Filed 8/22/13 P. v. Wade CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. MARTY ADELBERT WADE, Defendant and Appellant.	B238216 (Los Angeles County Super. Ct. No. BA367949)

APPEAL from a judgment of the Superior Court of Los Angeles County. John S. Fisher, Judge. Modified and affirmed with directions.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Kenneth C. Byrne, Supervising Deputy Attorney General, and Seth P. McCutcheon, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Marty Adelbert Wade appeals from the judgment entered following a jury trial in which he was convicted of misdemeanor vandalism and second degree robbery, with a finding he used a deadly and dangerous weapon. Defendant contends the trial court violated his constitutional rights by preventing him from asking a police officer about his usual practices during a suppression hearing and by failing to declare a doubt, sua sponte and retrospectively, about defendant's mental competence at the time of trial. The Attorney General requests that we reduce defendant's presentence conduct credit and double the amount of the court operations assessment and court construction fee imposed by the trial court. We affirm the judgment, but modify it to correct the amount of the court operations assessment and court construction fee.

BACKGROUND

Late on the afternoon of February 11, 2010, defendant walked into Kyung Jae Lee's video store in Los Angeles and asked to return a pornographic DVD. Defendant presented Lee with a receipt for the DVD showing that he had purchased it from Lee about six weeks earlier. Defendant told Lee there was nothing wrong with the DVD, but it featured white "characters," and defendant wanted a pornographic DVD featuring African-American "characters." Lee refused to exchange the DVD and told defendant too much time had passed since the purchase. Defendant grabbed a computer monitor and a Lotto ticket machine from the counter in Lee's store and threw them to the floor. Lee came out from behind the counter and asked defendant to stop what he was doing. Defendant used his cane to strike Lee's shoulder and hands, which Lee had raised to protect his head. Defendant told Lee to give him the movie he wanted. Lee took out his mobile phone to call for help, but defendant took it and attempted to break it. Lee said he would give defendant another DVD, then did so. Defendant took the DVD Lee handed him and left the store. Lee phoned 911 and watched defendant walk to a bus stop. When Los Angeles Police Department officers arrived, Lee pointed defendant out to them.

Officer Bradley Neilsen testified that as he approached defendant, he saw defendant remove a DVD from his pocket and throw it to the sidewalk. Officers

recovered the DVD, a DVD case, and defendant's cane. Neilsen and Officer Jay Mims testified they entered the store and saw the broken computer monitor and Lotto ticket machine on the floor.

Mims and his partner drove defendant to the police station and placed him in a holding cell. When Mims returned to obtain "personal information" needed to complete the booking forms, Mims told defendant he was being booked for robbery. Defendant said he wanted to explain what happened, then spontaneously told Mims he had gone in the store to exchange a DVD that featured White women for one that featured Black women because his taste in pornography had changed. The store owner refused to exchange the DVD, so defendant smashed the computer monitor and the lottery ticket machine to get the owner's attention. He then took a DVD featuring Black women and left the store, leaving behind the DVD he had sought to return.

Defendant did not testify or call any witnesses.

The jury convicted defendant of second degree robbery and misdemeanor vandalism and found true an allegation that defendant personally used a deadly and dangerous weapon in the commission of the robbery. The trial court found true allegations that defendant had suffered a prior serious felony conviction within the scope of the "Three Strikes" law and Penal Code section 667, subdivision (a)(1). (Undesignated statutory references are to the Penal Code.) About five months after trial, proceedings were suspended because the trial court found defendant to be incompetent. About 10 months later, defendant was restored to competence, proceedings resumed, and the court sentenced defendant to 11 years in prison, consisting of a second strike term of 6 years for robbery, plus 5 years for a section 667, subdivision (a)(1) enhancement, with a concurrent six-month term for vandalism.

DISCUSSION

1. Limitation on cross-examination during suppression hearing

Before trial, defendant moved to exclude his statement to Mims on the ground that it was obtained in violation of *Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602]

(*Miranda*). The trial court conducted the hearing on the motion during trial, outside the presence of the jury.

Upon questioning by the prosecutor at the hearing, Mims testified that while he and his partner were driving defendant to the police station, defendant made a spontaneous statement along the lines of, "'All I did was, you know, smash the computer.'" This statement was not admitted at trial and was not, apparently, a subject of defendant's suppression motion.

