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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

PETE ALLEN, Petitioner and Appellant, v. CITY OF BURBANK et al., Respondents.	B278024 Los Angeles County Super. Ct. No. BS154148

APPEAL from a judgment of the Superior Court of Los Angeles County, Joanne O'Donnell, Judge. Reversed and remanded with directions.

Stone Busailah, Michael P. Stone, Muna Busailah, and Robert Rabe for Petitioner and Appellant.

Amelia Ann Albano, City Attorney, and Charmaine Jackson, Assistant City Attorney for Respondents.

INTRODUCTION

Pete Allen, a former detective with the Burbank Police Department (the Department), appeals from a judgment denying his petition for administrative mandamus. The City of Burbank (the City) discharged Allen for misleading investigators about his knowledge of a suspected unlawful use of force by another officer. Allen filed a writ petition seeking reinstatement, arguing his misleading statements should have been suppressed because they were obtained in violation of his rights under Government Code section 3300 et seq., the Public Safety Officers Procedural Bill of Rights Act (POBRA or the Act).[1] Specifically, Allen asserted the Department interfered with his rights under POBRA by telling him the Act did not apply before interrogating him on matters that could lead to punitive employment action, such as discipline for failing to report another officer's misconduct.

The trial court found no POBRA violation, and concluded, even if there had been a violation, suppression of the dishonest statements was not an appropriate remedy under the circumstances. The court reasoned Allen was not substantially prejudiced by the supposed violation, because he nonetheless understood his duty and obligation as a peace officer to speak truthfully to investigators. And the court determined the adverse consequences of suppressing the statements would have far exceeded the prospect for deterring future POBRA violations.

We conclude the manner in which the City conducted Allen's interrogation deprived him of a meaningful opportunity to exercise his rights under POBRA. Although we find the trial

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[1] Statutory references are to the Government Code unless otherwise indicated.

court's suppression analysis was sound and supported by the evidence, the POBRA violation statutorily obligates the court to "render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature." (§ 3309.5, subd. (d)(1).) In addition, the trial court has discretion to award a civil penalty and damages if the public safety department maliciously violated POBRA. (§ 3309.5, subd. (e).) Accordingly, we must reverse the judgment and remand the matter to the trial court with directions to issue appropriate relief consistent with the principles expressed herein.

FACTS AND PROCEDURAL BACKGROUND

1. *The Porto's I Internal Affairs Investigation*

Allen joined the Department in 1994. In May 2007, he was promoted to detective, a position he held until his discharge in June 2010.

On December 28, 2007, members of the Mara Salvatrucha (MS-13) criminal street gang committed an armed, takeover robbery of the Porto's Bakery in Burbank. Several suspects were involved in the robbery, including at least two Porto's employees who assisted gang members with information and access to the business. After subduing several employees with zip-ties and physical force, the assailants forced the Porto's shift manager to open the company safe, and made off with approximately $11,000 in cash.

The Department assigned Allen to be lead investigator on the case, and designated another detective, Angelo Dahlia, to help with the investigation. Several members of the Department's Special Enforcement Detail (SED), including Lieutenant Omar Rodriguez, assisted with suspect interrogations. As lead investigator, Allen was responsible for

maintaining the case file and presenting evidence to the District Attorney's Office, but he had no authority to oversee interrogations. Instead, Rodriguez and the other SED officers reported directly to Deputy Chief Bill Taylor.

In April 2008, Officer Kerry Schilf approached Lieutenant J.J. Puglisi, an officer in the Department's Internal Affairs Division, about a "rumor" that had been circulating regarding possible misconduct during the investigation. According to the rumor, Rodriguez had held a gun to the head of a suspect at the police station before interrogating him about the robbery. Schilf did not know the original source of the rumor.

Following his conversation with Schilf, Puglisi contacted Taylor to relate what he had learned. After discussing the matter with Chief Timothy Stehr, Taylor instructed Puglisi to formally interview Schilf to "track down the source of the rumor." Schilf confirmed the rumor concerned Rodriguez's treatment of a suspect in the Porto's robbery investigation and that an "unknown detective" had "witnessed the incident, or he knew of it." Following the interview, the Internal Affairs Division opened an investigation into Rodriguez's alleged misconduct (Porto's I).

Before he began the Porto's I interviews, Puglisi approached Taylor about his concern that the investigation's focus was certain to extend beyond Rodriguez's alleged misconduct and would also encompass the failure to report the misconduct by the "unknown detective" who had possibly witnessed it. As Puglisi explained, "I expressed to [Taylor] a concern that if, in fact, this happened, that at some point we were going to get to somebody going down this rumor chain that potentially witnessed this misconduct, [and] that if they witnessed it and they failed to report it, that they were subject to

discipline." Out of this concern, Puglisi believed all witnesses should be "focused" and advised of their rights under POBRA.[2] Taylor rejected the request. He responded that Internal Affairs was not "the rumor police" and that Puglisi was not to do "focused interviews" unless a witness revealed that he or she had "seen something," at which point Puglisi was to "stop and focus that person."

