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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.

B293680

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

APPEAL from a judgment of the Superior Court of Los Angeles County. Judith L. Miller, Judge. Affirmed.

Janet Uson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant Attorney General, Steven D. Matthews and Heidi Salerno, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

A jury convicted defendant and appellant Johnny E. Jackson Jr. of second-degree robbery. Jackson waived his right to a jury trial on multiple prior conviction allegations, and the trial court found the allegations true. On appeal, Jackson contends his waiver of a jury trial was not knowing, intelligent, or voluntary. We affirm.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>

Jackson was charged by information with one count of robbery in the second degree (Pen. Code, § 212.5, subd. (c)).<sup>2</sup> It was further alleged that, for purposes of section 667.5, subdivision (b), Jackson had suffered four prior convictions. In addition, it was alleged one of his prior convictions qualified as a serious felony for purposes of sentencing enhancements under sections 667 and 1170.12.

During trial, Jackson admitted suffering the prior convictions. The jury convicted him of second-degree robbery, and the court sentenced him to 10 years in prison.<sup>3</sup>

On appeal of that judgment, we concluded Jackson's admissions of the prior convictions were not voluntary and intelligent. (See *People v. Jackson*, *supra*, B280386.) After vacating the admissions and sentence, we remanded the case so

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<sup>1</sup> We take some of the facts from our prior nonpublished opinion in this case, *People v. Jackson*, (May 7, 2018, B280386) [nonpub. opn.].

<sup>2</sup> All further unspecified section references are to the Penal Code.

<sup>3</sup> The details of Jackson's crime is not relevant to this appeal, so we need not discuss them.

the trial court could take proper admissions or allow Jackson to assert his right to a jury or court trial on the prior conviction allegations.

At the initial hearing on remand, Jackson's counsel requested a jury trial on the prior conviction allegations. After further discussion with the court, Jackson eventually waived his right to a jury trial and agreed to a court trial. The following discussion occurred at that hearing:

"The Court: This is a remittitur that has come back. What date would you like to set for either pretrial or further proceedings or hearing?

[Prosecutor]: Jury trial.

The Court: Jury trial?

[Defense Counsel]: Yes.

The Court: It's a jury trial on the priors?

[Defense Counsel]: Correct.

The Court: You're doing a jury trial—

[Defense Counsel]: Apparently so.

The Court: —on the priors?

[Defense Counsel]: Yes.

[Prosecutor]: Counsel asked that I give him a different deal—give him a deal on that, and I said, 'No,' because it's a trial. That's what he got sentenced to. There are technical issues.

The Court: Okay.

[Prosecutor]: There we have it.

[Defense Counsel]: Based on my reading, the worst he could possibly get is what he's already gotten.

The Court: I understand. Let's go off the record for a second.

[¶] . . . [¶]

[Defense Counsel]: Can I just talk to him for a second?

(Counsel conferring with client.)

The Court: Okay. So this matter has been brought back from the appellate court, so I have no doubt, Mr. Jackson, that [defense counsel] has thoroughly explained to you what's going on.

I'm not really sure what happened in the first trial. I believe it was with Judge Kim—correct me if I'm wrong—but there was a mistake or something happened in regards to the prior convictions that occurred in that trial, so the appellate court sent it back to us to basically fix whether or not you were properly adjudicated on those prior convictions. The appellate court essentially said, 'No, you were not adjudicated on them,' so they sent it back to us to figure it out.

The other thing that the appellate court has made very clear is that the sentence that Judge Kim gave you has flat out been vacated, which means, depending on what happens with those prior convictions, I, as a new judge on the case, may have different discretion to sentence you.

I can never sentence you more—to more than what you had already gotten from Judge Kim. There may be—I haven't reviewed your file, so let me be clear—there may be discretion where I could sentence you less, if I felt that the case warranted a little bit less. I'm not making any representations to

you that I will do that. As I said, I don't know anything about the case.

So it comes to us, at this point in time with: Are we going to have a full-blown jury trial on those prior convictions?

Just so you understand, if this case goes to the jury, all the jury is deciding whatsoever is whether the paperwork that's been submitted to—as an exhibit. So often, it's just literally rap sheets, prison packets.

Whether that paperwork—by the way, a stamped official is really official. All I'm—and I actually decide identification on that paperwork. I then decide whether that paperwork qualifies under the law for different levels of priors—whether it's one year, five year, a strike, et cetera, et cetera. They don't even decide that.

All they're looking is looking at pieces of paper and deciding, 'Is this a valid piece of paper and that a person by your name suffered certain prior convictions.' We don't have to do that by way of jury trial. We can do that by way of a court trial. So by way of the court trial, it just gets rid of the jury, but the evidence is still presented.

