S231009

9

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **RANDOLPH FARWELL,** Defendant and Appellant.	S_____ Court of Appeal No. B257775 Los Angeles No. TA130219

PETITION FOR REVIEW

After Published Opinion and Dissent
Court of Appeal Second Appellate District, Division Five
Honorable Paul Bacigalupo, Trial Judge

SUPREME COURT
FILED

DEC - 8 2015

Frank A. McGuire Clerk

Deputy

JASMINE PATEL
Attorney for Appellant
State Bar No. 243860
1032 Irving Street, #419
San Francisco, CA 94122
Telephone: (415) 846-4926
Fax: (415) 237-2922
Email: jpatel@jcpatlaw.com

By appointment of the Court of Appeal

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **RANDOLPH FARWELL,** Defendant and Appellant.	S_____ Court of Appeal No. B257775 Los Angeles No. TA130219

PETITION FOR REVIEW

After Published Opinion and Dissent
Court of Appeal Second Appellate District, Division Five
Honorable Paul Bacigalupo, Trial Judge

JASMINE PATEL
Attorney for Appellant
State Bar No. 243860
1032 Irving Street, #419
San Francisco, CA 94122
Telephone: (415) 846-4926
Fax: (415) 237-2922
Email: jpatel@jcpatlaw.com

By appointment of the Court of Appeal

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Rules

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. **RANDOLPH FARWELL,** Defendant and Appellant.	S_____ Court of Appeal No. B257775 Los Angeles No. TA130219

PETITION FOR REVIEW

To the Honorable Chief Justice and Associate Justices of the California Supreme Court:

Appellant Randolph Farwell requests the Court grant review of the published opinion and dissent from Division Five of the Second District Court of Appeal in Appeal No. B257775, issued on November 5, 2015, affirming appellant's conviction. (Exhibit A.)

QUESTION PRESENTED FOR REVIEW

1. Where a defendant is not advised of nor asked to waive his federal and state constitutional rights in connection with a stipulation wholly admitting his guilt to a charge, can a reviewing court apply the "totality of the circumstances" analysis to determine whether the defendant knowingly and voluntarily acquiesced to his trial counsel's agreement to the stipulation?
2. Under the "totality of the circumstances" test, are unrelated

references to federal and state constitutional rights during earlier stages of the proceedings, coupled with a defendant's criminal history, sufficient to conclude that he knowingly and voluntarily acquiesced to a stipulation entered by his trial counsel?

NECESSITY FOR REVIEW

A stipulation wholly admitting guilt to all elements of a charge triggers a duty to advise a defendant of three constitutional rights -- the privilege against compulsory self-incrimination, the right to trial by jury, and the right to confront one's accusers -- and to obtain his waiver of those rights. (*People v. Little* (2004) 115 Cal.App.4th 766, 788; see *Boykin v. Alabama* (1969) 395 U.S. 238, 243-244; U.S. Const., 5th, 6th, & 14th Amends.; Cal. Const., art. I, § 15.) This Court explained in *People v. Mosby* (2004) 33 Cal.4th 353, 362, that where such advisements and waivers are absent, i.e., a "silent record" case, a reviewing court cannot infer that the defendant knowingly and intelligently waived his constitutional rights. (See also *People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1420; *People v. Campbell* (1999) 76 Cal.App.4th 305; slip opn. (dis. opn. of , J. at p. 4).) However, in the recent decision in *People v. Cross* (2015) 61 Cal.4th 164, 179, a "silent record" case, the Court applied the "totality of the circumstances" analysis without reference to *Mosby*, to determine whether a defendant's stipulation to a prior conviction was knowing and voluntary. (See slip opn., pp. 4, 8.) As reflected by the majority and dissent opinions in the present case, the differing treatment in *Mosby* and *Cross* raises a question in "silent record"

cases as to whether reversal is compelled or the "totality of the circumstances" analysis applies in determining whether a defendant knowingly and voluntarily acquiesced to a stipulation by his trial counsel. On this issue, the U.S. Supreme Court has explained that presuming waiver from a silent record is impermissible. (*Boykin v. Alabama, supra,* 395 U.S. at p. 242.)