Upon arrival at the police station, Mims put defendant in a holding cell while he sought permission to book defendant. Mims did not read defendant his *Miranda* rights and to Mims's knowledge, no other officer did so. Mims returned to the holding cell to obtain information required for the booking process, such as name, address, and date of birth. Mims testified, "The only questions I was asking him were in regards to his contact information and his personal information. [¶] So, again, is this your address? You know, what's your birth date? That information." Defendant asked Mims, "'Why am I here?'" Mims replied, "'Well, you're here for robbery.'" Defendant responded, "'No. Let me tell you what really happened.'" Defendant then continued speaking in one long, rambling narrative, without Mims asking him any questions.

On cross-examination, defendant asked Mims how long he had been a police officer. Mims answered, "To date, roughly 18 months." Defendant then asked, "And is it your usual practice not to *Mirandize* arrestees?" The trial court interjected, "Sustained. Irrelevant."

In arguing his suppression motion, defendant urged the court to "act with caution" by excluding defendant's holding cell statement because Mims's uncorroborated testimony was "too convenient."

The trial court denied defendant's motion to suppress his statement, saying, "Certainly the jury instructions tells [*sic*] the jury to view them with caution and—but just as an aside I suppose if the officer wanted to make up a story he could have said [defendant] said he robbed the guy too."

Defendant contends that the trial court's limitation on his cross-examination of Mims violated his constitutional rights to confront witnesses, contest evidence, present a defense, remain silent, and to due process.

In *Miranda*, *supra*, 384 U.S. at page 444, the United States Supreme Court held that a person questioned by the police after being "taken into custody or otherwise deprived of his freedom of action in any significant way" must first "be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." Statements obtained in violation of this rule may not be used to establish guilt. (*Ibid*.)

Miranda advisements are required only when a person is subjected to "custodial interrogation." (*Miranda*, *supra*, 384 U.S. at p. 444.) "Interrogation" refers to both express questioning and to any words or actions that the police should know are reasonably likely to elicit an incriminating response from the suspect. (*Rhode Island v. Innis* (1980) 446 U.S. 291, 301 [100 S.Ct. 1682].) Simply telling a suspect why he has been arrested is not the functional equivalent of interrogation. (*People v. Celestine* (1992) 9 Cal.App.4th 1370, 1374.) An exception to the requirement of a *Miranda* advisement permits officers to ask questions reasonably related to obtaining the biographical data necessary for the administrative process of booking a person. (*Pennsylvania v. Muniz* (1990) 496 U.S. 582, 601–602 [110 S.Ct. 2638].) Volunteered statements also fall outside of the scope of *Miranda*. (*Miranda*, *supra*, 384 U.S. at p. 478.)

We review the trial court's implicit finding that Mims did not engage in custodial interrogation for substantial evidence or clear error. (*People v. Bradford* (1997) 14 Cal.4th 1005, 1034.)

Mims' testimony, which the trial court found to be credible, demonstrated that defendant's statement was volunteered in response to questions seeking basic biographical information for purposes of booking, not the product of custodial interrogation. Thus, *Miranda* did not render defendant's statement inadmissible, even

though no one had read defendant his *Miranda* rights. Although defendant contended Mims was not credible, he did not argue that Mims's booking questions or his response to defendant's inquiry were reasonably likely to elicit an incriminatory response. Nor did defendant argue, as he suggests on appeal, that leaving him in the holding cell for an unknown period of time physically or psychologically coerced his statement to Mims. Accordingly, the trial court did not err by denying defendant's suppression motion.

The trial court acted well within its discretion in sustaining its own objection to defendant's question asking if it were Mims's "usual practice not to *Mirandize* arrestees" because any answer would have been irrelevant to the decision the court was going to make on the suppression motion following the Evidence Code section 402 hearing. In this regard we note that defendant made no offer of proof and in the absence of such an offer, the court could reasonably view defendant's inquiry as "fishing" in the hope Mims would testify that it was his practice "not to *Mirandize* arrestees." Of course, because *Miranda* warnings are only required when custodial interrogation occurs, not when someone is arrested, such a response by Mims would not have assisted defendant in establishing that his statement was obtained in violation of *Miranda* as there was no evidence offered by defendant challenging Mims's testimony that defendant blurted out his statement.

