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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.

PHILLIP TUCKER,

Defendant and Appellant.

B267255

(Los Angeles County
Super. Ct. No. NA093473)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard R. Romero, Judge. Affirmed as modified.

Mark S. Devore, 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, Mary Sanchez and Timothy L. O'Hair, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Phillip Tucker guilty of assault by means likely to produce great bodily injury and willful infliction of corporal injury. On appeal Tucker contends: (1) the corporal injury charge must be reduced or retried because the jury may have based the conviction on a legally insufficient theory; (2) the trial court erred in denying his request for a free trial transcript to help him prepare a motion for new trial; (3) the trial court abused its discretion in failing to sua sponte revoke Tucker's in propria persona status; and (4) a one-year prior prison term enhancement (Penal Code section 667.5, subdivision (b)) must be stricken because the underlying conviction was designated a misdemeanor pursuant to Proposition 47 during the pendency of this appeal.¹ The People argue the abstract of judgment must be amended to include two fines that were orally pronounced in court. We order that the abstract of judgment be amended and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Tucker and Cheryl Byone dated for three years and lived together for two of those years. Their relationship ended in February 2014. Byone began a new romantic relationship with Reynald Perodin.

On May 19, 2014, Byone and Perodin boarded a Metro Blue Line train at the Anaheim Street Station, heading to Long Beach. Byone noticed Tucker was in the same train car. While Byone was attempting to make eye contact with Perodin to alert him to Tucker's presence, Tucker walked across the train car and sat next to Byone. Tucker then began to punch Perodin repeatedly, asking him, "You know who I am?" Byone stood up between

¹ All further undesignated statutory references are to the Penal Code.

Perodin and Tucker; she told Tucker to stop punching Perodin. As Perodin retreated to the end of the train, Tucker followed him, continuing to ask, “Don’t you know who I am?” Byone pushed the train’s emergency button to call for help. She then again placed herself between Tucker and Perodin, asking Tucker, “What are you doing? You don’t even know who he [Perodin] is.”

As the train arrived at the next station, Tucker grabbed Byone’s bag from her seat. When Tucker refused to return the bag, Byone grabbed one side to get it away from him. Tucker pulled the bag free from Byone’s grasp and exited the train. Bystanders on the station platform saw Tucker and Byone struggling over the bag; several admonished Tucker to release the bag. Tucker then threw the bag at Byone. The 10- or 15-pound bag hit Byone in the face, opening a two-inch laceration on her lip that began to bleed. As Tucker began running away, Byone called him a “bitch.” Tucker then turned around, re-boarded the train and chased Byone down the middle of the aisle until he was able to push her to the ground. She slid 20 or 30 feet across the train. Her knees and hands were sore. Tucker then exited the train and ran away. Video cameras on the train recorded the incident. Byone’s lip and Perodin’s injuries were photographed following the incident. Neither Byone nor Perodin sought medical treatment.

On June 5, 2015, the People filed an amended information charging Tucker with assault by means likely to produce great bodily injury (§ 245, subd. (a)(4); count 1) and willful infliction of corporal injury (§ 273.5, subd. (a); count 2). The information also alleged Tucker had two prior “strike” convictions and six “prison prior” convictions.

The trial court granted Tucker’s motion to represent himself pursuant to *Faretta v. California* (1975) 422 U.S. 806. The jury found Tucker guilty on both counts; he subsequently waived his right to a jury trial on the prior conviction allegations. Following a bench trial, the court found the prior conviction allegations to be true. The court sentenced Tucker to a total prison term of 14 years.² Tucker timely appealed.

DISCUSSION

I. Reversal of the Corporal Injury Conviction is Not Warranted

The jury found Tucker guilty of one count of violating section 273.5, subdivision (a). Tucker contends the conviction must be reversed because the jury may have found him guilty on a legally insufficient theory suggested by the prosecutor. We find no basis for reversal.