After interviewing several officers who had knowledge of the rumor, Puglisi eventually identified Detective Ken Schiffner as its possible source. Schiffner confirmed that he had heard a rumor about Rodriguez shoving his gun into the eye of a suspect. He had not witnessed the incident, but he was told it "happened right out in the hallway of the detective bureau," and that it "was not hidden." He had also heard that "a detective walked by as [the incident] was happening and witnessed it," but Schiffner claimed not to know the detective's identity. Schiffner identified Allen, Dahlia, Detective Brian Gordon, and Detective Mark Stohl

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[2] Section 3303 provides that whenever a "public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted" in accordance with POBRA's procedural protections. Among those protections is section 3303, subdivision (i), which states: "Upon the filing of a formal written statement of charges, or whenever an interrogation *focuses on matters that are likely to result in punitive action* against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation." (Italics added.) The term "focused," as used by Puglisi and other members of the Department, derives from these provisions.

as the people he spoke with most often about the investigation. Schiffner said he might have heard the rumor from one of them.

As investigators would later learn, the detective who witnessed the incident was Dahlia, and Allen was aware of it. According to Dahlia's testimony in a subsequent investigation, on December 29, 2007, Dahlia witnessed Rodriguez grab a suspect by the throat, pin the suspect's head against a wall, put his handgun underneath the suspect's eye, and yell, " 'How does it feel to have a gun in your face, motherfucker?' "[3] Dahlia said the incident occurred in the hallway of the Detective Bureau, down the hall from Allen's office. The incident left him in "disbelief," and he claimed he "wasn't quite sure what to do at that time." A few minutes later, he returned to Allen's office and told Allen, "I just saw Omar [Rodriguez] do something, but I'll tell you later." Dahlia never told Allen "precisely" what he saw, but at some point he knew Allen had learned the details. Dahlia had described the incident to Schiffner, and Allen later admitted it was Schiffner who told him Dahlia witnessed Rodriguez put a gun in a suspect's face.

Following Schiffner's interview, Puglisi interviewed Allen and Dahlia. A week before his interview, Allen received an email from Puglisi advising him that he would be interviewed as "a witness" and that his employee rights under POBRA, including the right to representation, did not apply. At the beginning of the

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[3] The suspect was the live-in boyfriend of one of the Porto's employees who had assisted gang members with the robbery. The suspect was never arrested or charged, and the Department ultimately determined he had no role in the robbery. Puglisi interviewed the suspect, and the suspect identified Rodriguez as the officer who put a gun to his head.

interview, Puglisi gave Allen a similar admonition, stating: "Detective Allen, you're not the focus of any allegations of misconduct and are being interviewed strictly as a witness. As such, employee rights regarding administrative interviews do not apply. I expect you to answer my questions in a truthful and accurate manner, in compliance with the duty manual." Allen affirmed that he understood.

During the interview, Allen denied any knowledge of misconduct between a lieutenant and a suspect in the Porto's robbery investigation. Allen said he had heard "some grumblings" about uses of force in the investigation, but he was unaware of anyone actually witnessing anything. When pressed, he claimed "[p]eople just talk in rumors" and "[t]hat's all I've heard." He denied that Schiffner had told him anything "specifically," and said they had "probably joked," but it was just "hallway stuff." He could not remember having a "serious conversation" with Schiffner about an improper use of force by any individual officer.

Before his interview, Dahlia approached Sergeant Michael Parrinello, the President of the Burbank Police Officers Association, to request representation. Parrinello discussed the matter with Puglisi, expressing his concern that interviewees were being denied representation despite the seriousness of the allegations under investigation. Puglisi agreed with Parrinello, but said he had been instructed to treat the interviewees as "witnesses" who were not entitled to representation under POBRA.

Like Allen, Dahlia denied having a conversation with Schiffner about an incident involving a lieutenant and a suspect in the Porto's robbery investigation. Dahlia said, "there was talk

amongst a bunch of people," but "I didn't witness anything." When pressed, he disclosed the rumors concerned Rodriguez, he had heard a suspect was choked, and there had been "talk" of a gun. However, Dahlia claimed not to have "independent knowledge" of any of this and said everything was just "hearsay."

After Dahlia's interview, Puglisi approached Taylor again to request that Dahlia be "focused." Puglisi explained that Dahlia had been noticeably nervous during the interview, and he believed Dahlia would be more forthcoming if he had a representative. Taylor "would not relent," and again demanded that Dahlia be treated as a witness, without rights under POBRA. After again admonishing Dahlia that he was being questioned as a witness and that his employee rights did not apply, Puglisi interviewed Dahlia a second time about the allegations against Rodriguez and whether Dahlia had witnessed any misconduct. Dahlia again denied that he had seen any improper contact between Rodriguez and a Porto's robbery suspect.

