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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT L. BECKHAM,

Defendant and Appellant.

B193050

(Los Angeles County  
Super. Ct. No. BA292953)

APPEAL from a judgment of the Superior Court of Los Angeles County, Rand S. Rubin, Judge. Affirmed.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Lance E. Winters, Supervising Deputy Attorney General, Viet H. Nguyen, Deputy Attorney General, for Plaintiff and Respondent.

## **INTRODUCTION**

A jury convicted defendant and appellant Robert I. Beckham (defendant) of unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a)) and hit and run driving (Veh. Code, § 20002, subd. (a)). The trial court sentenced defendant to the upper term of three years in state prison for his unlawful driving or taking of a vehicle conviction and a consecutive six-month term in county jail for his hit and run driving conviction. On appeal, defendant contends that the trial court's imposition of the upper term sentence based on facts not found true beyond a reasonable doubt by a jury violates his right to a jury trial under the Sixth Amendment to the United States Constitution and his right to due process under the Fourteenth Amendment to the United States Constitution as set forth in *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*) and *Cunningham v. California* (2007) 549 U.S. \_\_\_\_ [127 S.Ct. 856] (*Cunningham*). We affirm defendant's judgment of conviction and sentence.

## **BACKGROUND**

Defendant rented a Chrysler Sebring from Alamo Car Rental in Inglewood from July 22, 2005, until July 25, 2005. Defendant was to return the car by 11:00 p.m. on July 25, 2005. During the afternoon on July 25, 2005, defendant exchanged the rental car for another Chrysler Sebring. The license plate of the second Sebring was 5LED801. Defendant did not extend the rental period, and the second car was due back at Alamo at 11:00 p.m. on July 25, 2005.

Defendant did not return the rental car on July 25, 2005. On July 28, 2005, an Alamo employee called defendant's telephone number and left a voicemail message. Shortly thereafter, a person telephoned Alamo and told a manager that the car would be returned that day. The car was not returned that day. Alamo sent defendant letters at the end of July and beginning of August 2005 demanding the return of the rental car. On September 14, 2005, Alamo reported the rental car stolen to the police.

At about 5:30 p.m., on November 4, 2005, Los Angeles Police Department Sergeant Chris Ramirez spotted defendant driving the Sebring, license plate number

5LED801, that Alamo had reported stolen. Sergeant Ramirez pulled in behind defendant. Defendant drove through a stop sign and accelerated. Sergeant Ramirez activated his lights and siren. Defendant drove through two additional stop signs. When defendant drove through a fourth stop sign, he collided with a vehicle driving in cross traffic. The Sebring spun out of control and crashed into parked cars.

When Sergeant Ramirez arrived at the accident scene, the Sebring was “mangled,” and defendant was not inside. A witness informed Sergeant Ramirez that defendant had run toward two nearby houses. The police established a perimeter. A K-9 unit was called, and defendant was found shortly thereafter. A police officer searched the Sebring and found a brown paper bag on the center console that contained a photograph of defendant. The car had suffered extensive damage. Alamo spent about \$24,000 to repair the rental car.

## **DISCUSSION**

### **Defendant’s *Blakely/Cunningham* Claim**

Defendant contends that the trial court’s imposition of the upper term sentence based on facts not found true beyond a reasonable doubt by a jury violates his right to a jury trial under the Sixth Amendment to the United States Constitution and his right to due process under the Fourteenth Amendment to the United States Constitution. We disagree.

In *Cunningham*, the United States Supreme Court held that California’s determinate sentencing law violated the Sixth Amendment insofar as it authorized trial judges, rather than juries, to make factual findings that expose defendants to upper term sentences. (*Cunningham, supra*, 127 S.Ct. at pp. 868-871.) Following *Cunningham*, in *People v. Black* (2007) 41 Cal.4th 799 (*Black*), the California Supreme Court held that “so long as a defendant is *eligible* for the upper term by virtue of facts that have been established consistently with Sixth Amendment principles, the federal Constitution permits the trial court to rely upon any number of aggravating circumstances in exercising its discretion to select the appropriate term by balancing aggravating and

mitigating circumstances, regardless of whether the facts underlying those circumstances have been found to be true by a jury.” (*Id.* at p. 813.) Further, “[u]nder California’s determinate sentencing system, the existence of a single aggravating circumstance is legally sufficient to make the defendant eligible for the upper term. [Citation.] Therefore, if one aggravating circumstance has been established in accordance with the constitutional requirements . . . the upper term sentence is the ‘statutory maximum.’ ” (*Ibid.*)

The Sixth Amendment does not confer a right to a jury trial on either “the fact that a prior conviction occurred” or “other related issues that may be determined by examining the records of the prior convictions” (*Black, supra*, 41 Cal.4th at p. 819), including “whether a defendant has suffered prior convictions, and whether those convictions are ‘numerous or of increasing seriousness’” within the meaning of California Rules of Court, rule 4.421(b)(2). (*Id.* at pp. 819-820; see also *Almendarez-Torres v. United States* (1998) 523 U.S. 224, 239-247.) Furthermore, although California law requires proof beyond a reasonable doubt of alleged prior convictions used to justify a recidivist sentence (see, e.g., *People v. Bowden* (2002) 102 Cal.App.4th 387, 392-393, 125 Cal.Rptr.2d 513), facts relating to prior convictions found to be aggravating circumstances for purposes of imposing an upper-term sentence are not subject to proof beyond a reasonable doubt, but may be found by a preponderance of the evidence. (*Black, supra*, 41 Cal.4th at p. 820, fn. 9.) Accordingly, as the Supreme Court concluded in *Black*, “imposition of the upper term does not infringe upon the defendant’s constitutional right to jury trial so long as one legally sufficient aggravating circumstance has been found to exist by the jury, has been admitted by the defendant, or is justified based upon the defendant’s record of prior convictions.” (*Id.* at p. 816.) Among the facts a trial court is permitted to find under *Black* in connection with a defendant’s “prior conviction” is whether the defendant served a prior prison term. (*Id.* at p. 819 [citing *People v. Thomas* (2001) 91 Cal.App.4th 212, 220-223 for the proposition that “the exception recognized in *Apprendi* [*v. New Jersey* (2000) 530 U.S. 466] for ““the fact of a

prior conviction”” permits a trial court to decide whether a defendant has served a prior prison term”].)

In sentencing defendant to the upper term, the trial court found the following circumstances in aggravation: the manner in which the crime was carried out indicated planning, sophistication, or professionalism; the crime involved the actual taking or damage of great monetary value; defendant had engaged in a pattern of conduct that indicated a serious danger to society; defendant had served prior prison terms; and defendant’s performance on probation or parole was unsatisfactory. The trial court found no circumstances in mitigation.

Defendant contends that the trial court based defendant’s upper term sentence on its own factual findings of multiple non-recidivist aggravating circumstances. Defendant improperly includes among these “non-recidivist” aggravating circumstances the circumstance that defendant served a prior prison term. A trial court properly may find, on its own, the fact that a defendant has served a prior prison term. (*Black, supra*, 41 Cal.4th at pp. 818-819.) Thus, defendant’s criminal history made him eligible for the upper term. (*Ibid.*) Once defendant was eligible for the upper term, the trial court was entitled to consider all of the factors it relied on in sentencing defendant to the upper term. (*Id.* at p. 813.)

Defendant also contends that *Black, supra*, 41 Cal.4th 799 was wrongly decided. As defendant acknowledges, however, we are bound by that decision. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

**DISPOSITION**

The judgment of conviction and sentence are affirmed.

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MOSK, J.

We concur:

TURNER, P. J.

KRIEGLER, J.