A second question raised by this decision is whether, unrelated references to a defendant's constitutional rights, coupled with the defendant's criminal history, are sufficient under the "totality of the circumstances" test to find he would have knowingly and voluntarily acquiesced to a stipulation in a "silent record" case.

Thus this Court's review is necessary to secure uniformity of decision and to settle an important question of law. (Cal. Rules of Court, rule 8.500, subd. (b)(1).)

STATEMENT OF THE CASE AND FACTS

On December 19, 2013, appellant was charged with count one, felony gross vehicular manslaughter (Pen. Code, § 192, subd. (c)(1)); a prior conviction that qualified as a serious felony and a "strike" (Pen. Code, §§ 667, subds. (a), (b)-(i) & 1170.12, subds. (a)-(d)); and count two, misdemeanor driving with a suspended license (Veh. Code, §14601.1). (1CT 99-100.)

Prior to trial, defense counsel informed the court and the prosecutor that appellant was prepared to enter a no contest plea on count two and alternatively moved to bifurcate the trial on the count so that the issue could be taken out of the hands of the jury. (1RT

8-9.) The prosecutor objected to the plea as well as bifurcation because she believed proof of count two was relevant to appellant's knowledge of recklessness in count one and also because the prosecutor would have to call some of the same witnesses for both counts, resulting in an undue consumption of time. (1RT 8-9.) The prosecutor alleged that appellant had been given verbal notice by police about the license suspension two months before the accident. (1RT 9-10.) The trial court denied the defense motion, concluding it was part of the prosecution case. (1RT 40.)

At trial, the court informed the jury:

> [T]he lawyers are going agree to something, and it's called a stipulation, and they are agreeing to the information that will be read in a moment, and you are to consider that information as evidence. And it's agreed that this information is true and correct, instead of having to bring witnesses in to testify about that. So they're shortening the length of this trial already by this stipulation.
> (1RT 79.)

The parties stipulated that "on June 21st, 2013, [appellant] was driving a motor vehicle while his license was suspended for a failure to appear, and that when he drove, he knew his license was suspended." (1RT 79-80.)

In closing argument, the prosecutor told the jury that the stipulation met the elements of count two. (2RT 451-452.) Defense counsel argued in closing: "[B]y stipulation, he is guilty of driving on a suspended license. The fact that his license was suspended by the D.M.V. because he failed to appear is not evidence of recklessness. It

just means he wasn't supposed to drive because the D.M.V. for some reason suspended his license. That reason was because he failed to appear." (2RT 455.)

On June 17, 2014, appellant was found guilty of both counts. (1CT 160-167.)

In his appeal, appellant argued that count two must be reversed because the stipulation was invalid without appellant's waiver of his constitutional rights. (AOB 5.) Respondent requested judicial notice of minute orders of appellant's prior convictions to support the argument "that the stipulation [in the present case] was voluntary and intelligent under the totality of the circumstances." (Request For Judicial Notice, pp. 1-2.) Appellant opposed the request. (Opposition To Request For Judicial Notice, pp. 1-6.)

On its own motion, the Court of Appeal ordered augmentation of the voir dire proceedings at appellant's trial and ordered letter briefing on whether the record as a whole showed appellant's awareness of his trial rights. With regard to the Court of Appeal's question, the following facts pertain:

Trial commenced on June 10 and the stipulation regarding count two was entered at the end of the day on June 11. On June 10, the following events occurred. At a trial conference, the trial court summarized the facts at issue, and noted that the prosecutor would present witnesses and the defense would "point out the problems with the case...or at least attack some of the testimony...that's her job, is to confront those witnesses", and then the jury would determine whether the prosecutor had met her burden of proof. (Augmented

Reporter's Transcript ["ART"] 2-4.) The court briefly addressed appellant about the prosecution's plea offer and gave appellant time to discuss the offer with trial counsel. (ART 6.) Counsel informed the court that appellant was rejecting the offer. (ART 7.)