Prior to his interview, Rodriguez received notification of the allegations against him and his rights under POBRA. Rodriguez denied that he had any unlawful contact with a suspect during the robbery investigation. He also denied any knowledge of the "rumor" circulating about his alleged misconduct.

On July 16, 2008, Puglisi concluded the Porto's I investigation. The allegation of misconduct against Rodriguez was deemed "not sustained."

2. *The Porto's II Internal Affairs Investigation*

On April 2, 2009, Dahlia revealed to Parrinello that, throughout the Porto's I investigation, he had received a constant stream of threats from Rodriguez and other SED officers. Dahlia

admitted he was "not 'forthright' " in his prior interviews with Puglisi, but maintained he had been fearful for his own safety and the safety of his family. Dahlia also disclosed that Allen might have had knowledge of the incident (and other uses of excessive force) that he failed to report. Parrinello reported the matter to Chief Stehr, who directed Captain Craig Varner, with assistance from an outside investigator, to reopen the Porto's internal affairs investigation (Porto's II).

On July 28, 2009, Allen received a formal notification that he was under administrative investigation for, among other things, allegations of dishonesty and obstruction of the Porto's I investigation. The notification advised Allen of his "right to have a representative of your choice present who is not a part of this investigation." Allen retained an attorney as his representative for the interview.

Allen admitted he was untruthful during his Porto's I interview when he told Puglisi he had not heard anything about misconduct by a lieutenant. He explained that Dahlia had confided in him prior to their interviews that he was being intimidated by Rodriguez, and that Dahlia was scared for himself and his family. Allen claimed it was "clear" that Dahlia was subject to a "hostile environment" and that Dahlia "wasn't going to go into that [internal affairs interview] and tell [the investigators] what he saw." Allen also admitted that Schiffner had told him exactly what Dahlia witnessed, and he likewise believed Schiffner was not "going to cooperate and tell the truth" because Dahlia would not confirm it. With that in mind, Allen claimed he could not be forthcoming, because he feared retaliation if he was "the lone guy standing there saying I heard

this rumor, and my eyewitness [Dahlia] isn't going to say anything, out of safety for himself."

3. *Allen's Termination and Arbitration*

On March 26, 2010, Allen received a Notice of Proposed Termination. The notice charged Allen with numerous violations of the operative memorandum of understanding (MOU) and the Department's duty manual, all relating to Allen's dishonesty and failure to report misconduct. After assessing Allen's response to the charges, the Department issued a Notice of Termination.

Allen requested arbitration under the MOU's disciplinary and grievance provisions. Those provisions require a hearing and submission of evidence, with facts determined by an arbitrator, whose decision is ultimately confirmed or rejected by the City Manager.

In his arbitration testimony, Allen maintained he had not been forthcoming during his Porto's I interview because he genuinely worried for Dahlia's safety and believed that, if he said something, Dahlia and his family would be in danger. But Allen also admitted that his friendship with Dahlia did not supersede his duty to disclose misconduct and to tell the truth. Likewise, he admitted that Dahlia's fears were not a legitimate excuse for him or Dahlia to lie about their knowledge of Rodriguez's misconduct. As peace officers, Allen acknowledged he and Dahlia had a duty to act honestly in the face of danger and threats. Allen also admitted he understood he was required to be truthful during an internal affairs investigation regardless of whether he had a representative present during the interview.

The arbitrator found that Allen "was not forthcoming or truthful during his interview with [Puglisi]" and that his misconduct justified discipline. However, the arbitrator believed

Allen's termination was excessive and recommended that the disciplinary action be reduced to 60 days suspension.

The City Manager rejected the arbitrator's recommendation. Among other things, the City Manager determined the arbitrator had given "too little attention" to the fact that Allen's dishonesty impeded the Department's efforts to identify and expose "the corruption and culture of excessive force" that persisted until "Dahlia came forward." Further, the City Manager believed the arbitrator's recommendation would establish an untenable precedent, "in which the honesty required to eradicate misconduct and corruption is not required until the corruption has already been eradicated from the organization." The City Manager determined Allen was terminated for "good cause," and that, "given the severity of the charges, especially the dishonesty, the level of discipline [was] appropriate and [there were] no mitigating or extenuating circumstances to modify the termination."

4. *Allen's Petition for Administrative Mandamus*

Allen filed a verified petition for peremptory writ of mandate challenging the City Manager's final decision. The petition requested (1) an order suppressing Allen's statements in the Porto's I investigation and all "derivative fruits" on the ground that the City obtained the statements in violation of Allen's right under POBRA to have a representative for the interview; and (2) a writ commanding the City to set aside Allen's termination, remove all records of misconduct, and award Allen back pay with interest, less pay for the 60-day suspension ordered by the arbitrator.