I just listen and review the paperwork. I'm actually familiar with that paperwork, so I can decide whether I see something that appears to be false or not false. I'm the trier of

fact on that. Now, you do have the right to have 12 jurors decide that. That spends a lot of time. You're eating up time here in county jail, so you're not spending whatever time at state prison. I know it sounds weird, but a different facility where you can get going with other things.

The Defendant: It's terrible.

The Court: What?

The Defendant: It's terrible being in county jail.

The Court: It's terrible.

Well, I don't doubt that any jail facility would be terrible—whether it's state prison or county jail. Of course, I would understand, sir, that no facility of such nature would be fun to stay at.

My only understanding—at least at state prison—is you might be able to start working a job, earning money, things like that, whereas at county jail, you cannot do that.

To say it's an advantage, I know that that's a misnomer, but at least there are some things you can do a little bit differently at state prison.

So sir, if you had a jury trial, you would then have the right—your attorney would have the right to cross-examine and confront witnesses about this paperwork. Usually it's a DA clerk that comes in and testifies to the nature of the paperwork, but they don't even have to do that if the paperwork is fairly self-explanatory.

If you want to present a defense to that paperwork, maybe you have some contrary

paperwork or even you—you could do that, and then you would have the right to testify whether that paperwork is valid or not.

Do you want all that to happen or do you—in front of a jury, or do you agree all that can happen just in front of me as a court trial?  
The Defendant: Second option, just a court trial.

The Court: Okay. So let's just be clear. Your attorney has recommended earlier a jury trial, but he just wanted to make sure that all T's crossed and I's were dotted with the appellate court at this time.

I've explained the options to you. You are willing to waive your right to a jury trial, the right to cross-examine and confront witnesses, present a defense, and remain silent. And all those rights still exist, just so we're clear, in a court trial. Do you agree to that sir?

The Defendant: I agree.

The Court: Okay. Very good, sir. Thank you very much. Jury trial is waived."

At the subsequent court trial, the People presented certified records showing Jackson suffered the prior convictions as alleged. Jackson argued the paperwork did not sufficiently identify him as the defendant in the prior cases. The court disagreed and found true the prior conviction allegations. It sentenced Jackson to an aggregate term of 10 years and imposed various fines and fees.

Jackson timely appealed.

## DISCUSSION

Jackson's sole contention on appeal is that his waiver of a jury trial on the prior conviction allegations was not knowing, intelligent, or voluntary. We disagree.

When the People allege a prior conviction sentencing enhancement, the defendant has a statutory right to a jury trial on the factual issues raised by a denial of the allegation of prior convictions. (*People v. Vera* (1997) 15 Cal.4th 269, 274; *In re Yurko* (1974) 10 Cal.3d 857, 863.) The defendant may waive the right to a jury trial and have the court determine the truth of the allegation. (§ 1158.)

The trial court may only accept a defendant's waiver of the right to a jury trial if it is knowing, intelligent, and voluntary. (*People v. Collins* (2001) 26 Cal.4th 297, 305.) A waiver is knowing and intelligent if made with a full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it. A waiver is voluntary if the product of a free and deliberate choice rather than intimidation, coercion, or deception. (*Ibid.*)

A trial court is not required to give a specific colloquy before accepting a defendant's waiver. (*People v. Sivongxxay* (2017) 3 Cal.5th 151, 170 (*Sivongxxay*)). Nonetheless, the Supreme Court recommends trial courts "advise a defendant of the basic mechanics of a jury trial in a waiver colloquy, including but not necessarily limited to the facts that (1) a jury is made up of 12 members of the community; (2) a defendant through his or her counsel may participate in jury selection; (3) all 12 jurors must unanimously agree in order to render a verdict; and (4) if a defendant waives the right to a jury trial, a judge alone will decide his or her guilt or innocence." (*Id.* at p. 169.) The



Supreme Court also recommends “trial judge[s] take additional steps as appropriate to ensure, on the record, that the defendant comprehends what the jury trial right entails.” (*Ibid.*)

There is no specific method for determining whether a defendant has made a knowing, intelligent, and voluntary waiver of a jury trial in favor of a court trial. (*Sivongxxay, supra*, 3 Cal.5th at p. 167.) Instead, we must examine the totality of the circumstances. (*Ibid.*)