A. Background

The trial court instructed the jury that the People were required to prove Tucker inflicted an injury on Byone resulting in a “traumatic condition,” which was defined as “a wound or other bodily injury, whether minor or serious, caused by the direct application of physical force.” In closing argument, the prosecutor argued the section 273.5, subdivision (a) crime could be committed “by throwing an object at someone and causing the physical injury by throwing that object. So [Tucker] throwing the purse at [Byone], if that caused the cut to her lip, then that’s

² The 14-year sentence was comprised of eight years on the assault by means likely to produce great bodily injury count (four years, doubled pursuant to the Three Strikes law); a consecutive two years on the corporal injury count; and four one-year prior prison term enhancements under section 667.5, subdivision (b).

sufficient.” The prosecutor subsequently argued the People had proved beyond a reasonable doubt that Tucker inflicted an injury on Byone when he threw the bag at her and cut her lip. He continued: “[Tucker] also caused injury to [Byone] by pushing her down which caused pain to her legs. It’s irrelevant if the injury is minor. So long as there’s some injury, that’s sufficient for him to be guilty of this crime. And, therefore, the evidence established beyond a reasonable doubt that the defendant is guilty of this crime.” Tucker did not object to this argument.

B. Discussion

Under section 273.5, subdivision (a), “[a]ny person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in subdivision (b) is guilty of a felony. . . .” Subdivision (d) defines “traumatic condition” as “a condition of the body, such as a wound, or external or internal injury, including, but not limited to, injury as a result of strangulation or suffocation, whether of a minor or serious nature, caused by a physical force.” (§ 273.5, subd. (d).) Evidence the victim has suffered only pain, but no accompanying injury, is insufficient to establish the victim suffered injury resulting in a traumatic condition. (*People v. Beasley* (2003) 105 Cal.App.4th 1078, 1086; *People v. Abrego* (1993) 21 Cal.App.4th 133, 137-138.) Tucker contends on appeal that the prosecutor’s argument allowed the jury to find him guilty of a violation of section 273.5, subdivision (a) based on the legally inadequate theory that he pushed Byone and caused her to suffer pain, but not an “injury resulting in a traumatic condition.” The People contend the issue is one of factual inadequacy only.³

³ The People do not argue on appeal that the evidence was sufficient for the jury to conclude Tucker’s act of pushing Byone

Both factual and legal inadequacy concern the sufficiency of the evidence. But the terms refers to two different types of cases: “(a) those in which ‘a particular theory of conviction . . . is contrary to law,’ or, phrased slightly differently, cases involving a ‘*legally* inadequate theory’; and (b) those in which the jury has merely been ‘left the option of relying upon a *factually* inadequate theory,’ or, also phrased slightly differently, cases in which there was an ‘insufficiency of proof.’ [Citation.]” (*People v. Guiton* (1993) 4 Cal.4th 1116, 1128 (*Guiton*), citing *Griffin v. United States* (1991) 502 U.S. 46, 59.)

As explained in *Guiton*, “[i]f the inadequacy of proof is purely factual, of a kind the jury is fully equipped to detect, reversal is not required whenever a valid ground for the verdict remains, absent an affirmative indication in the record that the verdict actually did rest on the inadequate ground. But if the inadequacy is legal, not merely factual, that is, when the facts do not state a crime under the applicable statute, as in [*People v. Green* (1980) 27 Cal.3d 1, abrogated on another ground in *People v. Martinez* (1999) 20 Cal.4th 225, 239], the *Green* rule requiring reversal applies, absent a basis in the record to find that the verdict was actually based on a valid ground.” (*Guiton, supra*, 4 Cal.4th at p. 1129.)

However, as the California Supreme Court explained in *People v. Morales* (2001) 25 Cal.4th 34 (*Morales*), both *Guiton* and *Green* involved cases in which “the court presented the state’s case to the jury on an erroneous legal theory or theories.” (*Morales*, at p. 43.) In contrast, in *Morales*, as in this case, the court did not present to the jury a case premised on a legally

caused her an injury resulting in a traumatic condition to her leg or knee.

incorrect theory. Instead, the prosecutor, arguably incorrectly, suggested the evidence of Byone's pain after being pushed was sufficient to establish Tucker's conduct caused her to suffer an injury resulting in a traumatic condition. As the *Morales* court explained: "The prosecutor arguably misstated some law, but such an error would merely amount to prosecutorial misconduct [citation] during argument, rather than trial and resolution of the case on an improper legal basis." (*Ibid.*) The same is true here. The trial court properly instructed the jury on the applicable law, and it cannot be said a legal theory unsupported by the evidence was presented to the jury in the very trying of the case.