The trial court denied the petition, concluding Allen's rights under POBRA were not violated and that suppression

would not be an appropriate remedy in any event. With respect to POBRA, the court concluded, as a matter of statutory interpretation, that an employing public safety department "is only required to provide representation when [it] has knowledge that [a public safety officer] is likely to make statements during [an] interview that may lead to punitive action against him/her." The court reasoned that because the Porto's I investigation concerned only a " 'rumor,' " and because Puglisi never formed the impression that Allen was "giving him any information that would result in [Allen] becoming a subject of the investigation," Allen's right to representation under POBRA was never "triggered." Further, despite acknowledging that "Taylor may have informally discouraged reliance on POBRA as part of a scheme to subvert the Porto's investigation,"[4] the court found it was Allen's "obligation" to request representation, as Puglisi could not be expected to "read [Allen's] mind" about his undisclosed knowledge of Rodriguez's misconduct.

Although it found no POBRA violation, the trial court also determined that, "[e]ven if [Allen] had been improperly denied representation, suppression of his untruthful statement would be unwarranted." On that count, the court found Allen was "not materially prejudiced," because he understood he "was obliged to . . . answer truthfully, regardless of whether he was represented." And the court found "suppression in this case would have an effect entirely disproportionate with any deterrence value," as it would "effectively sanction [Allen's] willful misconduct" and allow

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[4] Part of the Porto's II investigation focused on Taylor's conduct and management of the Porto's I investigation. The City terminated Taylor after the investigation concluded he obstructed and interfered with Porto's I.

him to "escape punishment for his decision to dishonestly respond to official inquiries."

DISCUSSION

1. *Standard of Review*

Allen contends his interview in the Porto's I investigation constituted an interrogation "that could lead to punitive action," and thus entitled him to the procedural protections established by POBRA. (§ 3303.) Specifically, he argues he should have been afforded the right to have a representative present at the interrogation because, as an officer with suspected knowledge of Rodriguez's alleged unlawful use of force, his interrogation would necessarily "focus[ ] on matters that [were] likely to result in punitive action against [him]." (§ 3303, subd. (i).) He maintains the City interfered with that right by instructing him, before his interrogation, that his employee rights under the Act did not apply. He argues the trial court should have suppressed his statements made in the Porto's I investigation to remedy the POBRA violation. The arguments implicate multiple standards of review.

"In determining the scope of coverage under the Act, we independently determine the proper interpretation of the statute and are not bound by the lower court's interpretation." (*Binkley v. City of Long Beach* (1993) 16 Cal.App.4th 1795, 1806.) Thus, whether POBRA applies to Allen's interrogation is an issue we consider de novo. (See *Shafer v. Los Angeles County Sheriff's Dept.* (2003) 106 Cal.App.4th 1388, 1396 (*Shafer*); *City of Los Angeles v. Superior Court* (1997) 57 Cal.App.4th 1506, 1514 (*Labio*).) On the other hand, "[w]hether suppression of a statement for a violation of the Act is an appropriate remedy is within the discretion of the trial court, and we review that

decision to determine if there has been an abuse of discretion." (*Shafer,* at p. 1396; *Labio,* at pp. 1516-1517.) "As to any factual findings by the trial court, our review is based on the substantial evidence standard of appellate review applied to trial court decisions in administrative cases." (*Shafer,* at p. 1396; *Fort Mojave Indian Tribe v. Department of Health Services* (1995) 38 Cal.App.4th 1574, 1590.)

2. *The Department Interfered with Allen's Rights under POBRA by Denying Him a Meaningful Opportunity to Request Representation*

POBRA "provides a catalog of basic rights and protections that must be afforded all peace officers by the public entities which employ them." (*California Correctional Peace Officers Assn. v. State of California* (2000) 82 Cal.App.4th 294, 304.) The Act's purpose is "to maintain stable employer-employee relations and thereby assure effective law enforcement." (*Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, 826 (*Lybarger*).) "Although notions of fundamental fairness for police officers underlie the Act, a number of its provisions also reflect the Legislature's recognition of the necessity for internal affairs investigations to maintain the efficiency and integrity of the police force serving the community." (*Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564, 572 (*Pasadena*).) POBRA is thus "concerned primarily with affording individual police officers certain procedural rights during the course of proceedings which might lead to the imposition of penalties against them." (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 681.) The Act's various procedural protections are intended to " 'balance the public interest in maintaining the efficiency and integrity of the police force with the police officer's interest in receiving fair

treatment.' " (*Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 320 (*Mays*).)

Consistent with this purpose, section 3303, subdivision (i) provides: "Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation." The Act defines "punitive action" as "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment." (§ 3303.) The right to representation does "not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor [does it] apply to an investigation concerned solely and directly with alleged criminal activities." (§ 3303, subd. (i).)

