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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DAVEL D. WALKER,

Petitioner,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

THE PEOPLE,

Real Party in Interest.

E056345

(Super.Ct.No. SWF1102631)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Timothy F. Freer,
Judge. Petition granted.

Gary Windom, Public Defender, and Lisa M. Larson, Deputy Public Defender, for
Petitioner.

No appearance for Respondent.

Paul Zellerbach, District Attorney, and Alan D. Tate, Deputy District Attorney, for Real Party in Interest.

In this matter, we have reviewed the petition and the opposition filed by real party in interest. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

At the time the People presented the peremptory challenge against Judge Angel M. Bermudez on May 17, 2012, Judge Bermudez had already heard and ruled on petitioner Walker's motion to suppress or exclude statements made by Walker to police after he arguably invoked his Fifth Amendment right to silence. Case law holds that a ruling on such a motion, with its substantial effect on the further prosecution of the case, involves contested issues of fact relating to the merits of the case. (See *Abdul Y. v. Superior Court* (1982) 130 Cal.App.3d 847; *Briggs v. Superior Court* (2001) 87 Cal.App.4th 312.) Accordingly, pursuant to the provisions of Code of Civil Procedure section 170.6, subdivision (a)(2), the People's peremptory challenge to Judge Bermudez was untimely and should have been rejected.

Accordingly, the petition for writ of mandate is granted.

DISPOSITION

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to strike the peremptory challenge filed against Judge Angel M. Bermudez as untimely.

Petitioner is directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

The previously ordered stay is hereby lifted.

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MILLER
J.

We concur:

RAMIREZ
P. J.

KING
J.