The court then heard the parties' pre-trial motions including defense counsel's request to plead guilty to count two or to bifurcate trial on that count. (ART 8-10, 39-40.) In discussing in limine motions, the prosecutor said she would not introduce appellant's blood alcohol tests (blood alcohol 0.0) unless it was to impeach appellant if he took the stand and that if appellant wanted to introduce his statements to the police, he could do so by testifying. (ART 11, 14.)

The trial court addressed the jury panel and voir dire commenced. (ART 40-54.) During voir dire, the court explained to the prospective jurors that both parties are entitled to a cross section of the community, which is "what jury duty is about.... and then they participate in the system wherein you are the triers of the facts." (ART 46.) The trial court described the functions of a juror and explained that the trial would have a jury selection phase, an evidence phase, and a jury deliberation phase. (ART 46, 50.) The court explained the burden of proof. (ART 51.) As voir dire continued, defense counsel and the trial court explained to the jurors that a defendant in a criminal case has the right not to testify and remain silent and not present witnesses and that the burden is on the prosecutor to prove her case beyond a reasonable doubt. (ART 106-107.)

The next morning voir dire continued. (ART 110-207.) The prosecutor explained that a defense attorney defends her client and defends his rights including the right to cross examine prosecution witnesses and that it is the prosecutor's job to present evidence against the defendant. (ART 115-116.) Defense counsel further noted that the prosecutor has to present evidence and the defense does not have to prove anything or present evidence and further asked newly drawn jurors if anyone would have a problem with appellant's right not to testify. (ART 149-150, 153, 190.)

Following jury selection and opening statements, the prosecutor called her first witness, who testified briefly. (ART 212-218.) Defense counsel and the prosecutor examined the witness. (ART 212-218.) The trial court then advised the jury about stipulations and the parties' stipulation regarding count two was presented to the jury. (ART 218-219.)

On November 5, 2015, the Court of Appeal issued its opinion affirming the conviction and denying respondent's motion for judicial notice. (Slip opn., pp. 8-9, fn. 3.)

ARGUMENT

I. WHERE THERE IS NO ADVISEMENT NOR WAIVER OF FEDERAL AND STATE CONSTITUTIONAL RIGHTS IN CONJUNCTION WITH A STIPULATION WHOLLY ADMITTING A CHARGE, REVERSAL IS REQUIRED BECAUSE IT CANNOT BE KNOWN WHETHER A DEFENDANT UNDERSTOOD THAT WITH THE STIPULATION HE WAS GIVING UP HIS RIGHTS AND ESSENTIALLY PLEADING GUILTY.

A stipulation that addresses all evidentiary facts needed to

prove guilt of a charge requires that the defendant first be advised of and knowingly and voluntarily give up his constitutional right to jury trial, right against compulsory self-incrimination, and right to confront and cross-examine his accusers. (*People v. Little, supra,* 115 Cal.App.4th at p. 773, fn. 4 [citing *Boykin v. Alabama, supra,* 395 U.S. 238 and *In re Tahl* (1969) 1 Cal.3d 122]; U.S. Const., 5th, 6th, & 14th Amends.; Cal. Const., art. I, § 15.) The stipulation is "tantamount to a plea of guilty" and must be accompanied by *Boykin-Tahl* advice and waivers. (*In re Mosley* (1970) 1 Cal.3d 913, 924-926, fn. 10.)