Morales further clarified the holding of *Green*: "[*Green*] stands for the proposition that the prosecution may present a case in which jurors may have been (1) legally misled by instructions or evidence, i.e., presented an 'alternate theory [that] is legally erroneous' [citation] because it is based on (a) incorrect instructions or (b) inadmissible evidence; or (2) factually misled by evidence, 'i.e., when the reviewing court holds the evidence insufficient to support the conviction' [citation]. Properly understood, *Green* reasons that in cases suffering from insufficient evidence, deficient instructions, or other errors made in presenting evidence or giving instructions, ill-advised remarks by the prosecutor may compound the trial's defects." (*Morales, supra*, 25 Cal.4th at p. 48.)

There were no such errors here. As a result, *Green* is not controlling. Only the prosecutor's closing argument suggested Byone's leg pain was evidence of an injury resulting in a traumatic condition. At most, this was a misstatement of the law to the extent it conflated pain with "injury" under section 273.5,

subdivision (a). Viewed as prosecutorial misconduct, we find no reversible error.

As an initial matter, Tucker forfeited any claim of prosecutorial misconduct by failing to object below. (*People v. Clark* (2016) 63 Cal.4th 522, 577 (*Clark*); *People v. Nguyen* (2015) 61 Cal.4th 1015, 1046-1047.) Even had Tucker preserved the argument it would fail. There is no basis to conclude the prosecutor's conduct infected the trial with such unfairness as to make the conviction a denial of due process, or that he made use of deceptive methods and it is reasonably probable that without such misconduct Tucker would have received a more favorable outcome. (*Clark*, at pp. 576-577.)

The prosecutor's argument that Byone's leg pain was sufficient to establish an "injury resulting in a traumatic condition" was a minor point, secondary to the argument he made twice, which was that the lip injury Tucker caused satisfied the elements of section 273.5, subdivision (a). Further, the evidence of the lip injury was undisputed. The jury had no basis to reject the evidence establishing a "traumatic condition" based on the lip injury, while also accepting the argument that Tucker's act of pushing Byone caused her to suffer an injury resulting in a traumatic condition. Even if the prosecutor's argument was misleading or incorrect, it is not reasonably probable that absent the statement the outcome would have been more favorable to Tucker.

Moreover, even if we consider Tucker's argument in the context of *Guiron* and *Green*, we would still conclude reversal is not warranted. *Green* concerned a legally erroneous instruction. (*People v. Hughes* (2002) 27 Cal.4th 287, 351 [*Green* involved a legally erroneous instruction; *Guiron* involved legally correct

instructions on a theory for which there was an inadequacy of proof[.] Tucker does not contend the jury was improperly instructed on the law in this case. Instead, his argument concerns one of factual inadequacy—the prosecutor argued alternate theories, one of which was unsupported by the evidence, namely that Tucker inflicted injury on Byone, resulting in a traumatic condition to her knee or leg.

Reversal is not required because there was a valid ground upon which to base the conviction and no affirmative indication that the jury’s verdict rested on the factually inadequate ground. (*Guiron, supra*, 4 Cal.4th at p. 1129.) The evidence was undisputed that Tucker threw a heavy bag at Byone, causing a laceration on her lip that bled and became swollen. Byone’s testimony about the injury was corroborated by the testimony of a police officer who observed the injury. This evidence was sufficient to support the “traumatic condition” element, and there was no basis for the jury to reject it. Thus, reversal is not warranted.

II. The Trial Court Did Not Err in Denying Tucker’s Request for a Free Trial Transcript

Following the trial, Tucker submitted written and oral motions requesting a free, complete trial transcript. Tucker argued he needed the transcript to prepare a motion for new trial. He also argued he needed the transcript as an accommodation because he did not have a “perfect memory” and did not take notes during the trial. The trial court denied the request. Tucker now contends the denial violated his rights to due process and a fair trial. He additionally asserts the denial violated the court rule regarding disability accommodations. We disagree.