We further note that when the court precluded Mims from answering the "usual practice" question on the ground of relevance, defendant failed to assert that the ruling violated his right to confront witnesses. Accordingly, he forfeited that claim for appeal. (*People v. Williams* (2008) 43 Cal.4th 584, 626.) Had defendant raised that theory, the trial court, in an abundance of caution, may have permitted Mims to answer. In any event, there was no violation of the confrontation clause, which simply guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense wishes. (*Delaware v. Van Arsdall* (1986) 475 U.S. 673, 679 [106 S.Ct. 1431].) Judges retain wide latitude to impose reasonable limits on cross-examination. (*People v. Quartermain* (1997) 16 Cal.4th 600, 623.) Confrontation

rights are not violated unless a defendant shows that the prohibited cross-examination would have produced a significantly different impression of the witness's credibility. (*Id.* at pp. 623–624.) Defendant has not shown what Mims's answer to the "usual practice" question would have been, much less that it would have caused the trial court to have a significantly different impression of his credibility. Defendant did not ask about Mims's "usual practice" in the presence of the jury, and thus we do not speculate as to what effect, if any, the unknown answer would have had on the jury's impression of Mims's credibility. Were merely note that defendant fully cross-examined Mims in the presence of the jury, including asking about whether he recorded defendant's statement or took notes during the statement, and whether any other officers were present when Mims was "taking the statements from" defendant.

Even if we were to conclude that the trial court erred by admitting defendant's statement, we would find the error harmless beyond a reasonable doubt. (*People v. Sims* (1993) 5 Cal.4th 405, 447.) Everything inculpatory in defendant's statement to Mims was introduced through Lee's testimony and defendant had no defense to the charges. Officers Neilsen and Mims testified to seeing the broken computer monitor and Lotto ticket machine on the floor of Lee's store, and Neilsen testified he saw defendant discard a DVD as Neilsen approached him. The only matter unique to defendant's statement was his explanation that he broke the monitor and ticket machine because he wanted to get Lee's attention. Defendant used this as partial support for his argument to the jury that when he broke things and struck Lee he was simply angry and acting out, and was not using force or fear to deprive Lee of a DVD. Accordingly, there is no reasonable possibility that the jury would have rendered a different verdict absent the purported error. (*People v. Ochoa* (1998) 19 Cal.4th 353, 479.)

2. Failure to conduct sua sponte retrospective competency hearing

On March 4, 2010, the date set for defendant's preliminary hearing, the trial court declared a doubt regarding defendant's mental competency and suspended proceedings. Psychiatrist Dr. Kory J. Knapke interviewed defendant in jail on April 28, 2010, pursuant

to a court order. Knapke's report to the court recounted defendant's "rather extensive psychiatric history," which included multiple psychiatric holds and hospitalizations, and defendant's admission of a severe crack cocaine addiction. Knapke concluded that defendant was "psychiatrically stable" and competent to stand trial, but added, "However, I would recommend that the defendant continue to take his antipsychotic medication on a daily basis." The parties submitted the issue of defendant's competence on Dr. Knapke's report, and the trial court found defendant competent and reinstated criminal proceedings on May 4, 2010.

Defendant's trial began on August 12, 2010. The jury began deliberations and returned a verdict on August 18, 2010. After the verdict on the charges and weapon enhancement, defendant personally waived a jury trial on the prior conviction allegations. When the court inquired if defendant wanted a jury trial on those allegations, defendant asked, "It's the same jury, right?" After the court said it would be the same jury, defendant responded, "Okay. I would like to waive the jury since it wasn't in my favor." The court asked defendant if he understood his right to a jury trial on the allegations, and defendant replied, "Well, I would like to—I'll give the jurors a second chance, you know. I'll give them a second chance." He then added, "It's a matter of me, you know, recovering, rehabbing my health. It's not the juror, you know. That's not the problem. It doesn't matter which jurors—" The court interrupted and explained that the issue was whether the court or the jury would decide whether defendant suffered the alleged prior convictions. Defendant said, "It doesn't make any sense for them to because the court's already made the decision that—" Defense counsel and the court interrupted to state that the court had not made the decision. Defendant then stated, "No. I don't want the jury." Upon inquiry by the court defendant then stated he understood his right to a jury trial and relinquished it.