An admission of guilt " 'cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.' " (*Boykin v. Alabama, supra,* 395 U.S. at p. 243, fn. 5, quoting *McCarthy v. U.S.* (1969) 394 U.S. 459, 466.) Thus a defendant is specifically canvassed on his understanding that he is giving up these rights when he pleads guilt. (*Id.* at pp. 243-244.) "What is at stake for an accused facing death or imprisonment demands the utmost solicitude of which courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence." (*Ibid.*)

Reversal should be required where a defendant is provided no advisement and does not waive his constitutional rights in conjunction with a stipulation. This is because it is not possible to know whether the defendant understood the consequences of the stipulation to his trial rights and that he was knowingly and voluntarily acquiescing to his trial counsel essentially admitting his guilt. This Court has implicitly rejected such assumptions from a

silent record. "The court did not ask whether Cross had discussed the stipulation with his lawyer; nor did it ask any questions of Cross personally or in any way inform him of his right to a fair determination of the prior conviction allegation." (*People v. Cross, supra,* 61 Cal.4th at p. 180.)

In *People v. Little, supra,* 115 Cal.App.4th 766, the defendant was convicted of being under the influence of a controlled substance following his stipulation in language that mirrored the language of the charge for the crime. (Slip opn. (dis. opn. of Mosk, J. at p. 2, discussing *Little*).) Reversing the conviction because the record did not establish that the stipulation was knowing and voluntary, *Little* explained that even though the stipulation was offered during the trial, "there were no advisements from which defendant could possibly and reasonably have inferred that by offering the stipulation, he was surrendering his privilege against self-incrimination and at least partially surrendering his right to confront and cross-examine witness concerning the charge.... Nor was he advised that as a consequence of the stipulation, the jury would, in effect, be required to enter a guilty verdict." (*People v. Little, supra,* 115 Cal.App.4th at p. 780.)

Little explained further,

> Given the fundamental importance attached to the right to have a jury determine guilt and given the impact of the stipulation here on the jury's function, which made a guilty verdict a foregone conclusion, if not a procedural formality, ...some advisement concerning the right to a jury trial is necessary to ensure that the defendant knows the stipulation will, as defense

> counsel here told the jury, require the jury to find him or her guilty and without the stipulation the jury would have to evaluate the evidence and from it determine beyond a reasonable doubt whether defendant was guilty.
> (*People v. Little, supra,* 115 Cal.App.4th at p. 779, fn. 7.)

In *Boykin v. Alabama, supra,* 395 U.S. at p. 239, the defendant pled guilty at his arraignment to five charges of robbery. The judge asked no questions of the defendant and the defendant did not address the court. In overturning the conviction, the U.S. Supreme Court explained, "A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction; nothing remains but to give judgment and determine punishment." (*Id.* at p. 242.) And a confession, the Court explained further, "must be based on a 'reliable determination on the voluntariness issue which satisfies the constitutional rights of the defendant.' " (*Ibid.*) Similarly, where a defendant wishes to waive his right to trial counsel, the record must show that an accused was offered counsel but intelligently and understandingly rejected the offer. (*Ibid.*) Accordingly, presuming waiver from a silent record case is impermissible given the several constitutional rights and the penal consequence at stake. (*Id.* at pp. 242-243.)

This Court rightly made a distinction in *People v. Mosby* between silent-record cases, where the defendant has been provided no advisements of his trial rights, and cases where the defendant was provided incomplete advisement of his trial rights. (*Mosby, supra,* 33 Cal.4th at p. 362.) In the former, the convictions have not been upheld. (*Ibid.*) *Mosby* explained that while a defendant in such

a case might have been aware of his trial rights, it could not be concluded from the record that the defendant was prepared to give up those rights. (*Ibid.* [discussing *People v. Johnson* (1993) 15 Cal.App.4th 169].)

Therefore, where there is no advisement or waiver of constitutional rights in conjunction with the entry of a stipulation wholly admitting guilt, reversal is required since it cannot be known that a defendant understood and voluntarily gave up his trial rights along with accepting guilt.

II. REFERENCES TO TRIAL RIGHTS MADE EARLIER IN THE PROCEEDINGS COUPLED WITH A DEFENDANT'S CRIMINAL RECORD ARE INSUFFICIENT FOR CONCLUDING THAT HE UNDERSTOOD THE CONSEQUENCES OF A STIPULATION AND THAT HE WAS KNOWINGLY AND VOLUNTARILY AGREEING TO HIS TRIAL COUNSEL'S ENTRY OF THE STIPULATION.

