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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**A112203**

**v.**

**(Lake County  
Super. Ct. No. CR906064)**

**ORION GUERRA,**

**Defendant and Appellant.**

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Orion Guerra appeals from a judgment entered after a jury convicted him of driving recklessly while evading a police officer (Veh. Code, § 2800.2), resisting arrest, (Pen. Code, § 148, subd. (a)(1))<sup>1</sup> driving while his license was suspended for driving under the influence (Veh. Code, § 14601.2), and driving while his license was suspended pursuant to Vehicle Code sections 13353 and 13353.2 (Veh. Code, § 14601.5). He contends (1) the trial court erred when it admitted certain evidence, and (2) the court sentenced him incorrectly. We reject these arguments and affirm.

**I. FACTUAL AND PROCEDURAL BACKGROUND**

On August 7, 2005, near 2:30 p.m. Clearlake Police Officer Timothy Hobbs was on patrol when he saw a red Chevy Blazer driving so fast that it was throwing gravel into

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<sup>1</sup> Unless otherwise indicated, all further section references will be to the Penal Code.

the air. Hobbs followed the Blazer as it drove wildly through the streets of Clearlake. When the Blazer crashed into a tree, Hobbs watched appellant exit the vehicle and run away.

Hobbs recognized appellant from a prior contact. He and other officers went to appellant's home hoping to find him. When the officers entered, they saw someone run from the bathroom to a bedroom. The officers entered the bedroom, found appellant, and placed him in handcuffs.

Based on these facts, an information was filed charging appellant with, inter alia, the offenses we have described. As to the first count, the information also alleged appellant had served two prior prison terms within the meaning of section 667.5, subdivision (b).

The case proceeded to a jury trial where the prosecution presented the evidence we have set forth above. Appellant presented a mistaken identity defense. His counsel denied appellant was the one who was driving the car on the day in question.

The jury rejected this defense and convicted appellant. In a court trial that followed, the court found the prior prison term allegations to be true. Subsequently, the court sentenced appellant to three years in state prison for violating Vehicle Code section 2800.2, plus an additional year for each of the prior prison term findings.

## II. DISCUSSION

### A. Admission of Evidence

To prove the prior prison term allegations, the prosecutor proposed, and the court admitted into evidence, certified copies of judgments that showed appellant had been convicted of a felony in Modoc County in 1994 and was sentenced to two years in state prison; and that appellant had been convicted of a felony in Lake County in 1998 and was sentenced to three years in prison. To establish that appellant had been in prison custody within the past five years, and that the wash-out provision of section 667.5, subdivision (b) did not apply,<sup>2</sup> the prosecutor asked the court to admit a certified "rap sheet" from the

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<sup>2</sup> Section 667.5, subdivision (b) states, in part, ". . . where the new offense is any felony for which a prison sentence is imposed, in addition and consecutive to any other

California Law Enforcement Telecommunications System (CLETS). Defense counsel objected to the CLETS printout arguing it was inadmissible hearsay. The court overruled the objection and admitted the printout.

Appellant now contends the trial court erred when it admitted the CLETS printout. Conceding that the court's hearsay ruling was correct under the state of the law before the United States Supreme Court's decision in *Crawford v. Washington* (2004) 541 U.S. 36 (hereafter *Crawford*), (see *People v. Dunlap* (1993) 18 Cal.App.4th 1468, 1476-1481), appellant tries a new tack. He contends admission of the CLETS printout violated his Sixth Amendment right to confront the witnesses against him as interpreted by *Crawford*.

We need not address this argument because appellant did not raise it in the court below. It is well established that claims "based on statutory violations, as well as claims based on violations of fundamental constitutional rights" are forfeited if not raised below. (*People v. Kennedy* (2005) 36 Cal.4th 595, 612.) This rule applies equally to any claim on appeal that the evidence was erroneously admitted on grounds other than those asserted at trial. "When an objection is made to proposed evidence, the specific ground of the objection must be stated. The appellate court's review of the trial court's admission of evidence is then limited to the stated ground for the objection." (*Ibid.*) Applying this principle, our Supreme Court has ruled specifically that an objection on hearsay grounds is insufficient to preserve for purposes of appeal an argument based on an alleged violation of the defendant's confrontation rights. (*People v. Burgener* (2003) 29 Cal.4th 833, 869.)

As directed by our Supreme Court, we decline to address appellant's confrontation argument because he did not raise it in the court below.

Appellant contends the hearsay objection he asserted was adequate to preserve his confrontation argument under the authority of *People v. Partida* (2005) 37 Cal.4th 428.

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prison terms therefor, the court shall impose a one-year term for each prior separate prison term served for any felony; *provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which*

In *Partida*, the defendant argued in the trial court that certain evidence should have been excluded under Evidence Code section 352. On appeal, he argued the court's erroneous admission of the evidence under Evidence Code section 352 resulted in a violation of his due process rights. The *Partida* court ruled the defendant could validly raise the due process issue even though he had not raised it in the court below: "When a trial court rules on an objection to evidence, it decides only whether that particular evidence should be excluded. Potential consequences of error in making this ruling play no part in this decision. A reviewing court, not the trial court, decides what legal effect an erroneous ruling has. Here, the trial court was called on to decide whether the evidence was more prejudicial than probative. It did so. Whether its ruling was erroneous is for the reviewing court to decide. If the reviewing court finds error, it must also decide the consequences of that error, including, if the defendant makes the argument, whether the error was so serious as to violate due process. The consequences of hypothetical error are not something the trial court ordinarily can or should consider when making the initial ruling." (*Id.* at pp. 436-437.)

While the *Partida* court ruled the defendant could argue on appeal that the legal consequence of the court's error was to violate his due process rights, the court was careful to limit the scope of its holding, "To the extent, if any, that defendant may be understood to argue that due process required exclusion of the evidence for a reason different from his trial objection, that claim is forfeited." (*Partida, supra*, 37 Cal.4th at p. 436.)

Here, appellant does not argue the court should have sustained his hearsay objection, and that the legal consequence of that error was a violation of his confrontation rights. Instead, he implicitly concedes the hearsay argument and then raises an entirely different argument; on appeal he asserts the admission of the CLETS printout was erroneous because it violated his confrontation rights as articulated in *Crawford*.

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*the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.*" (Italics added.)

Because appellant did not raise that issue in the court below, he cannot raise it on appeal. (*People v. Partida, supra*, 37 Cal.4th at p. 436.)

B. Sentencing

Appellant contends the aggravated sentence on his Vehicle Code section 2800.2 conviction must be reversed under principles articulated in *Blakely v. Washington* (2004) 542 U.S. 296 and its progeny. Our Supreme Court recently rejected this same argument in *People v. Black* (2005) 35 Cal.4th 1238. Appellant concedes that *Black* is controlling in this court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)<sup>3</sup>

III. DISPOSITION

The judgment is affirmed.

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Jones, P.J.

We concur:

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Simons, J.

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Bruiniers, J.\*

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

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<sup>3</sup> We note that this issue is pending before the United States Supreme Court in *People v. Cunningham* (Apr. 18, 2005, A103501), cert. granted *sub nom. Cunningham v. California* (2006) 126 S.Ct. 1329.