After the court trial on the prior conviction allegations on August 18, 2010, counsel selected a date of September 16, 2010, for the sentencing hearing. The court asked defendant if he waived his right to be sentenced before that date. Defendant asked,

"Of September?" then stated, "Yes. I have no problem with that date." On September 16, 2010, the sentencing hearing was continued to October 18, 2010, at the request of defense counsel. The court asked defendant if he understood his right to be sentenced "today" and if he waived that right. Defendant replied, "Yes, your honor."

On October 18, 2010, defense counsel requested another continuance, to November 18, 2010. The court again asked defendant if he understood his right to be sentenced "today" and if he waived that right. Defendant replied, "I don't like to stay over Twin Towers. I would not like to stay at Twin Towers anymore. [¶] I'm supposed to transfer to the V.A. medical center for further outpatient treatment. If you tell me the V.A. judge is going to be in place of you today, I don't see him here. Okay. He lied. There's nothing I can do about it, you know? I got to come back November 18." The court asked defense counsel, "Is this a continuance because you need a doctor for evaluation?" Counsel said it was. The court responded, "I find good cause. So ordered."

On November 18, 2010, outside defendant's presence, defense counsel asked for another continuance for a variety of reasons, including the appointed psychiatrist's failure to complete his report regarding defendant. The court agreed to continue the sentencing hearing to December 16, 2010. Defense counsel asked that defendant be brought into court to waive time, but stated, "I anticipate there may possibly be an outburst." The court stated, "Yeah. I'm not going to do that."

On December 16, 2010, defense counsel declared a doubt regarding defendant's competency. Defendant interjected, saying, "I'm competent. I just can't go up north to no hospital. I'm competent over at the court 95 up the street. They already made me competent to stand trial. I'm competent. I just can't survive up north with the white folks. I don't have a family up there and I'm not a prison person. I'm not gay, okay? I don't live around men all my life, okay? [¶] So I already talked to Mr. Shannon to be a rep and we agreed, Mr. Weingart, to send me to the Weingart for further programming to help get me back into society." Counsel explained that the psychiatrist attempted to interview defendant in jail, but defendant refused to come out of his cell. The court

granted a continuance of the sentencing hearing to January 7, 2011, to give the psychiatrist another opportunity to interview defendant and prepare a report, but refused to declare a doubt regarding defendant's competency.

On January 5, 2011, Dr. Joseph R. Simpson submitted his report, which opined that defendant was incompetent to be sentenced. Simpson reviewed defendant's medical records from jail and reported that upon his arrest in this case on February 11, 2010, defendant was housed on the seventh floor, an area "reserved for inmates with severe psychiatric symptoms, and was prescribed Risperdal. However, he decompensated over the course of the next several weeks. In early April he was transferred to FIP [the forensic inpatient unit] on a 72-hour hold for danger to others. . . . He was psychiatrically stabilized and was discharged back to the seventh floor on April 8th. By April 19th, he was transferred to the sixth floor, which houses inmates with lower acuity psychiatric conditions . . . ." Simpson reported that defendant "became noncompliant with medications in the summer" sometime after the jail began giving him his medication in tablet form, instead of liquid. Simpson recounted, "In early August [defendant] told his jail psychologist: 'I was insane when I committed the crime, because I ate a lot of mozzarella cheese and milk. Milk and cheese are made of cocaine. Cocaine made me high. Benadryl is made of milk, and you know that milk makes you feel high. You guys have been deceiving me to take medications. This is why I stopped taking them.' On August 11th, he was interviewed by a psychiatrist, and admitted that he had been flushing his psychiatric medications down the toilet. He told the psychiatrist that he would not agree to take medications, so the psychiatrist discontinued the medication order. [¶] Mr. Wade's functioning continued to decline, and his symptoms continued to worsen, over the next several months. He was not prescribed antipsychotic medication again for over two and a half months, until November 30th. The records indicate that he reported bizarre delusions and behaved in a progressively more bizarre fashion."