The majority opinion in this case concludes that unrelated references to a defendant's constitutional rights, coupled with the defendant's experience with the criminal justice system, are sufficient to conclude he understood the consequences of a stipulation and knowingly and voluntarily acquiesced to his trial counsel's entry of the stipulation. (Slip opn., pp. 6-8.)

However, even if it can be inferred that a defendant has some awareness of his trial rights generally, it is impossible to know whether the defendant would then understand that by his trial counsel's entry of the stipulation, he was thus giving up these rights and pleading guilt, if he was never personally addressed by the trial court regarding these rights. As the dissent explains, if a defendant's

experience with the criminal justice system were sufficient to infer a voluntary and intelligent waiver of trial rights, " 'courts would rarely be required to give *Boykin/Tahl* admonitions.' " (Slip opn. (dis. opn. of Mosk, J. at pp. 6-7, quoting *People v. Campbell, supra,* 76 Cal.App.4th at p. 310).) The dissent explains further that the same logic applies to earlier references to constitutional rights during a trial. There is "no way of knowing if the defendant actually heard or understood any such references during earlier proceedings." (Slip opn. (dis. opn. of Mosk, J. at p. 7.)

Moreover, even if a defendant's criminal history could suggest that he understood that a guilty plea involved a waiver of trial rights, this does not mean that he would then understand that a stipulation similarly equaled an admission of guilt and waiver of rights. A stipulation raises greater concerns because in a guilty plea, even if the defendant is not canvassed on his rights, the defendant is nonetheless heard to plead that he is guilty. At least it can be known that he understands he is pleading guilty. Whereas when a trial counsel enters a stipulation, the defendant is completely silent and he is never personally addressed by the court. So it cannot be known whether he understood that the stipulation was "tantamount to a plea of guilty." It is truly a silent record.

In *In re Tahl* (1969) 1 Cal.3d 122, 127-128 ("*Tahl*"), this Court noted a few cases, in which the defendant was personally addressed by the trial court, albeit not perfectly, regarding the circumstances of his decision to plead guilty. At the outset, the context of the stipulation here is similar to the circumstances in *Tahl,* where the

defendant pled guilty to the charges following empanelment of the jury and opening statements. (*Id.* at p. 125.) However, in *Tahl*, both the defendant and his counsel were nonetheless questioned at length by the trial court regarding his decision to plead guilty. (*Id.* at pp. 125, 131, fn. 1.) Tahl was asked whether he understood the nature of the charges, whether his counsel had discussed this with him, whether his attorney had explained his constitutional rights, and whether he was pleading freely and voluntarily and without inducement. (*Id.* at pp. 125, fn. 1.) *Tahl* also indicated that the trial counsel discussed the consequences of the stipulation with the defendant. (*Id.* at p. 131.) Significantly, the facts in *Tahl* included a stipulation in addition to the guilty plea, regarding which also, the defendant was personally addressed by the court. (*Id.* at pp. 125, fn. 1.) The prosecutor asked the trial court to inquire of Tahl whether his counsel had explained the stipulation to him and whether he fully understood it. (*Ibid.*) This Court accordingly upheld the validity of the plea.

In contrast to *Tahl*, nothing in the proceedings here would have remotely indicated to a defendant the import of the stipulation with respect to his trial rights. Even with a criminal record, a layperson would not have the sophistication to understand from earlier proceedings what was at stake with respect to a stipulation.

Therefore, in a silent record case, evidence of other references to trial rights coupled with a defendant's criminal history, is insufficient to conclude that he knowingly and understandingly agreed to his trial counsel's stipulation regarding the elements of a

charge.

CONCLUSION

Appellant respectfully requests that this petition be granted.

Dated: December 3, 2015

Respectfully submitted,

/s/JasminePatel/s/_____
JASMINE PATEL
Attorney for Appellant

CERTIFICATE OF WORD COUNT

Counsel hereby certifies that this brief consists of **3,263** words (excluding tables, proof of service, and this certificate), according to the word count of the computer word-processing program. (Cal. Rules of Court, rule 8.504(d).)

