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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEVE MICHAEL HUFFINES,

Defendant and Appellant.

G049350

(Super. Ct. No. 13HF1100)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, W.
Michael Hayes, Judge. Affirmed as modified.

John F. Schuck, under appointment by the Court of Appeal, for Defendant
and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and
Teresa Torreblanca, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

Defendant was convicted of second degree burglary of a motor vehicle. (Pen Code, §§ 459, 460, subd. (a).)¹ Defendant admitted the allegations that he suffered two prior strike convictions (§§ 667, subds. (c), (e)(2)(C), 1170.12, subd. (c)(2)(C)) and served a prior prison term (§ 667.5, subd. (b)). The court sentenced defendant to seven years in prison, which was double the upper term of three years for the burglary, plus one year for the prison prior.

Defendant raises two narrow issues on appeal.

First, he contends the court abused its discretion in awarding \$400 restitution to the victim, which represented the cost to the victim of installing a new security system in his vehicle following the break in. We agree this was a voluntary expense incurred by victim, not a loss caused by defendant, and thus the court abused its discretion in awarding that amount of restitution.

Second, defendant contends the court failed to properly advise him of his constitutional rights prior to admitting his strikes and prison prior, and thus the admission was not voluntary and should be reversed. The People agree the court failed to properly advise defendant, but contend the totality of the circumstances indicates defendant's admission was voluntary. We agree with the People and affirm that aspect of the judgment.

FACTS

Because the facts of the underlying case have no impact on the issues on appeal, we provide only a brief overview.

¹

All statutory references are to the Penal Code.

In March 2013, the victim parked his red Honda Civic at a Home Depot store, where he worked. He locked it before entering the store. That evening, his coworker went to the parking lot and noticed the victim's driver's side door was open and that a pair of legs were hanging out of the vehicle. After calling the victim, the coworker approached the individual in the victim's vehicle, later identified as Jason Stenico, at which point Stenico exited the victim's vehicle and got into the passenger's seat of a nearby vehicle. Defendant was the driver of that car. Before defendant could drive away, the coworker took photographs of the license plate and individuals in the vehicle, and got a good look at both of them. The police later apprehended Stenico, who stated in an interview that defendant had told him to enter the victim's vehicle.

The trial against defendant was bifurcated. Defendant expressly waived his right to a jury trial on the prior strikes and prison prior allegations. In taking that waiver, the court advised the defendant, among other things, "you can have your sentence doubled if the strike priors are found to [be] true. Do you understand that? [¶] Mr. Huffines: Yes, sir." After the jury found defendant guilty, the following colloquy took place regarding defendant's priors:

"[Defense counsel:] Your honor, I believe — I believe Mr. Huffines is in a position to admit the existence of the priors.

"The Court: All right. Sir, you have a right — we have what — typically what I see is what's called a 969(b) packet. They go downstairs, get information that contains your plea, would contain your conviction, that sort of information, probably an abstract.

"The Defendant: Yeah.

"The Court: I can make them go down and get it, or are you giving up your right to present evidence or to listen to make them prove it and just admit the — that you suffered the two prior strikes?

"The Defendant: No. That's fine. I admit the two prior strikes.

“The Court: All right. Do you admit they were strikes?”

“The Defendant: Yes.

“The Court: And they are as alleged?”

“The Defendant: Yeah.

“The Court: Okay.

“[The deputy district attorney:] There’s a prison prior as well, your Honor.

“The Court: And do you admit that you’ve been to prison and failed to remain free from custody for a period of five years?”

“The Defendant: Free of custody of what? From prison?”

“[Defense Counsel:] After your parole is over, if five years passed.

“The Defendant: I wasn’t free of that.

“[Defense Counsel:] Do you admit?”

“The Defendant: Yeah I admit.

“The Court: Okay. Essentially that’s a one-year potential add-on.”

At the sentencing hearing the prosecution requested \$400 in restitution to the victim to pay for an antitheft alarm the victim installed in his vehicle after the burglary. Defense counsel objected that this was not a proper item of restitution because it was not damage caused by defendant. The court granted the award, stating, “I’ll indicate that I’ve thought long and hard about this. So if I’m going to be wrong, I’m going to be consistently wrong. And I haven’t seen this exact issue for an hour because I just completed a restitution hearing on a home security system, and I’ve landed, based on my research, that it’s an appropriate restitution amount. [¶] So I’ll place that issue squarely before the appellate court.” Defendant timely appealed.

