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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. MYFORD DAVID JENKINS, Defendant and Appellant.	B233790 (Los Angeles County Super. Ct. No. TA113927)

APPEAL from a judgment of the Superior Court of Los Angeles County. Paul A. Bacigalupo, Judge. Affirmed.

Libby A. Ryan, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Zee Rodriguez, Deputy Attorneys General, for Plaintiff and Respondent.

* * * * * *

Appellant Myford David Jenkins appeals from the judgment entered upon his conviction by jury of one count of resisting an executive officer (Pen. Code, § 69).[1] In a separate proceeding, appellant admitted that he had suffered a prior felony conviction for robbery (§ 211) within the meaning of section 667, subdivision (a)(1) and the "Three Strikes" law (§§ 1170.12, subds. (a)-(d), 667, subds. (b)-(i)), and that he had suffered three prior convictions within the meaning of section 667.5, subdivision (b). Appellant was sentenced to seven years in state prison, consisting of four years on the resisting charge based on the middle term of two years doubled pursuant to the Three Strikes law, plus three one-year enhancements pursuant to section 667.5, subdivision (b).

Appellant contends that there was insufficient evidence to support the trial court's imposition of the three one-year enhancements under section 667.5, subdivision (b). Appellant also seeks review of the trial court's in camera hearing pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

The totality of the circumstances demonstrated that appellant's admission supported imposition of the three one-year enhancements. We find no abuse of discretion with respect to the in camera hearing. We affirm the judgment.

FACTS

On August 22, 2010, Los Angeles Police Officer Kurt Lockwood was patrolling with his partner, Officer Jeffrey Cruise. The officers were in uniform in a marked black and white patrol car. At approximately 9:00 p.m. they responded to a possible domestic violence incident near Figueroa and 94th Street in the City of Los Angeles. The officers spoke with Feshay and Brenda Youngblood and were told that appellant had broken into their home, struck one of them,[2] and then fled. The Youngbloods pointed to appellant

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[1] All further statutory references are to the Penal Code unless otherwise stated.

[2] The record is not clear as to which of the Youngbloods was allegedly struck by appellant.

wearing a white backpack as he walked down the street, and told the officers that he was the suspect.

The officers approached appellant and asked him to turn around and place his hands on his head. Appellant refused to comply and said "Why the fuck are you stopping me?" The officers attempted to handcuff appellant and a struggle ensued. Appellant punched Officer Lockwood in the shoulder causing his arm to go numb. Appellant continued to flail his arms and tried to hit the officers. Officer Lockwood punched appellant twice and kicked his legs four times. Appellant continued to resist and Officer Lockwood called for backup.

When appellant tried to escape from Officer Cruise's grasp, Officer Lockwood retrieved his taser from the patrol car and tasered appellant twice in the legs. Officer Pierre Vieillemaringe and his partner Officer Edwin Castro arrived and helped to roll appellant over and handcuff him.

Appellant testified that on the evening in question he left his girlfriend Brenda Youngblood's house and was walking down the street when he heard police sirens and saw a police car pass by him and stop at the Youngblood's house. He stopped when the officers ordered him to do so and placed his hands on his head. He pulled his injured hand away when one of the officers squeezed it. Officer Lockwood then punched him twice in the face and appellant reacted by punching Officer Lockwood in the shoulder. Appellant was repeatedly punched and kicked in the ribs before being tasered and eventually handcuffed.

DISCUSSION

I. The Trial Court Properly Imposed Three Section 667.5, Subdivision (b) Enhancements

Appellant contends there was insufficient evidence to support the imposition of three one-year enhancements under section 667.5, subdivision (b) because he only admitted that he had suffered the prior convictions but did not admit all of the elements of

the enhancements. Specifically appellant contends that he did not admit that he (1) served separate prison terms, and (2) did not remain free of both prison custody and commission of a new offense resulting in a felony conviction for a period of five years (the "washout" provision). We disagree. The totality of the circumstances demonstrated that appellant understood and admitted all requisite elements of the enhancement.

Section 667.5 provides in relevant part: "Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows: [¶] . . . . [¶] (b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction."

The statute further defines a "prior separate prison term" as "a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration." (§ 667.5, subd. (g).)

Proof of an enhancement under section 667.5, subdivision (b) requires the prosecution to establish that the defendant: (1) was previously convicted of a felony; (2) was imprisoned as a result of that conviction; (3) completed the term of imprisonment; and (4) did not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. (*People v. Tenner* (1993) 6 Cal.4th 559, 563.) "Due process requires the prosecution to shoulder the burden of proving each element of a sentence enhancement beyond a reasonable doubt." (*Id*. at p. 566.) We review section 667.5 enhancements in the light most favorable to the

judgment "to determine whether substantial evidence supports the fact finder's conclusion, i.e., whether a reasonable trier of fact could have found that the prosecution . . . sustained its burden of proving the defendant guilty beyond a reasonable doubt." (*People v. Tenner, supra*, at p. 567.)

Relying on *People v. James* (1978) 88 Cal.App.3d 150 (*James*) and *People v. Franco* (1970) 4 Cal.App.3d 535 (*Franco*), appellant contends the one-year enhancements should not have been imposed because the prosecutor did not read the entire information to appellant before he admitted the priors, and even if he had, the information failed to allege that appellant served "separate" prison terms on the prior convictions.

In *James*, the appellate court found insufficient evidence to support the section 667.5, subdivision (b) enhancements even though it "might be inferred from the dates alleged and from the content of the allegations" that the defendant had served separate sentences for forgery and robbery "the information did not charge specifically that defendant had served separate prison terms for the two prior convictions." (*James, supra*, 88 Cal.App.3d at p. 161.)