In general, “[e]qual protection principles require that the government provide an indigent criminal defendant with a free reporter’s transcript of prior proceedings if the transcript is needed for proper appellate review or for an effective defense. [Citations.] The policy behind this rule is to ensure that an indigent defendant receive ‘the basic tools of an adequate defense or appeal, when those tools are available for a price to other [defendants].’ [Citation.]” (*People v. Markley* (2006) 138 Cal.App.4th 230, 240 (*Markley*), citing *Griffin v. Illinois* (1956) 351 U.S. 12, 18-19 and *Britt v. North Carolina* (1971) 404 U.S. 226, 227-230.)

However, “[a]n indigent defendant ‘is not entitled, as a matter of absolute right, to a full reporter’s transcript of his trial proceedings for his lawyer’s use in connection with a motion for a new trial; but, since a motion for a new trial is an integral part of the trial itself, a full reporter’s transcript must be furnished to all defendants . . . whenever necessary for effective representation by counsel at that important stage of the proceeding.’ [Citation.] There are no mechanical tests for deciding when the denial of transcripts for a motion for new trial is so arbitrary as to violate due process or to constitute a denial of effective representation. Each case must be considered on its own peculiar facts and circumstances.” (*People v. Bizieff* (1991) 226 Cal.App.3d 1689, 1700 (*Bizieff*)). “[A]ppellant must show that the requested transcripts are necessary for effective representation by counsel on the motion for new trial.” (*Id.* at p. 1702.)

Here, Tucker failed to show a full reporter’s transcript was necessary for effective representation on the motion for new trial. His initial argument was that he was entitled to the transcript and needed it to prepare a motion because he did not have a

“perfect memory.” He later argued he needed the transcript to “effectively cross-examine the witnesses” and to “build an effective defense for appeal.” He asserted he had new evidence with which to impeach Byone and that the trial court improperly prevented him from impeaching Perodin. He also argued Byone, Perodin, and a detective all committed perjury at trial, and the person who testified as Perodin on the first day was not, in fact, Perodin. As we understand the argument he made in the trial court, he further contended a new trial was warranted due to prosecutorial misconduct.

None of these arguments articulated a specific or particularized need for a full trial transcript with respect to a motion for new trial. (*Markley, supra*, 138 Cal.App.4th at p. 242; *Bizieff, supra*, 226 Cal.App.3d at p. 1702.) While Tucker asserted he did not take notes and did not have a “perfect memory,” he was present for the entirety of the trial, which lasted only two days and involved the testimony of only four witnesses. Tucker’s argument to the trial court demonstrated he recalled enough of the evidence to discuss the issues he wished to challenge in the new trial motion. Further, the issues Tucker intended to raise did not require a detailed recollection of the evidence at trial. Effectively presenting an argument regarding newly discovered evidence was possible with general details about the evidence adduced at trial, particularly since the judge who presided over the trial would also hear the new trial motion. (*People v. Lopez* (1969) 1 Cal.App.3d 78, 82.) The argument that the trial court erred by limiting Tucker’s impeachment of Perodin also did not require significant detail beyond what Tucker demonstrated he was able to recall without the aid of a trial transcript. He also recounted the basis for his prosecutorial misconduct claims

without the aid of a transcript. Tucker did not show a complete trial transcript was necessary for effective representation with respect to the new trial motion he was contemplating.

We also conclude the trial court did not err in denying the request under California Rules of Court, rule 1.100 (rule 1.100). Rule 1.100 sets forth a procedure for a litigant to request a disability accommodation and for the court to consider and rule on the request. Under rule 1.100(c)(2), requests for accommodations must include “a statement of the impairment that necessitates the accommodation.” Tucker described himself as requiring a free trial transcript as an accommodation for a disability, but he explained this request only by stating that he did not have a “perfect memory.” Tucker offered no other information that would have permitted the trial court to conclude he had a disability within the meaning of the Americans with Disabilities Act or California Civil Code section 51 et seq. (Rule 1.100(e)(1) [“In determining whether to grant an accommodation request . . . the court must consider . . . California Civil Code section 51 et seq., the provisions of the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101, et seq.), and other applicable state and federal laws.”].) A trial court may properly deny an accommodation request when it determines the applicant has failed to satisfy the requirements of the rule.

