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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.

JOHNNY EARL JACKSON, JR.,

Defendant and Appellant.

B280386

(Los Angeles County
Super. Ct. No. NA104857)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark C. Kim, Judge. Affirmed in part, vacated in part, and remanded.

Anthony W. Tahan, 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, Steven E. Mercer and Michael C. Keller, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Johnny Jackson of second degree robbery. Jackson also admitted four prior convictions, including a prior strike. On appeal, Jackson asks us to review the sealed transcript of the *in camera* proceedings the trial court conducted pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). In addition, he asserts the enhancements must be vacated because the trial court failed to give the required advisements before he admitted the prior convictions. We vacate Jackson's sentence and remand for retrial of the prior conviction allegations, but otherwise affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On August 26, 2016, Jackson grabbed a necklace¹ off Christopher D.'s neck as Christopher D. rode past him on a skateboard. Christopher D. stopped and asked Jackson to return the necklace. Jackson responded by putting the necklace in his pocket and moving toward Christopher D. in an attacking stance. At that point, Long Beach Police Officer Jorge Salazar approached the men and told them to "break it up." Jackson took the necklace out of his pocket, dropped it to the ground, and started to walk away.

In a first amended information, Jackson was charged with one count of second degree robbery (Pen. Code, § 212.5, subd. (c)).² It was alleged that Jackson served four prior prison terms for: (1) unlawful driving or taking a vehicle (Veh. Code, § 10851,

¹ The necklace cost \$630.

² All further unspecified section references are to the Penal Code.

subd. (a)); (2) receiving stolen property (§ 496); (3) first degree burglary (§ 459); and (4) grand theft (§ 487, subd. (b)(3).) (§ 667.5, subd. (b).) It was further alleged that Jackson's burglary conviction qualified as a strike. (§§ 667, 1170.12.)

On Jackson's motion, the trial court bifurcated trial of the prior conviction allegations. As we discuss in detail below, at the conclusion of the People's case-in-chief on the robbery charge, Jackson admitted the prior conviction allegations. Jackson then presented his defense, during which he testified regarding his prior convictions.

The jury convicted Jackson of robbery in the second degree (§ 212.5, subd. (c)). Jackson was sentenced to an aggregate term of 10 years, comprised of the low term of two years, doubled because of the prior strike, plus five years for the prior serious felony enhancement, and a one-year enhancement pursuant to section 667.5, subdivision (b). The court struck the remaining prior conviction allegations for sentencing purposes.

Jackson timely appealed.

DISCUSSION

I. The Trial Court Conducted a Sufficient *Pitchess* Review and Properly Determined No Disclosures Were Required

Prior to trial, Jackson filed a motion for disclosure of Officer Salazar's personnel records pursuant to *Pitchess* and Evidence Code sections 1043 et seq.³ On November 16, 2016, the trial court conducted an *in camera* hearing related to Officer

³ The motion also sought disclosure of personnel records of a second officer, but the trial court found insufficient cause to warrant review of such records. On appeal, Jackson does not challenge that finding.

Salazar's personnel records and found there were no relevant records to disclose. On appeal, Jackson asks us to review the sealed transcript of that hearing.

If a defendant shows good cause for the disclosure of confidential peace officer personnel records, the court must conduct an *in camera* hearing to determine what information, if any, must be disclosed. (*People v. Gaines* (2009) 46 Cal.4th 172, 179; Evid. Code, § 1043, subd. (b)(3).) In connection with such a hearing, "the custodian of the [personnel] records is obligated to bring to the trial court all 'potentially relevant' documents to permit the trial court to examine them for itself." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228–1229 (*Mooc*).) The trial court then reviews the documents in chambers, and must disclose to the defendant " 'such information [that] is relevant to the subject matter involved in the pending litigation.' " (*Id.* at p. 1226.) To ensure meaningful appellate review, the trial court must "make a record of what documents it examined before ruling on the *Pitchess* motion." (*Id.* at p. 1229.)

In response to Jackson's request, we have reviewed the sealed record of the *in camera Pitchess* hearing. We conclude the trial court properly conducted the hearing and appropriately exercised its discretion in ruling that no discoverable material existed. (*People v. Myles* (2012) 53 Cal.4th 1181, 1209; *Mooc*, *supra*, 26 Cal.4th at pp. 1228, 1232.)

II. The Prior Enhancements Must Be Vacated

Jackson asserts the prior conviction enhancements must be vacated because the trial court failed to advise him of his constitutional rights and the penal consequences of his admissions. We agree.

A. Background

At the close of the People's case-in-chief, and outside the presence of the jury, Jackson's counsel represented to the court that Jackson intended to testify in his own defense. Because the prosecutor intended to impeach Jackson with his prior convictions, counsel asked that the court exclude or sanitize their use for impeachment purposes. The prosecutor agreed to sanitize the convictions. Jackson's counsel indicated that Jackson would waive trial on the priors and admit them.