In *Franco*, the defendant admitted one of the prior convictions and the trial court read the allegations of the information including the charge that the defendant was previously convicted of petty theft and served a term for that crime. (*Franco, supra*, 4 Cal.App.3d at p. 539.) The appellate court cited *People v. Jackson* (1950) 36 Cal.2d 281, 287 for the proposition that "[w]here an information charges the accused with a former conviction, and with having served a term of imprisonment therefor, and upon arraignment and the reading of the information to him he admits, without reservation, that he has suffered such conviction, it must be assumed that he knowingly admitted that he served the sentence as alleged in the information. To determine otherwise would be quibbling with the facts." (*Franco, supra*, at p. 540.) The appellate court held that the defendant's admission of the prior conviction included an admission that he had served a

term as alleged in the information even though he was not asked separately whether he had served such a term. (*Ibid*.)

Subsequent to *James* and *Franco*, the California Supreme Court in *People v. Mosby* (2004) 33 Cal.4th 353 (*Mosby*) held that we look to the totality of the circumstances to determine whether the advisements given a defendant about his various trial-related rights were sufficient. The court held that a review of the entire record "sheds light on defendant's understanding" in cases involving admissions of prior prison term enhancements. (*Id.* at pp. 364, 365; see also *People v. Christian* (2005) 125 Cal.App.4th 688, 694.) Viewing appellant's admission of his prior convictions in the context of the entire proceedings, it is clear that appellant was admitting the allegations set forth in the information, which included all elements necessary to support an enhancement under section 667.5, subdivision (b).

The information alleged: "It is further alleged as to count(s) 1, 2 and 3 pursuant to Penal Code section 667.5(b) that the defendant(s), MYFORD DAVID JENKINS, has suffered the following prior conviction(s) . . . ." Thereafter, the information separately listed violations of section 211, section 470, subdivision (b), and section 11350 of the Health & Safety Code by case number, conviction date and court, and alleged: "and that a term was served as described in Penal Code section 667.5 for said offense(s), and that the defendant did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term."

At the time the jury reached a verdict on the charged offense, the trial court advised appellant of his right to a jury trial on the prior convictions and took express waivers of appellant's right to a jury trial, right to cross-examination of witnesses and right against self-incrimination on all three prior felony convictions. The jury returned a guilty verdict on the charge of resisting an executive officer (§ 69).

Appellant subsequently waived a court trial on the prior convictions. The prosecutor then proceeded to question appellant in admitting the priors:

"[PROSECUTOR]: Okay. In case TA113927, there's an allegation pursuant to Penal Code section 1170.12(a) through (d) and 667(b) through (i), that you suffered a prior conviction in case TA072855, a violation of Penal Code section 211, with the conviction date of December 23rd, 2003, the County of Los Angeles Superior Court. Do you admit that prior?

"[APPELLANT]: Yes.

"[PROSECUTOR]: And, also, that suffered three prior convictions pursuant to Penal Code section 667.5(b), the same mentioned prior in case TA072855, a violation of Penal Code section 211, conviction date of December 23rd, 2003, Los Angeles, California, Superior Court. Do you admit the prior for those purposes?

"[APPELLANT]: Yes.

"[PROSECUTOR]: And also in case LA036630, a violation of Penal Code section 470(b), as in boy, with a conviction date of October 17th, 2000, in the County of Los Angeles, Superior Court. Do you admit that prior?

"[APPELLANT]: Yes.

"[PROSECUTOR]: And, also, in case FSB03019, a conviction for a violation of Health and Safety Code section 11350(a), with a conviction date of January 29th, 1994, in the County of San Bernardino Superior Court. Do you admit that prior?

"[APPELLANT]: Yes."

Appellant's counsel joined in the admissions.[3]

Viewing appellant's admission under the totality of the circumstances we are satisfied that substantial evidence supports the trial court's imposition of the enhancement under section 667.5, subdivision (b). (See, e.g., *People v. Ebner* (1966) 64 Cal.2d 297, 303 ["admission of the prior convictions is not limited in scope to the fact of the convictions but extends to all allegations concerning the felonies contained in the

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[3] The People moved to amend the conviction date with regards to case No. TA072855 to reflect December 23, 2003, and with regards to case No. FSB03019 to reflect a conviction date of January 29, 1994.

information"]; *People v. Bowie* (1992) 11 Cal.App.4th 1263, 1266 ["admission of a sentence enhancement allegation is deemed to constitute a judicial admission of every element of the offense charged"]; *People v. Cardenas* (1987) 192 Cal.App.3d 51, 61 ["admission of prior convictions where the charging information specifically alleges the convictions resulted in prior separate prison terms is deemed an admission such prison terms were separately served"].) The record shows that the information advised appellant of the elements of a section 667.5, subdivision (b) enhancement allegation including the requirement of separate prison terms and the applicability of the washout provision; the prosecutor referred to section 667.5, subdivision (b) in taking appellant's admission to the three prior convictions and appellant admitted that he suffered those convictions; and appellant's counsel joined in the admissions informing the court that appellant was "willing to waive the court trial on the priors and just admit them."

The trial court did not err by imposing three one-year prior prison term enhancements.

II. The *Pitchess* Motion

Appellant also requests that we independently review the sealed transcript of the in camera proceedings on his *Pitchess* motion, which we have done. The trial court's findings during that review, as reflected in the sealed transcript, were sufficient to permit appellate review of its ruling. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229, 1232.) We find no error in the trial court's ruling at the in camera hearing.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

ASHMANN-GERST