The trial court did not err in denying Tucker’s request for a free trial transcript.

III. The Trial Court Did Not Abuse its Discretion in Failing to Sua Sponte Revoke Tucker’s Self-Representation

Tucker also argues the trial court erred when it failed to sua sponte revoke his in propria persona status. We disagree.

Tucker contends the court should have terminated his self-representation because he made comments in front of the jury alleging witnesses and the prosecutor were lying; he asserted the court was biased against him and made racially-motivated rulings; he claimed the proceedings were unfair; he asked Perodin irrelevant questions about his alleged HIV status; and he asserted two different people had claimed to testify as Perodin. Tucker further contends the need to terminate his self-representation was apparent after the jury rendered its verdict because he then repeated his claim that two people had testified as Perodin; he asserted his former public defender and the prosecutor conspired to question his competency; and he made several comments, using profanity, indicating he no longer wished to participate in the proceedings.

“A trial court may revoke self-representation if the defendant engages in disruptive or obstructionist behavior. [Citations.] But a trial court is not *compelled* to revoke self-representation in such cases. “The trial court possesses much discretion when it comes to terminating a defendant’s right to self-representation and the exercise of that discretion “will not be disturbed in the absence of a strong showing of clear abuse.” [Citations.]’ [Citation.] The fact a defendant does a bad job, or even fails to contest the case, is not a basis to revoke self-representation.” (*People v. Weber* (2013) 217 Cal.App.4th 1041, 1060.)

Although Tucker had several outbursts during the trial in which he complained about the proceedings and used profanity, he responded to the trial court’s admonishments. The trial court could reasonably conclude Tucker was not out of control and his behavior did not impair the orderly progress of the trial. Tucker

at times attempted to pursue irrelevant lines of questioning, and he accused witnesses of lying during examinations, but he also asked many pertinent questions and legitimately challenged the People's case. He largely kept his outbursts limited to discussions with the court and prosecutor that were outside the presence of the jury. The record offers no basis for this court to conclude Tucker's behavior adversely impacted the core integrity of the trial (*People v. Carson* (2005) 35 Cal.4th 1, 9), such that the court was required to terminate his self-representation.

Tucker suggests the trial court should have been more aware of the potential need to terminate his self-representation because of questions regarding his competency that were raised at the outset of the case. However, the record does not indicate Tucker engaged in behavior suggesting he suffered from a mental illness so severe that he was unable to carry out the basic tasks needed to present a defense without the help of counsel. (*People v. Johnson* (2012) 53 Cal.4th 519, 530.) Tucker was at times very frustrated with the criminal process and he displayed an unfamiliarity with the rules of evidence. Yet, he clearly understood the process and, while he expressed his displeasure and frustration, he was generally able to actively participate in the trial and carry out his defense. (See *People v. Ramos* (2004) 34 Cal.4th 494, 508 [to be deemed incompetent defendant "must exhibit more than bizarre, paranoid behavior, strange words, or a preexisting psychiatric condition that has little bearing on the question of whether the defendant can assist his defense counsel."].)

Although Tucker engaged in some disruptive or improper behavior, our review of the record does not reveal that his behavior was so detrimental to the integrity of the trial that the

court abused its discretion by not sua sponte terminating his self-representation.

IV. Proposition 47 Does Not Require this Court to Strike Tucker's Prison Prior Enhancement

The trial court found true the allegation that Tucker suffered several prior convictions within the meaning of section 667.5, subdivision (b) (prison priors).⁴ One of the prison priors was an April 19, 2001 conviction for a violation of Health and Safety Code section 11350, subdivision (a), in case No. NA043014. On August 27, 2015, the trial court sentenced Tucker to a 14-year prison term in the instant case. One component of the sentence was a one-year enhancement for the prison prior based on the April 19, 2001 conviction. Tucker filed a notice of appeal on September 10, 2015. On September 21, 2016, the trial court redesignated the April 19, 2001 conviction in case No. NA043014