Dated: December 3, 2015

/s/JasminePatel/s/_____
JASMINE PATEL
Attorney for Appellant

Exhibit A

Filed 11/5/15

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. RANDOLPH D. FARWELL, Defendant and Appellant.	B257775 (Los Angeles County Super. Ct. No. TA130219)

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

Jasmine Patel, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Michael R. Johnsen, Supervising Deputy Attorney General, Gary A. Lieberman, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

Defendant and appellant Randolph D. Farwell (defendant) was convicted of gross vehicular manslaughter (Pen. Code, § 192, subd. (c)(1)[1]) and driving when his driver's license was suspended or revoked (Veh. Code, § 14601.1, subd. (a)). On appeal, defendant contends that his conviction for driving while his license was suspended or revoked (count 2) must be reversed because the trial court did not explicitly advise him of his constitutional trial rights before accepting his stipulation to the substantive crime that he drove a vehicle while knowing his license was suspended.

We hold, in connection with the stipulation, the trial court did not commit reversible error. We review the entire record, not just the record of the stipulation colloquy, and under the totality of circumstances conclude the record affirmatively shows the stipulation was voluntary and intelligent. Therefore, we affirm the judgment.

BACKGROUND

A. Relevant Proceedings[2]

On February 18, 2014, defendant continued his trial and was explicitly advised by the court of his right to trial: "[y]ou have the right to have your trial within 60 days . . . Do you understand . . . and give up that right, . . ." to which the defendant responded, "yes."

Just before trial, defendant's counsel informed the trial court that defendant was prepared to enter a no contest plea on count 2 so that "issue [is] taken out of the hands of the jury," or alternatively, move to bifurcate the trial on count 2. The prosecutor stated that she was not willing to accept the no contest plea, and objected to defendant's motion

---

1 All statutory citations are to the Penal Code unless otherwise noted.

2 Because the only claim on appeal is that the conviction on count 2 should be reversed, we do not include a statement of facts regarding the other charges.

to bifurcate on the ground that proof of count 2 was relevant to defendant's knowledge of recklessness in count 1. The trial court denied defendant's motion to bifurcate.

During the pretrial proceedings, and extensive jury voir dire, defendant became fully aware of his constitutional rights to trial, remain silent and confront and cross-examine witnesses well before he stipulated to the elements of count 2. No less than 45 times during jury voir dire defendant's right to trial, remain silent and cross-examine witnesses were discussed or mentioned. Before the stipulation was read the trial court informed the jury, "[T]he lawyers are going to agree to something, and it's called a stipulation . . . . And it's agreed that this information is true and correct, instead of having to bring witnesses in to testify about that." Defense counsel stipulated "on June 21st, 2013, [defendant] was driving a motor vehicle while his license was suspended for a failure to appear, and that when he drove, he knew his license was suspended[.]"

B. Procedural Background

The District Attorney filed an information charging defendant with gross vehicular manslaughter in violation of section 192, subdivision (c)(1) (count 1), and driving when his driver's license was suspended or revoked in violation of Vehicle Code section 14601.1, subdivision (a) (count 2). It was also alleged defendant had a prior serious felony conviction as defined by sections 667, subdivision (a)(1), 667, subdivision (d), and 1170.12, subdivision (b).

Following trial, the jury found defendant guilty on all counts. Defendant admitted the prior conviction allegation, and was sentenced to state prison for a term of 13 years, consisting of the midterm of four years on count 1, doubled pursuant to the Three Strikes law, plus five years pursuant to section 667, subdivision (a)(1). The trial court imposed a concurrent term on count 2; awarded custody credits, and ordered payments of various fees, fines and penalties. Defendant filed a timely notice of appeal.