Of his January 3, 2011 interview with defendant, Simpson reported, "His thought process was tangential and at times frankly disorganized. He had prominent bizarre

delusions . . . . His insight was extremely poor. His judgment was poor." Defendant told Simpson that he would not be going to prison, but would instead go to an outpatient program or to "'an SRO program downtown.'" Simpson opined that defendant had "a chronic, severe psychotic disorder, most likely schizophrenia," independent of substance abuse, and that he was "presently exhibiting severe psychotic symptoms . . . ." Simpson further opined, "As a result of his psychosis, he does not understand and appreciate his current legal situation. He is unable to rationally understand his conviction and the resulting sentence and its purpose. Thus, he is incompetent to be sentenced."

On January 7, 2011, the trial court declared a doubt regarding defendant's competency on the basis of Simpson's report, suspended proceedings, and, at the prosecutor's request, appointed a second psychiatrist to evaluate defendant. Defendant refused to speak to the second psychiatrist.

At a hearing pursuant to section 1368 on February 10, 2011, both counsel submitted the issue on the basis of Simpson's report. Over defendant's objection, the court found defendant to be incompetent and ordered him to be transferred to Patton State Hospital.

Defendant was admitted to Patton State Hospital on March 7, 2011. On October 4, 2011, Patton's medical director certified defendant's mental competence, and on October 21, 2011, the parties submitted the issue of defendant's competence on the report from Patton. The court found defendant competent and criminal proceedings were resumed. On November 4, 2011, the court sentenced defendant to prison. Defendant argued his mental illness as a mitigating factor, but did not argue that he was incompetent during his trial or seek a new trial on that ground.

Defendant contends that "based upon information the court received before sentencing, the court had a *sua sponte* duty to declare a doubt as to [defendant's] mental competence at the time of the jury trial, and that Due Process and the right to a fair trial required the court, at minimum, to conduct a retroactive determination of [defendant's] competency at the time of the jury trial."

Both the state and federal constitutional guarantees of due process prohibit the trial of an incompetent defendant who is so mentally impaired as to be unable to assist his or her attorney rationally in conducting the defense. (*People v. Lightsey* (2012) 54 Cal.4th 668, 690–691.) California's statutes regarding competency of a criminal defendant "essentially parallel the state and federal constitutional directives." (*Id.* at p. 691.)

A defendant who, as the result of mental disorder or developmental disability, "is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner" is incompetent to stand trial. (§ 1367, subd. (a).) "Whether on motion of the defendant or sua sponte, the trial court is required to suspend criminal proceedings and hold a hearing to determine competency whenever substantial evidence of incompetence is introduced. 'Substantial evidence is evidence that raises a reasonable doubt about the defendant's competence to stand trial.' [Citation.] Evidence regarding past events that does no more than form the basis for speculation regarding possible current incompetence is not sufficient." (*People v. Hayes* (1999) 21 Cal.4th 1211, 1281.) The trial court's duty to conduct a competency hearing arises when such evidence is presented at any time prior to judgment. (§ 1368, subd. (a).)

A defendant is presumed competent and bears the burden of establishing by a preponderance of the evidence that he or she is incompetent. (*People v. Smith* (2003) 110 Cal.App.4th 492, 502, 504 (*Smith*).) "[T]he mere presence of a mental illness does not mean [a defendant is] unable to understand the proceedings or assist in his own defense." (*Id.* at p. 502.)

Defendant's contention fails for three reasons. First, the record does not reflect that at the time of trial the court had before it substantial evidence that defendant was incompetent. Defendant apparently behaved himself throughout the trial and on the final day of trial, August 18, 2010, defendant responded appropriately when the trial court questioned him regarding a waiver of a jury trial on the prior offense allegations and the date of the sentencing hearing. Defendant also responded appropriately on September

16, 2010, when the court asked him if he consented to a second continuance of the sentencing hearing. The first indication in the record that something may have been amiss with defendant was on October 18, 2010, when the court asked him if he consented to a third continuance of the sentencing hearing. Indeed, defense counsel did not declare a doubt as to defendant's competency until December 16, 2010, four months after the trial. Nothing in the record indicates that the trial court was aware of the existence of any of the matters revealed in Dr. Simpson's report until January 5, 2011, at the earliest. After receiving that report, the court immediately declared a doubt as to defendant's competence. But at the time of trial, there was no substantial evidence before the court that raised a reasonable doubt about the defendant's competence, and the court thus had no sua sponte duty to declare a doubt as to defendant's competence.