⁴ Under section 667.5, subdivision (b), when a “new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under subdivision (h) of Section 1170 is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended for any felony; provided that no additional term shall be imposed under this subdivision for any prison term or county jail term imposed under subdivision (h) of Section 1170 or when sentence is not suspended prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under subdivision (h) of Section 1170 or any felony sentence that is not suspended.”

as a misdemeanor pursuant to Proposition 47 (§ 1170.18, subd. (g)).⁵

Briefing in this appeal was completed in late September 2016. However, at Tucker’s request, we granted the parties leave to file supplemental briefs regarding the validity of the prison prior enhancement based on the April 19, 2001 conviction. Tucker argues this court should strike the one-year prison prior enhancement because the underlying conviction is now a misdemeanor and may no longer form the basis of the enhancement. The People ask us to reject this argument, contending striking the prison prior enhancement would require retroactive application of Proposition 47. The People argue the language of Proposition 47, the voters’ intent, and existing caselaw all fail to provide a basis for a “retroactive” application of the law that would eliminate the collateral consequences of prior felony convictions. We conclude Proposition 47 does not require us to strike the prison prior enhancement.

Proposition 47 changed certain drug- and theft-related offenses from felonies or wobblers to misdemeanors. (*People v. Lynall* (2015) 233 Cal.App.4th 1102, 1108.) Defendants who have completed their sentence for a crime that is now a misdemeanor may apply to have the felony conviction re-designated as a misdemeanor. (§ 1170.18, subd. (f).) While Proposition 47 indicates redesignated convictions are to be considered misdemeanors for “all purposes” (§ 1170.18, subd. (k)), the statute contains no express language explaining how redesignation is intended to affect prior prison term enhancements imposed based on a redesignated conviction.

⁵ We have granted Tucker’s two unopposed requests for judicial notice.

This issue--whether a defendant is eligible for resentencing on the penalty enhancement for serving a prior prison term on a felony conviction, after the trial court has redesignated the underlying felony as a misdemeanor under Proposition 47--is currently under review by the California Supreme Court. (*People v. Valenzuela*, S232900, rev. granted March 7, 2016.) However, we may still cite recent published cases while review is pending for any potential persuasive value (see Cal. Rules of Court, rule 8.1115(e)(1)), and we find persuasive value in *People v. Acosta* (2016) 247 Cal.App.4th 1072 (*Acosta*), review granted August 17, 2016, S235773.

Acosta interpreted section 667.5, subdivision (b) as affording additional punishment based on the service of a prior prison term, rather than the status of the conviction or the underlying criminal conduct. We agree with this reasoning. Under section 667.5, subdivision (b), a defendant's sentence is enhanced based on his service of a prior prison term or county jail term. The enhancement is "based on the defendant's status as a recidivist." (*People v. Gokey* (1998) 62 Cal.App.4th 932, 936.) The fact that the defendant served a prison term is not changed or eliminated after a redesignation of the underlying offense pursuant to Proposition 47. We therefore conclude the one-year enhancement imposed in this case, as to Tucker's conviction and prison term served in case No. NA043014, is still valid.

V. The Abstract of Judgment Must Be Corrected

The People argue the abstract of judgment must be corrected to accurately reflect the oral pronouncement of sentence.⁶ At sentencing, the trial court imposed various fees

⁶ Tucker did not respond to the People's argument in his reply brief.

and assessments, including the court facilities assessment pursuant to Government Code section 70373, subdivision (a)(1), in the amount of \$30 per count, and the court security fee under section 1465.8, subdivision (a)(1), in the amount of \$40 per count. (*People v. Woods* (2010) 191 Cal.App.4th 269, 272.) The abstract of judgment reflects the assessment and fee for only one count, rather than the total amount assessed for both convictions. We agree that the abstract of judgment must be corrected to reflect the oral pronouncement of the court. (*People v. Scott* (2012) 203 Cal.App.4th 1303, 1324.)

DISPOSITION

The trial court is directed to prepare a corrected abstract of judgment reflecting a total assessment of \$60 pursuant to Government Code section 70373, subdivision (a)(1), and a total fee of \$80 pursuant to Penal Code section 1465.8, subdivision (a)(1), and to forward a copy to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

BIGELOW, P.J.

We concur:

RUBIN, J.

FLIER, J.