As with other POBRA provisions, we apply established rules of statutory construction to determine the scope of coverage under section 3303, subdivision (i). (See *Shafer, supra,* 106 Cal.App.4th at p. 1396.) "In examining statutes, ' "[c]ourts must ascertain legislative intent so as to effectuate a law's purpose. [Citations.] 'In the construction of a statute . . . the office of the judge is simply to ascertain and declare what is . . . contained therein, not to insert what has been omitted, or to omit what has been inserted; . . .' [Citation.] Legislative intent will be determined so far as possible from the language of statutes, read as a whole, and if the words are reasonably free from ambiguity

and uncertainty, the courts will look no further to ascertain its meaning. [Citation.] ' "The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction." ' [Citations.] 'Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole.' [Citations.]" ' " (*Sulier v. State Personnel Bd.* (2004) 125 Cal.App.4th 21, 26, italics omitted (*Sulier*).) And, we must "avoid interpretations leading to absurd results." (*Ellins v. City of Sierra Madre* (2016) 244 Cal.App.4th 445, 454 (*Ellins*).)

Allen contends his interview in the Porto's I investigation necessarily implicated his right to representation under POBRA. Department policy, he stresses, requires an officer to disclose another officer's misconduct immediately after becoming aware of it.[5] As an officer suspected to have knowledge of Rodriguez's alleged misconduct, Allen maintains his interview was certain to "focus" on what he knew of the misconduct and his possible failure to report the misconduct as soon as he learned of it. Because that matter was "likely to result in punitive action against" him (§ 3303, subd. (i)), Allen argues he was entitled to have a representative present for his questioning. Allen contends the Department, by instructing him before the interview that

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[5] Part I, Section 2, Article 6.4 of the Department's duty manual sets forth the obligation to report misconduct by fellow officers: "Peace officers shall maintain the integrity of their profession through complete disclosure of those who violate any of the rules of conduct, violate any law, or who conduct themselves in a manner which tends to discredit the profession."

POBRA did not apply, interfered with his right to representation under section 3303, subdivision (i).

The trial court rejected Allen's contention. As set forth in its written order, the court interpreted the phrase "whenever an interrogation focuses on matters that are likely to result in punitive action" (§ 3303, subd. (i)) to mean "the interviewer is only required to provide representation when he/she has knowledge that the interviewee is likely to make statements during the interview that may lead to punitive action against him/her." Under this interpretation, the court concluded Allen's POBRA rights were never triggered, because, as far as Puglisi and other internal affairs investigators knew, they were investigating only "rumor[s]," and nothing that Allen said during the interview led Puglisi to believe Allen was "giving him any information that would result in [Allen] becoming a subject of the investigation." The court also implicitly rejected Allen's contention that the pre-interview communications interfered with his statutory right. Without specifically addressing the communications, the court concluded Allen's position was "inconsistent with the statutory requirement that the officer being interviewed is only entitled to representation 'at his or her request.' "

We disagree with the trial court's statutory interpretation or analysis. Contrary to the court's construction, the right to representation is not triggered by the interviewer's "knowledge that the interviewee is likely to make *statements* during the interview that may lead to punitive action." (Italics added.) Rather, as the statute explicitly states, the right is triggered by whether "*an interrogation* focuses on matters that are likely to result in punitive action." (§ 3303, subd. (i), italics added.) In

other words, the right is triggered by *the questions* the investigator will ask—that is, whether those questions will focus on matters that, if proven, would lead to punitive action—not on *the responses* the interviewee is expected to make. This is the only construction that is both consistent with the statutory text and workable in practice.

By assessing the questions it will ask, a public safety department can know *before the interrogation begins* whether it must afford the officer his or her rights under POBRA. In contrast, if the officer's responses were the determinative factor, the department would be left either to speculate about what the officer might say, or to wait for the officer to say something incriminating during the interrogation, before it could assess whether a representative should be (or should have been) present. This would deprive the officer of representation at the time it is most needed, and it would occasion unnecessary delays to allow the officer to find representation while an interrogation is already in progress. Neither outcome is consistent with the balance POBRA seeks to achieve between efficiency of investigations and fairness to officers. (See *Mays, supra,* 43 Cal.4th at p. 320.)

Moreover, as this case demonstrates, a response-based test will often produce absurd results. Here, the trial court held Allen did not have the right to representation because the Department was investigating mere "rumors," and Allen's responses never suggested to Puglisi that Allen might actually be subject to discipline. But the same could have been said for Rodriguez, who undeniably was entitled to representation under POBRA. Like Allen, investigators had yet to establish actual misconduct by Rodriguez, the allegations against him were mere "rumors," and

Rodriguez's untruthful responses never suggested to Puglisi that Rodriguez would be subject to discipline. But Rodriguez was plainly entitled to his rights under POBRA, because *the interrogation* focused on matters that, if proven, would likely result in punitive action. The same must be said for Allen.

When the Department began the Porto's I investigation, Puglisi had learned from Schilf about Rodriguez's alleged unlawful use of force and that an "unknown detective" had "witnessed the incident, or he knew of it." By the time Puglisi interviewed Allen, he had heard from Schiffner that (1) the alleged incident "happened right out in the hallway of the detective bureau" and it "was not hidden"; (2) "a detective walked by as [the incident] was happening and witnessed it"; and (3) though Schiffner could not remember who told him about the incident, he assumed it was one of the detectives he often spoke with about the Porto's case—Dahlia, Allen, Gordon, or Stohl. In view of this information, Puglisi had sufficient reason to know, at a minimum, that his interviews with these four detectives would focus on whether they had knowledge of Rodriguez's alleged misconduct that they had failed to report.