DISCUSSION

We begin with the \$400 restitution award. A crime victim is entitled to restitution for economic losses caused by a defendant's criminal conduct. (Cal. Const., art. I, § 28, subd. (b); § 1202.4, subds. (a) & (f).) The amount of restitution "shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined *economic loss* incurred *as the result of* the defendant's criminal conduct." (§ 1202.4, subd. (f)(3), italics added.) When calculating the amount of restitution, the court must use a "rational method that could reasonably be said to make the victim whole." (*People v. Mearns* (2002) 97 Cal.App.4th 493, 498.) The amount of restitution must have a "factual and rational basis." (*Id.* at p. 499.) "We review a restitution order for an abuse of discretion." (*Id.* at p. 498.)

Section 1202.4, subdivision (f)(3), provides a nonexclusive list of permissible restitution categories. Included among those categories is, "(J) Expenses to install or increase residential security incurred related to a violent felony, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks."

From this provision, the parties draw opposite inferences. Defendant contends, "Had the Legislature intended that restitution be available for a new vehicle security system, it would have expressly said so, as it did regarding a residential security system." More generally, defendant contends restitution is limited to what is necessary to restore the victim to the status quo ante, citing *People v. Busser* (2010) 186 Cal.App.4th 1503. That court stated, "Victims are only entitled to an amount of restitution so as to make them whole, but nothing more, from their actual losses arising out of the defendants' criminal behavior." (*Id.* at p. 1510; see also *People v. Millard* (2009) 175 Cal.App.4th 7, 28 ["a restitution order 'is not . . . intended to provide the victim with a windfall'"].)

The People contend that because restitution awards include, but are not limited to, the categories listed in the statute, a vehicle security system is so closely analogous to a residential security system that it should be permitted. The People note that ““the word ‘loss’”” in section 1202.4 is to ““be construed broadly and liberally.”” (*People v. Crisler* (2008) 165 Cal.App.4th 1503, 1508.) The People observe that the victim testified that he is now regularly worried about his vehicle being broken into and contend, “To make this victim whole, it was reasonable for the court to reimburse him for the steps he took to reduce the stress appellant caused.”

This is a close issue and both sides have made strong arguments. Nonetheless, we conclude defendant has the better of it. We agree with defendant’s reasoning above. Additionally, permitting the sort of “restitution” involved in this case would raise potential constitutional concerns. There have been multiple challenges to restitution awards on the ground that they violate the Sixth Amendment right to a jury trial because they constitute punishment under the line of cases including *Apprendi v. New Jersey* (2000) 530 U.S. 466, *Blakely v. Washington* (2004) 542 U.S. 296, and *Cunningham v. California* (2007) 549 U.S. 270. These challenges have been rejected in California on the ground that “the primary purpose of victim restitution is to provide monetary compensation to an individual injured by crime.” “We conclude from the language of the governing statutes that the Legislature intended victim restitution as a civil remedy rather than as a criminal punishment.” (*People v. Millard, supra*, 175 Cal.App.4th at p. 35; see also *People v. Chappelone* (2010) 183 Cal.App.4th 1159, 1183-1184 [gathering federal cases].) A civil damages remedy, however, is limited to losses caused by defendant. Anything beyond that is arguably punishment.

We are not persuaded that the installation of a car alarm is a loss caused by defendant. We recognize that section 1202.4 permits the recovery of the installation of a residential security system for the victim of a violent felony. One obvious point of distinction, however, is that defendant did not commit a violent felony in this case. The

Legislature may have determined that the victim of a violent felony is left feeling so vulnerable and psychologically damaged that a residential security system is a necessary element of making them whole again. Not so with a burglary of an unoccupied vehicle. Installation of a car alarm system may well have been a prudent step, but it is an asset the victim did not have prior to the burglary. To award that by way of restitution would leave the victim better off and thus constitute a windfall. Accordingly, it was an abuse of discretion to award the value of the vehicle alarm system as victim restitution.

We turn next to the issue of whether the court prejudicially erred by failing to adequately inform defendant of his constitutional rights prior to admitting the truth of the allegations concerning his prior offenses and prison term.