Jackson's counsel then asked the trial court to advise Jackson of his right not to testify in his own defense, and the court did so. After Jackson verified it was his choice to testify at trial, the court asked the prosecutor to question Jackson regarding his admissions.

In response to questioning by the prosecutor, Jackson admitted he was convicted and served prison time for violations of sections 496, 487, subdivision (b)(3), 459, and Vehicle Code section 10851, subdivision (a). Jackson was not advised of, and did not waive, any rights in connection with his admissions. The trial court gave no further advisements. Jackson's counsel and the prosecutor stated they joined in the waivers and admissions, and stipulated to a factual basis for the admissions.

B. Legal Principles

When a criminal defendant enters a plea of guilty, the trial court is required to ensure that the plea is knowing and voluntary. (*People v. Cross* (2015) 61 Cal.4th 164, 170 (*Cross*); see *Boykin v. Alabama* (1969) 395 U.S. 238, 243–244 (*Boykin*); *In re Tahl* (1969) 1 Cal.3d 122, 132 (*Tahl*).) To satisfy itself that a plea is indeed knowing and voluntary, the trial court typically

must advise the defendant of three constitutional rights—the right to a jury trial, the right against self-incrimination, and the right to confront and cross-examine witnesses⁴—as well as obtain a waiver of each. (*Cross, supra*, at p. 170.) The same requirements of advisement and waiver apply when a defendant admits the truth of a prior conviction allegation that subjects him to increased punishment. (*In re Yurko* (1974) 10 Cal.3d 857, 863, 865 (*Yurko*); accord *Cross, supra*, at p. 170.) Additionally, in such a situation, the defendant must be advised of the full penal consequences of a truthful finding of the prior conviction allegation. (*Yurko, supra*, at p. 865; *Cross, supra*, at p. 170.)

In *Mosby, supra*, 33 Cal.4th 353, the California Supreme Court distinguished between “silent-record” and “incomplete advisement” cases. The high court explained that “[t]ruly silent-record cases are those that show no express advisement or waiver of the *Boykin–Tahl* rights before a defendant’s admission of a prior conviction.” (*Id.* at p. 361.) In such cases, the reviewing court “cannot infer that in admitting the prior the defendant has knowingly and intelligently waived [the right to a trial on the prior convictions] as well as the associated rights to silence and confrontation of witnesses.” (*Id.* at p. 362.) In contrast, where the defendant has been advised of his right to a trial on the prior convictions, but not the other *Boykin–Tahl* rights, the reviewing court may infer the admission is voluntary and intelligent under the totality of the circumstances.⁵ (*Id.* at pp. 362–365.)

⁴ These are often referred to as *Boykin–Tahl* rights. (See *People v. Mosby* (2004) 33 Cal.4th 353, 360 (*Mosby*).)

⁵ The court may, for example, infer from the defendant’s prior history with the criminal justice system that he is aware of

C. Analysis

Here, before accepting Jackson's admissions, the trial court failed to advise him of his right to a trial, his right to remain silent, and his right to confront and cross-examine witnesses.⁶ In addition, the court did not advise Jackson of the penal consequences of a truthful finding of the prior conviction allegations. Further, Jackson did not expressly waive any such rights in connection with the admissions.

The Attorney General concedes the trial court failed to give these required admonitions, but insists the record affirmatively shows Jackson's admissions were voluntary and intelligent. In support, the Attorney General points out that because the admissions were made after the People's case-in-chief, Jackson had watched his own counsel cross-examine witnesses and therefore "clearly understood how the right of cross-examination operated." The Attorney General also suggests Jackson was aware of his rights because his prior convictions involved guilty pleas, whereby he presumably received *Boykin–Tahl* admonitions. Jackson's general knowledge of such rights, however, is irrelevant given he was not advised of his right to a trial on the prior conviction allegations. (*Mosby, supra*, 33

his right to remain silent and confront witnesses at trial. (*Mosby, supra*, 33 Cal.4th at p. 365.)

⁶ Although the trial court informed Jackson of his right to remain silent before accepting his admissions, the admonition came in the context of Jackson's decision to testify in the trial of the underlying robbery allegation. The court did not indicate that the right would also apply to a trial to establish the prior convictions.

Cal.4th at p. 362.) Accordingly, we may not infer that Jackson's admissions were intelligent and voluntary, and must remand for retrial of the prior conviction allegations. (*Ibid.*; *People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1421.)

DISPOSITION

The prior convictions and sentence are vacated. The case is remanded so that either the trial court may take proper admissions of the prior convictions or Jackson can assert his right to a jury or court trial. In either case, the trial court must resentence Jackson upon resolution of the prior convictions.

In all other respects, the judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

ROGAN, J.*

* Judge of Orange Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.