Here, we conclude Jackson entered a knowing, intelligent, and voluntary jury waiver. Jackson was represented by counsel throughout the case, including during the specific hearing at issue. At that hearing, the court expressly informed him that, on the prior conviction allegations, he had the right to a trial by 12 jurors at which he could cross-examine and confront witnesses, present evidence, and testify in his own defense. The court further explained the relevant characteristics of a court trial. It then asked Jackson whether he wanted a jury trial or court trial, to which Jackson responded that he wanted a court trial. Before accepting this implicit waiver, the court reminded Jackson his counsel previously requested a jury trial and asked explicitly whether he agreed to waive his right to a jury trial; Jackson responded that he did. In addition, Jackson had very recently completed a full jury trial on the underlying offense, during which he would have gained familiarity with the fundamental aspects of a jury trial. (See *Sivongxxay, supra*, 3 Cal.5th at p. 167 [considering the defendant’s prior experience with the criminal justice system as relevant to whether his jury waiver was knowing and intelligent].) Considered as a whole, the circumstances surrounding Jackson’s waiver demonstrate it was knowing, intelligent, and voluntary.

Jackson sets forth various arguments as to why his waiver was not knowing and intelligent, none of which has merit. First, he complains that the court improperly minimized the jury's role and diminished the evidence presented at a trial as mere "paperwork" and "pieces of paper." Jackson does not, however, contend the court's representations were false or misleading. It is apparent the court's statements were meant to convey to Jackson the limited nature of the jury trial, likely to disabuse him of any erroneous notion that it would concern the merits of the underlying convictions.

Jackson additionally contends his waiver was not knowing and intelligent because the trial court failed to give all the advisements recommended by the Supreme Court in *Sivongxxay*, including that a jury is composed of 12 members of the community, his counsel would assist in selecting the jury, and all 12 jurors must unanimously agree to render a verdict. The Supreme Court was clear that such advisements are not required and "a trial court's adaptation of or departure from the recommended colloquy in an individual case will not necessarily render an ensuing jury waiver invalid." (*Sivongxxay, supra*, 3 Cal.5th at p. 170.) Here, we have little doubt Jackson was familiar with these basic aspects of a jury trial given the recency of his jury trial on the underlying offense.

Next, Jackson asserts the court improperly represented it had expertise when it stated, "I'm actually familiar with that paperwork [on prior convictions], so I can decide whether I see something that appears to be false or not false. I'm the trier of fact on that." Implicit in this argument is that Jackson would have welcomed such expertise, which we doubt. Indeed, Jackson did not argue during his court trial that the paperwork was false.

We are not convinced, therefore, the court's representations had any impact on Jackson's decision.

Jackson further asserts the trial court erred in failing to inquire whether he had any questions, wanted to consult with his attorney, and understood the rights being waived, as well as failing to make an inquiry of counsel on the record. A trial court is not required to make such inquiries in every case. (See *Sivongxxay, supra*, 3 Cal.5th at p. 170.) For the reasons discussed above, we do not think they were required under the circumstances here.

We are also not persuaded by Jackson's various arguments as to why his waiver was not voluntary. First, he suggests the trial court improperly indicated he might receive a lesser sentence if he waived a jury trial. In support, he points to the court's statements that it may have discretion to give him a lesser sentence than the prior court gave. The record does not demonstrate, however, that the court explicitly or implicitly tied its sentencing discretion to Jackson's waiver of a jury trial. Rather, the court made these comments in the context of discussing the procedural posture of the case, and particularly the fact that Jackson's prior sentence had been vacated. The court was also clear that it was not making any representations regarding Jackson's sentence, which it would not even consider until it became more familiar with the case.

Jackson additionally suggests the court improperly coerced him to waive a jury trial by noting such a trial would take "a lot of time" during which he would remain in county jail. This was not coercion. The court did not threaten to delay Jackson's case if he elected a jury trial. Nor did it offer to accelerate the case if he elected a court trial. Rather, it made a truthful statement about

something that may not have been obvious to Jackson: a jury trial would require he remain in county jail for an extended period of time. Jackson clearly welcomed such information.

*People v. Collins, supra*, 26 Cal.4th 297, upon which Jackson relies, is distinguishable. There, the Supreme Court held a trial court improperly persuaded a defendant to waive his right to a jury trial when, “upon learning that defendant might waive jury trial, the court informed defense counsel that ‘there might well be a benefit in it,’ because ‘just by having waived jury’ and thus not taking two weeks’ time to try the case, ‘that has some effect on the court.’” (*Id.* at p. 309.) The Supreme Court explained that such comments improperly offered to reward the defendant for refraining from exercising a fundamental constitutional right. (*Ibid.*) Here, in contrast, the trial court did not offer, implicitly or explicitly, to reward Jackson for waiving his right to a jury trial. Nor did it threaten to punish him if he refused such a waiver.

#### **DISPOSITION**

We affirm the judgment.

BIGELOW, P. J.

We concur:

STRATTON, J.

WILEY, J.