We further note that the matters upon which defendant relies to argue that he was incompetent at the time of his trial—his milk-cheese-cocaine statement to jail psychologist "[i]n early August" of 2010 and his statement to a jail psychiatrist on August 11, 2010, that he had "been flushing his psychiatric medications down the toilet" for some unspecified period of time—would not constitute substantial evidence that defendant was unable to understand the nature of the criminal proceedings or to assist his attorney in the conduct of a defense in a rational manner. These statements indicated that defendant was mentally ill, but the mere presence of mental illness is not the pertinent standard. It would be speculative to conclude he was incompetent during his trial (*Smith*, *supra*, 110 Cal.App.4th at p. 502), and such speculation would contravene the presumption that defendant was competent.

Second, defendant did not raise the possibility that he was incompetent at the time of his trial until appeal. He never mentioned this theory or asked the trial court to make a finding that he was incompetent at the time of his trial, and the court had no sua sponte duty to raise this issue, especially in the absence of substantial evidence indicating that defendant was incompetent at the time of his trial. "The statute and general rules of criminal procedure place the burden on the defendant to come forward after restoration of

competency with sufficient evidence to show which, if any, parts of the prior proceedings were infected by his subsequent declaration of incompetence." (*Smith, supra*, 110 Cal.App.4th at p. 505, fn. omitted.) Defendant, not the trial court, had the burden of raising the issue and proving his purported incompetence at the time of trial.

Finally, "Section 1368 is a legislative determination that the trial court is the appropriate judicial body for determining a defendant's competence. Unless the trial court has been offered evidence on these issues relative to earlier proceedings upon restoration of competency, there is nothing for the appellate court to review." (*Smith, supra*, 110 Cal.App.4th at p. 506.) "In the absence of evidence sufficient to find incompetency as a matter of law, or a retroactive finding of incompetency by the trial court, we cannot find the later incompetency finding under section 1369 reaches back to some unknown and unidentified point in earlier proceedings. Doing so would create an unmanageable and unjustified quagmire for appellate and trial courts alike." (*Id.* p. 505.)

3. Request to modify fines, fees, and credits

The Attorney General requests this court to reduce the conduct credits the trial court awarded defendant by three days and impose the $40 section 1465.8, subdivision (a)(1) court operations assessment and the $30 Government Code section 70373, subdivision (a)(1) court construction fee for each count, not just a single count, as reflected in the sentencing minute order and on the abstract of judgment. Defendant failed to oppose any of these requests.

With respect to defendant's credits, the Attorney General argues the court erred by awarding conduct credits for a portion of the time defendant was in Patton State Hospital. The record reveals that the trial court was fully aware that defendant was not entitled to conduct credits for his time in Patton, and relied upon defense counsel to provide a "breakdown between Patton and county jail." Counsel apparently provided the court with the calculation off the record. We cannot determine from the appellate record that the trial court's award of credits was erroneous. The Attorney General argues defendant was returned from Patton to jail on October 21, 2011, the date of the sentencing hearing,

but the record reveals he was returned to jail no later than October 11, 2011, when he appeared in court. Accordingly, we have no factual basis for modifying the award of credits and deny the Attorney General's request.

The $40 court operations assessment and the $30 court construction fee are statutorily required to be imposed "on every conviction for a criminal offense, including a traffic offense" (§ 1465.8, subd. (a)(1); Gov. Code, § 70373, subd. (a)(1).) Defendant was convicted of two counts, but the trial court imposed the assessment and fee just once, not for each count. Accordingly, we modify the judgment by doubling the court construction fee and the court operations assessment.

DISPOSITION

The judgment is modified by (1) correcting the amount of the court operations assessment pursuant to Penal Code section 1465.8, subdivision (a)(1), which should be $80; and (2) correcting the amount of the court construction fee pursuant to Government Code section 70373, subdivision (a)(1), which should be $60. As modified, the judgment is affirmed. Upon remand, the trial court is directed to issue an amended abstract of judgment reflecting the corrected assessment and fee.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.