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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND LAVERN CLAY,

Defendant and Appellant.

B279498

(Los Angeles County  
Super. Ct. No. BA447033)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig J. Mitchell, Judge. Affirmed.

Lori A. Quick, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Michael C. Keller and John Yang, Deputy Attorneys General, for Plaintiff and Respondent.

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“[A] knowing and intelligent jury waiver requires an appreciation of the *nature* of the jury trial right and the *consequences* of forgoing this right.” (*People v. Sivongxxay* (2017) 3 Cal.5th 151, 171.) There is no merit to defendant’s argument that his jury trial waiver was not knowingly and intelligently made. We affirm the judgment of conviction.

### **BACKGROUND**

Defendant Raymond Lavern Clay was charged with one count of failure to register as a sex offender in violation of Penal Code section 290.015, subdivision (a).<sup>1</sup> It is undisputed that when defendant was a juvenile, a petition was sustained for an offense requiring him to register as a sex offender. Seven prior felonies within the meaning of section 1203, subdivision (e)(4) and section 667.5, subdivision (b) were alleged. One prior serious or violent felony was alleged.

Prior to trial, jurors were called and administered an oath. Defendant’s motion to bifurcate trial on his prior convictions was granted. Defense counsel then informed the court that defendant “indicated to me that he would waive his right to a jury trial.” Following a colloquy, defendant affirmed that he understood he

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<sup>1</sup> Penal Code section 290.015, subdivision (a) applies to persons convicted of committing certain sex offenses and provides: “A person who is subject to the Act shall register, or reregister if he or she has previously registered, upon release from incarceration, placement, commitment, or release on probation pursuant to subdivision (b) of Section 290. This section shall not apply to a person who is incarcerated for less than 30 days if he or she has registered as required by the Act, he or she returns after incarceration to the last registered address, and the annual update of registration that is required to occur within five working days of his or her birthday, pursuant to subdivision (a) of Section 290.012, did not fall within that incarceration period.”

was giving up “the right to have the 12 jurors listen to the evidence.” He further acknowledged that he understood the judge, not the jury, would make the determination as to his guilt. Both defendant and defense counsel agreed to waive the right to a jury trial. Potential jurors were then dismissed.

Evidence was presented in a court trial. The parties stipulated that defendant was notified in 2014 of his duty to register as a sex offender. The parties further stipulated that defendant was not given notice of his duty to register upon his release on April 17, 2016. Defendant testified he received other notifications and registered between 12 and 14 times but did not receive notification following his 2016 release. Defendant testified that he believed that he no longer had to register and assumed that his earlier filed petition to remove the registration requirement had been granted.

The court found defendant guilty of failing to register. After the court found defendant guilty, the court asked defense counsel to confer with defendant regarding how he wished to proceed. Defense counsel requested that the court immediately sentence defendant. The court indicated that would require defendant to admit the strike prior. When the court indicated that it was inclined “to take his admission of the strike prior” and then wait to sentence him, defense counsel responded, “That sounds good, Your Honor.” The court advised defendant of his right to question witnesses, to remain silent, and to present evidence. The court informed defendant that if he admitted he sustained a prior strike conviction, “that will establish that fact beyond a reasonable doubt.”

Following these advisements, defendant admitted that he suffered a prior strike conviction, specifically a robbery (Pen.

Code, § 211). Defense counsel joined in the admission. Ultimately the court sentenced defendant to 32 months (the low term doubled), which the court calculated would add just over a month to the time defendant had served.

### DISCUSSION

Defendant’s pretrial jury trial waiver—which indisputably—was knowingly and intelligent forecloses defendant’s argument that he failed to knowingly and intelligently waive jury trial on the prior conviction allegation. As shall become clear, defendant’s contrary argument based on outdated and inapplicable authority lacks merit.

“ ‘[I]t is settled that where a defendant waives a jury trial he is deemed to have consented to a trial of all of the issues in the case before the court sitting without a jury.’ ” (*People v. Sivongxxay, supra*, 3 Cal.5th at p. 172.) This rule means that the waiver of a jury trial includes the waiver of a jury to determine the truth of a prior conviction allegation.<sup>2</sup> As our Supreme Court explained: “ ‘[A] prior conviction charge is to be determined solely as one of the issues in the trial for the new offense.’ [Citation.] ‘It is settled that where a defendant waives a jury trial he is deemed to have consented to a trial of all of the issues in the case before the court sitting without a jury.’ ” (*People v. Berutko* (1969) 71 Cal.2d 84, 94.) Applying our high court’s holding here ineluctably leads to the conclusion that defendant’s pretrial jury trial waiver encompassed all issues including the allegation that he suffered a prior conviction. (See *People v.*

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<sup>2</sup> Defendant’s right to a jury trial on a prior conviction allegation is statutory, not constitutional. (Pen. Code, § 1025; *People v. Lloyd* (2015) 236 Cal.App.4th 49, 57, fn. 7.)

*Russell* (1961) 195 Cal.App.2d 529, 532 [pretrial jury trial waiver included issue of alleged prior conviction].)

Defendant's reliance on *People v. Mosby* (2004) 33 Cal.4th 353 (*Mosby*) is misplaced. In *Mosby* our high court considered the propriety of an admission of a prior conviction when a transcript failed to reveal complete waivers. Defendant tries to argue that he received incomplete waivers because the trial court did not inform him of his right to a jury trial just before he admitted his prior conviction. But, because defendant had already waived his right to a jury trial, there was no need to advise him of that right prior to his admission. In contrast to *Mosby*, defendant did not receive incomplete admonitions, and the principles in *Mosby* are simply inapplicable.<sup>3</sup>

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<sup>3</sup> Rejecting an earlier test, the *Mosby* court explained that “if the transcript does not reveal complete advisements and waivers, the reviewing court must examine the record of ‘the entire proceeding’ to assess whether the defendant’s admission of the prior conviction was intelligent and voluntary in light of the totality of the circumstances.” (*Mosby, supra*, 33 Cal.4th at p. 361.) The high court held that “[w]hen immediately after a jury verdict of guilty, a defendant admits a prior conviction after being advised of and waiving only the right to trial,” the waiver may be found knowingly and intelligent if the “totality of circumstances surrounding the admission” indicates that defendant intended to waive the “rights to remain silent and to confront adverse witnesses.” (*Id.* at p. 356.) Applying the test to the facts in *Mosby*, the court concluded that the defendant knowingly and intelligently waived his rights and admitted his prior conviction. Relying on the fact that defendant was represented by counsel, had exercised his right to remain silent, and had through counsel confronted witnesses, the court found defendant “would have understood that at a trial he had the right of confrontation.” (*Id.* at p. 364.) The court also considered

The other cases defendant cites in addition to *Mosby* are not persuasive because they were disapproved of in *Mosby*. (*Mosby*, *supra*, 33 Cal.4th at p. 365, fn. 3 [disapproving *People v. Garcia* (1996) 45 Cal.App.4th 1242, *People v. Torres* (1996) 43 Cal.App.4th 1073, and *People v. Howard* (1994) 25 Cal.App.4th 1660].) Additionally, none of the cases concern the purported failure to admonish a defendant of his right to a jury trial before the defendant's admission of a prior conviction when the defendant waived the right to a jury trial at the outset. Thus, none is on point. In short, defendant knowingly and intelligently waived his right to a jury trial, and his waiver encompassed the trial on the prior strike allegation.

#### **DISPOSITION**

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.

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defendant's previous experience in the criminal justice system, which suggested that he knew he did not have to admit the prior conviction but could have had a court or jury trial. (*Id.* at p. 365.)