Indeed, Puglisi understood this at the time. As he testified during Allen's arbitration: "I expressed to [Taylor] a concern that if, in fact, this happened, that at some point we were going to get to somebody going down this rumor chain that potentially witnessed this misconduct, [and] that if they witnessed it and they failed to report it, that they were subject to discipline." Parrinello expressed the same view after Dahlia requested his assistance in securing representation. In fact, as far as we can tell from the record, Taylor was the only responsible party who insisted Allen and the other detectives were not entitled to

exercise their rights under POBRA. But the trial court found "Taylor may have informally discouraged reliance on POBRA as part of a scheme to subvert the Porto's investigation," and the Porto's II investigation unequivocally reached the same conclusion, resulting in Taylor's discharge for obstructing Porto's I. Because the right to request representation is triggered by whether an "interrogation focuses on matters that are likely to result in punitive action" (§ 3303, subd. (i)), and Allen was questioned specifically because he might have information about misconduct that he had failed to report, we conclude Allen had the right to have a representative present during his Porto's I interview.

The trial court also found there had been no POBRA violation because Allen never *requested* representation as expressly required by section 3303, subdivision (i). While the scope of the right is of course governed by the statutory text, we must interpret this requirement in a way that does not undermine the "notions of fundamental fairness" that undergird the Act's procedural protections. (*Pasadena, supra,* 51 Cal.3d at p. 572; *Mays, supra,* 43 Cal.4th at p. 320; see also *Sulier, supra*, 125 Cal.App.4th at p. 26 [in interpreting statutes "court should take into account matters such as context, the object in view, [and] the evils to be remedied" (italics omitted)].) Here, the trial court's interpretation of the request requirement did not adequately account for the effect of the Department's pre-interview communications to Allen. We conclude that where, as here, the right to representation is triggered, a public safety department interferes with POBRA by communicating to an officer that his or her rights do not apply, and this constitutes a

violation regardless of whether the officer ever requests representation.

Although we are unaware of a case directly addressing this issue, past cases considering the Act's general scope support our conclusion. For instance, in *Ellins*, the court rejected a literal interpretation of section 3303, subdivision (c) that would have permitted an interrogation to go forward so long as the officer was informed of the investigation's nature " 'prior to' the interrogation," "even if by mere minutes." (*Ellins, supra,* 244 Cal.App.4th at pp. 452-453; see § 3303, subd. (c) ["The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation."].) Relying in part on subdivision (i), the *Ellins* court reasoned that an officer must be notified " '*reasonably* prior to' the interrogation," because the officer must know the nature of the investigation and have an opportunity to assess "whether the interrogation is 'likely to result in punitive action' " before he or she can meaningfully exercise the right to request representation. (*Ellins,* at p. 453, italics added.)

Similarly, in *Upland Police Officers Assn. v. City of Upland* (2003) 111 Cal.App.4th 1294 (*Upland*), the court rejected a literal reading of the "representative of his or her choice" language in section 3303, subdivision (i), holding the choice must be limited to "a representative who is reasonably available to represent the officer, and who is physically able to represent the officer at the reasonably scheduled interrogation." (*Upland*, at p. 1306.) The contrary interpretation, the court reasoned, would result in absurdity and undermine "the need for prompt investigations of allegations of officer misconduct" by allowing an officer to "dictate, by their choice of representative, whether an

interrogation would occur." (*Id.* at pp. 1305-1306.) However, because "the right to a representative under section 3303, subdivision (i) resembles the right to counsel of choice in criminal cases," the *Upland* court held "the officer must be given a reasonable opportunity to obtain a representative of his or her choice to be present at the scheduled interrogation." (*Id.* at p. 1309.)

Ellins and *Upland* demonstrate how, under certain circumstances, courts will reject literal constructions of POBRA's text that undermine the statute's fundamental purposes. As these cases teach, reasonableness is the touchstone, and our construction of the "at his or her request" clause in section 3303, subdivision (i) must " 'balance the public interest in maintaining the efficiency and integrity of the police force with the police officer's interest in receiving fair treatment.' " (*Mays, supra,* 43 Cal.4th at p. 320; *Upland, supra,* 111 Cal.App.4th at p. 1304.)

