. Johnson's motion for a new trial made after the jury returned its verdict was also based in part on the same argument. The court denied both motions.

3.2. Analysis

Johnson argues the prosecutor's line of questioning improperly elicited testimony about whether the LAPD had provided a defense expert with the fingerprint packet used to identify Johnson. According to Johnson, that testimony suggested that a defense expert had reviewed the packet and reached a conclusion based on that review. Johnson asserts the testimony improperly suggested that the defense expert's conclusion was not favorable to Johnson, since he did not call a fingerprint expert to testify at trial. According to Johnson, the testimony impermissibly shifted the burden of proof to him to prove his innocence by affirmatively attacking the results of the LAPD's fingerprint analysis. We do not need to decide whether the prosecutor's line of questioning constituted misconduct, however, because Johnson suffered no prejudice as a result of that questioning.

As noted above, the trial court sustained its own objection to the fingerprint expert's testimony about whether there were any records of whether the fingerprint packet had been provided to a defense expert, and the court precluded the prosecutor from pursuing her line of questioning any further. The court also struck that portion of the expert's testimony and admonished the jury not to consider it. When a court admonishes a jury not to consider testimony or improper comments from the prosecutor, "[w]e presume that the jury heeded the admonition and any error was cured." (*People v. Wash* (1993) 6 Cal.4th 215, 263.) Thus, the court on its own motion took appropriate curative action and, as a result, Johnson suffered no prejudice from the prosecutor's line of questioning or the expert's testimony.

We also disagree with Johnson's contention that the prosecutor's line of questioning and the expert's testimony "tread so deep into prejudicial waters" that we cannot presume the court's admonition was effective. While the court certainly acted reasonably to preclude the prosecutor from continuing her line of questioning, the People's expert had yet to testify that a defense expert had in fact been provided the fingerprint packet that led the LAPD to identify Johnson as a suspect in the robbery. Specifically, the People's expert never testified that a defense expert received the packet used to conduct the LAPD's fingerprint analysis. The expert only testified that it is the LADP's policy to allow a defense expert to independently review the fingerprint packet, and that there was a record in the case of "whether or not" that packet was provided to a defense expert. Thus, the expert only stated that there was a record of what had been or had not been done with the fingerprint packet; he did not actually confirm that the packet was provided to a defense expert. This line of questioning and responses were sufficiently

innocuous that the court's objection and admonition prevented any prejudice to Johnson.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.