DISCUSSION

Defendant contends his conviction for driving when his driver's license was suspended or revoked (count 2) must be reversed. He argues the stipulation entered into on his behalf, which admitted all of the elements of count 2, was invalid because he was not advised of, and did not waive, his trial rights, at the time the stipulation was entered. The Attorney General correctly notes the trial court's failure to explicitly advise defendant of his constitutional rights is not reversible error because defendant's "stipulation was voluntary and intelligent under the totality of the circumstances."

A. Applicable Law

In *People v. Cross* (2015) 61 Cal.4th 164, 170 (*Cross*), our Supreme Court recently stated, "When a criminal defendant enters a guilty plea, the trial court is required to ensure that the plea is knowing and voluntary. (See *Boykin v. Alabama* (1969) 395 U.S. 238, 243-244 [23 L.Ed.2d 274, 89 S.Ct. 1709] (*Boykin*).)"

A stipulation admitting the elements of the substantive crime is tantamount to a guilty plea and requires the defendant be aware of and waive his constitutional rights to trial. (*In re Mosley* (1970) 1 Cal.3d 913, 924-926, fn. 10; *People v. Little* (2004) 115 Cal.App.4th 766, 778.)

In determining whether defendant, prior to entering such a stipulation understood his constitutional rights, the failure of the trial court to explicitly advise defendant of those rights at the time of the stipulation is not reversible error if it is shown the admission was voluntary and intelligent. In making that determination we review the entire record and not just the admission colloquy. *Cross, supra*, 61 Cal.4th at pp. 179-180 ["[t]he failure to properly advise a defendant of his or her trial rights is not reversible 'if the record affirmatively shows that [the admission] is voluntary and intelligent under the totality of the circumstances.' . . . a reviewing court must 'review[] the whole record, instead of just the record of the plea colloquy.']"

The development of this standard is traceable to *People v. Howard* (1992) 1 Cal.4th 1132 (*Howard*). Before *Howard,* the failure to advise a defendant of his

constitutional rights or secure his waiver of them prior to accepting a guilty plea under Boykin, *supra*, 395 U.S. 238 and *In re* Tahl (1969) 1 Cal.3d 122, or admission of a prior conviction under *In re* Yurko (1974) 10 Cal.3d 857, made the plea or admission generally automatically reversible, regardless of prejudice. (*Howard, supra*, 1 Cal.4th at pp. 1174-1175.) The court in *Howard* stated, "We expressly based our decision in *Yurko* on the interpretations of federal law set out in *Boykin* and *Tahl*. [Citation.] However, the overwhelming weight of authority no longer supports the proposition that the federal Constitution requires reversal when the trial court has failed to give explicit admonitions on each of the so-called *Boykin* rights. Accordingly, we have no choice but to revisit our prior holdings. 'The question of an effective waiver of a federal constitutional right in a proceeding is of course governed by federal standards.' [Citation.] [¶] [W]e now hold that *Yurko* error involving *Boykin/Tahl* admonitions 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. [Citations]" (*Howard, supra*, 1 Cal.4th at p. 1175.) Whether the record affirmatively shows that the plea is voluntary and intelligent under the totality of the circumstances is a harmless error analysis. (*People v.* Allen (1999) 21 Cal.4th 424, 438; *People v. Little, supra*, 115 Cal.App.4th at pp. 780, 781.)

Therefore, it is unmistakably clear in making that determination we review the entire record, and not just the portion relating to the stipulation colloquy. *Cross, supra*, 61 Cal.4th at pp. 179-180 [In applying the totality of the circumstances test a reviewing court must review the whole record instead of just the record of the plea colloquy, citing *People v.* Mosby (2004) 33 Cal.4th 353, 361.]

Moreover, our Supreme Court in *Cross, supra*, 61 Cal.4th at p. 179, reiterated this rule without any reference to other appellate court decisions that distinguish between silent record cases and incomplete advisement cases, "[t]he failure to properly advise a defendant of his or her trial rights is not reversible 'if the record affirmatively shows that [the admission] is voluntary and intelligent under the totality of the circumstances.'