The trial court concluded that, regardless of the interview's focus, there could have been no POBRA violation because "the officer being interviewed is only entitled to representation 'at his or her request,' " and the interviewer cannot be "expected to read the interviewee's mind to determine whether he/she is likely to say something that is likely to result in punitive action." As discussed, this analysis incorrectly treats the interviewee's *responses*, rather than the interviewer's *questions*, as the determinative factor in deciding whether the "interrogation focuses on matters that are likely to result in punitive action." (§ 3303, subd. (i).) Moreover, the court's reasoning overlooks the foreseeable effect that the Department's pre-interview notification and admonition had on Allen's exercise of his right to representation. By telling Allen he had no right to

representation in the same email that notified him of the interview, the Department predictably dissuaded him from considering whether he should have a representative present. And, by admonishing him at the beginning of the interview that his administrative rights under POBRA did not apply, the Department likewise discouraged him from requesting representation during the interview. We hold that, under these circumstances, where an interview is reasonably certain to "focus[ ] on matters that are likely to result in punitive action" (§ 3303, subd. (i)), an employing public safety department interferes with an officer's rights under POBRA by communicating to the officer that his or her rights do not apply. And this constitutes a violation regardless of whether the officer requests representation or not.[6]

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[6] This is not to say, as Allen suggests, that a public safety department violates POBRA anytime it advises an officer that he or she will be interviewed as a witness and is not under investigation. As explained, by assessing whether the interrogation's questions will focus on matters that could, if proven, subject the officer to punitive action, a department will know whether the officer is entitled to representation, and may properly advise the officer as such, prior to an interview. Any other rule would unnecessarily impede the efficiency of investigations and give officers the false impression that the department suspects misconduct when no reasonable basis exists to believe an interview could result in punitive action. (See, e.g., *Blue v. Office of Inspector General* (2018) 23 Cal.App.5th 138, 161 [Office of the Inspector General did not violate POBRA by telling officers they were not entitled to representation where none of the officers "had a reasonable basis to believe their interviews with the OIG 'could lead to punitive action' against them"].)

Here, the Department knew Allen's interrogation would focus on whether Allen had knowledge of another officer's alleged misconduct that he failed to report. Allen was therefore entitled to representation under section 3303, subdivision (i), and the Department interfered with and violated that right by communicating to Allen that his rights under POBRA did not apply. The trial court erred in finding no violation.

Subdivisions (d) and (e) of section 3309.5 address the remedies for a POBRA violation. "In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court *shall* render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer." (§ 3309.5, subd. (d)(1), italics added.) Subdivision (d) grants superior courts broad discretion to fashion "appropriate" equitable remedies to redress violations of POBRA and to deter future ones. (*Williams v. City of Los Angeles* (1988) 47 Cal.3d 195, 203 (*Williams*).) By enacting this provision, the Legislature determined the task of formulating a remedy was best left to the superior courts on a case-by-case basis. (*Ibid.*)

Subdivision (e) of section 3309.5 addresses the remedies of a civil penalty and damages. It provides for the imposition of a $25,000 civil penalty if the public safety department maliciously violated POBRA with the intent to injure the officer. In addition, it states: "If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or

protection was denied, the public safety department shall also be liable for the amount of the actual damages." (§ 3309.5, subd. (e).)

Our conclusion that the Department violated Allen's right to representation under POBRA thus mandates that we remand the matter to allow the trial court to exercise its broad discretion in determining what relief is appropriate—other than suppression of Allen's statements—to remedy the POBRA violation. (See *Jaramillo v. County of Orange* (2011) 200 Cal.App.4th 811, 827-828; *Riverside Sheriffs' Assn. v. County of Riverside* (2009) 173 Cal.App.4th 1410, 1426-1427.)

3. *The Trial Court Reasonably Exercised Its Discretion to Consider Allen's Untruthful Statements*

Although it found no POBRA violation, the trial court nevertheless considered Allen's request for suppression of the untruthful statements he made during the Porto's I investigation. Applying the two-part test our Supreme Court established in *Williams*, the trial court determined suppression would not be an appropriate remedy, even if a violation had occurred, because Allen was not prejudiced by the lack of representation and the adverse consequences of excluding the statements would have vastly outweighed the deterrent value of suppression. We conclude the court applied the correct legal standard and its determinations were supported by the evidence.

Section 3303 does not specify a remedy for violation of its provisions. Instead, as we discussed above, remedies are addressed by subdivisions (d) and (e) of section 3309.5.

In *Williams*, our Supreme Court considered whether a violation of POBRA could ever justify the suppression of evidence under section 3309.5, given that, at the time, the Act did not

expressly provide for such a remedy under any circumstance.[7] The peace officer in *Williams* argued admissions he made during an internal affairs investigation should have been suppressed in a subsequent disciplinary hearing because he was not advised, as required by *Lybarger*, *supra*, 40 Cal.3d 822, that his statements could not be used against him in a criminal proceeding.[8]

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[7] In 1994, subsequent to the *Williams* decision, the legislature amended section 3303 by adding subdivision (f). That subdivision now provides for exclusion, "in any subsequent civil proceeding," of statements made "during interrogation by a public safety officer under duress, coercion, or threat of punitive action." (§ 3303, subd. (f).) Subdivision (f) is subject to four enumerated qualifications, none of which the City advances here.