“In *In re Yurko* (1974) 10 Cal.3d 857, 861-865 . . . , our Supreme Court held trial courts are constitutionally required to advise defendants who intend to admit prior convictions that they have the right to a jury trial on the prior, the right to confront and cross-examine witnesses, and the right against self-incrimination” (*People v. Campbell* (1999) 76 Cal.App.4th 305, 309-310.) Additionally, “an accused, prior to the time the court accepts his admission of an allegation of a prior criminal conviction or convictions, is entitled to be advised: (1) that he may thereby be adjudged an habitual criminal . . . ; (2) of the precise increase in the term or terms which might be imposed if any, in the accused’s case . . . [citation]; and (3) of the effect of any increased term or terms of imprisonment on the accused’s eligibility for parole.” (*In re Yurko, supra*, 10 Cal.3d at p. 864.) “However, unlike the admonition required for a waiver of constitutional rights, advisement of the penal consequences of admitting a prior conviction is not constitutionally mandated. Rather, it is a judicially declared rule of criminal procedure. [Citations.] Consequently, when the only error is a failure to advise of the penal consequences, the error is waived if not raised at or before sentencing.” (*People v. Jones* (2009) 178 Cal.App.4th 853, 858.) “*Yurko* error . . . should be reviewed under the test used to determine the validity of guilty pleas under the federal

Constitution. Under that test, a plea is valid if the record affirmatively shows that it is voluntary and intelligent under the totality of the circumstances.” (*People v. Campbell* (1999) 76 Cal.App.4th 305, 310.)

The trial court failed to properly advise defendant prior to accepting his admissions. The court made no mention of either the right against self-incrimination or the right to cross-examine witnesses. The People agree. The question is thus whether defendant’s admissions were, nonetheless, voluntary and intelligent. The seminal case on this question is *People v. Mosby* (2004) 33 Cal.4th 353 (*Mosby*).

In *Mosby* defendant was convicted of selling cocaine. (*Mosby, supra*, 33 Cal.4th at p. 358.) At trial, defendant’s attorney cross-examined prosecution witnesses, but defendant did not testify. (*Id.* at p. 357.) Afterwards, the court advised defendant of his right to a jury trial, which defendant waived, but made no mention of the right against self-incrimination and the right to confront witnesses. (*Id.* at pp. 357-359.) The question before the court was the same as the one before us: “whether, under the totality of the circumstances, defendant’s admission was voluntary and intelligent despite the trial court’s failure to advise defendant of the rights to remain silent and to confront witnesses.” (*Id.* at p. 360.)

The *Mosby* court distinguished two types of cases: silent-record cases, and incomplete-advisement cases. (*Mosby, supra*, 33 Cal.4th at pp. 361-363.) In silent-record cases, “in which the defendant was not advised of the right to have a trial on an alleged prior conviction, we cannot infer that in admitting the prior the defendant has knowingly and intelligently waived that right as well as the associated rights to silence and confrontation of witnesses.” (*Id.* at p. 362.) With respect to the case before it, however, which was an incomplete-advisement case, the court held that under the totality of the circumstances the defendant’s admission was voluntary and intelligent. The court reasoned that “defendant, who was represented by counsel, had *just* undergone a jury trial at which he did not testify, although his codefendant did. Thus, he not only would have

known of, but had just exercised, his right to remain silent at trial, forcing the prosecution to prove he had sold cocaine. And, because he had, through counsel, confronted witnesses at that immediately concluded trial, he would have understood that at a trial he had the right of confrontation.” (*Id.* at p. 364.) The court also reasoned that because the defendant had plead guilty in a previous case, at which time he would have received proper advisement, he would likely know his rights. (*Id.* at p. 365.)

The *Mosby* court’s analysis applies squarely to the present case. Here, defendant was expressly advised of his right to a jury trial, which he waived. Further, in the guilt phase, defendant sat through a trial where he did not testify, demonstrating his knowledge of his right to remain silent, and where his attorney cross-examined prosecution witnesses, effectively communicating the right to cross-examine. Additionally, the People filed two requests for judicial notice, which we grant, attaching the minutes from seven different cases in which defendant pleaded guilty. We presume, as did the *Mosby* court, defendant was given proper advisements in those cases. Under the totality of the circumstances, therefore, defendant’s admissions were voluntary and intelligent.

Defendant also contends in passing that the court failed to advise him of the penal consequences of his admissions. However, the record reveals that the court did advise defendant of the increased sentences he would face if the priors were found true. In any event, because defendant did not raise this issue below, he forfeited the issue on appeal. (*People v. Jones, supra*, 178 Cal.App.4th at p. 858.)

DISPOSITION

The People’s requests for judicial notice are granted. The documents attached to the requests are deemed part of the record on appeal. The judgment is modified by striking the \$400 victim restitution award. In all other respects the judgment

is affirmed. The clerk of the superior court is directed to prepare an amended abstract of judgment and forward a certified copy to the Department of Corrections and Rehabilitation.

IKOLA, J.

WE CONCUR:

FYBEL, ACTING P. J.

THOMPSON, J.