[8] In *Lybarger*, *supra*, 40 Cal.3d 822, our Supreme Court held a peace officer must be advised of the qualified nature of his right to remain silent before administrative sanctions, such as dismissal for insubordination, could be invoked. As relevant to the court's holding, section 3303, subdivision (h) provides: "If prior to or during the interrogation of a public safety officer it is deemed that he . . . may be charged with a criminal offense, he . . . shall be immediately informed of his . . . constitutional rights." The *Lybarger* court determined that, in the context of an administrative inquiry into possible criminal misconduct, the officer's " 'constitutional rights' " consisted of the basic *Miranda* rights (see *Miranda v. Arizona* (1966) 384 U.S. 436). "In other words," the court explained, "[Officer Lybarger] should have been told, among other things, that although he had the right to remain silent and not incriminate himself, (1) his silence could be deemed insubordination, leading to administrative discipline, and (2) any statement made under the compulsion of the threat of such discipline could not be used against him in any subsequent criminal proceeding. [Citations.]" (*Lybarger, supra,* 40 Cal.3d at p. 829.)

(*Williams*, *supra*, 47 Cal.3d at pp. 197-198.) The *Williams* court found "no basis for a complete ban on exclusion of evidence as a remedy," but held suppression would not be appropriate if the officer "was not prejudiced individually" by the violation, or if the effect of exclusion would have "no appropriate deterrent value." (*Id*. at pp. 203-205; *Labio*, *supra*, 57 Cal.App.4th at p. 1516.) Assessing prejudice, the Supreme Court perceived "no 'reasonable basis' for the trial court's [exclusion order]," as the officer had *chosen* to speak in spite of the department's failure to give him the assurance that his statements could not be used against him in a criminal proceeding. (*Williams,* at p. 204.) And, because existing law already created an adequate incentive to advise an officer of his rights under *Lybarger*, the *Williams* court found little deterrent value would be realized from excluding the statements and reinstating the officer despite his admitted misconduct.[9] (*Williams*, at pp. 204-205.)

Applying *Williams*, the trial court found Allen "was not materially prejudiced by the absence of representation," because he fully understood his obligation to answer investigators' questions "truthfully, regardless of whether he was represented." Consistent with that finding, the record shows that at the beginning of his Porto's I interview, Allen acknowledged and understood, even without a representative present, that he had an obligation to answer Puglisi's questions "in a truthful and

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[9] Under *Lybarger*, *supra*, 40 Cal.3d 822, if an officer is not advised of the rights specified in that case (see fn. 8, *ante*), the officer cannot be disciplined for choosing to remain silent. The *Williams* court concluded this existing rule provided an adequate deterrent against future violations of *Lybarger* and POBRA. (*Williams, supra,* 47 Cal.3d at p. 204.)

accurate manner, in compliance with the duty manual." In his arbitration testimony, Allen likewise admitted he understood that "whether there was a representative present or otherwise," he was "required to tell the truth when asked a question." And he conceded that his friendship with Dahlia did not supersede his duty of honesty in an official investigation, nor did Dahlia's fears justify his or Dahlia's decision to mislead investigators about Rodriguez's misconduct. In view of these admissions, the trial court reasonably concluded that suppression of Allen's dishonest statements was not warranted, as Allen was not prejudiced by the lack of representation.

The trial court also reasonably concluded that the adverse consequences of suppressing Allen's dishonest statements would far exceed the prospects for deterring future POBRA violations. (See *Williams, supra,* 47 Cal.3d at p. 205 [where "marginal increase in deterrence conceivably afforded by the trial court's order" was "so out of scale with its consequences," suppression was not "appropriate" within the meaning of section 3309.5, subdivision (c)].) Consistent with that conclusion, the record unambiguously establishes that credibility and honesty are essential to the proper performance of a peace officer's duties. The Department's duty manual mandates that "[t]he highest standard of truthfulness shall be maintained by every employee" and "[n]o employee shall make a false official statement to any other employee, nor knowingly enter or cause to be entered in any record or report, any inaccurate, false, or improper information." Suppression, the court reasonably found, would have undermined this critical mandate, by "effectively sanction[ing]" Allen's "willful misconduct" and allowing him to "escape punishment for his decision to dishonestly respond to

official inquiries." On the other hand, the record shows suppression would have had little deterrent value, as the Department had already expelled the principal most responsible for denying Allen his right to representation—Deputy Chief Taylor—for that misconduct following the Porto's II investigation. Given this record, the trial court reasonably exercised its discretion to consider suppressing Allen's dishonest statements as a potential remedy for a POBRA violation, and rejected that remedy.

DISPOSITION

The judgment is reversed and the trial court is directed to vacate its order denying the petition for writ of mandate. On remand, the trial court shall conduct further proceedings to determine the appropriate remedy or remedies to be included in any writ issued by the court to resolve the POBRA violation. Allen shall recover his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.

We concur:

EDMON, P. J.

LAVIN, J.