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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER JAMES KOPPI,

Defendant and Appellant.

G044792

(Super. Ct. No. 07NF2301)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Patrick H. Donahue, Judge. Affirmed as modified.

Donna L. Harris, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Emily Hanks and James D. Dutton, Deputy Attorneys General, for Plaintiff and Respondent.

After a jury convicted defendant Christopher James Koppi of gross vehicular manslaughter while intoxicated (Pen. Code, § 191.5, subd. (a); all further statutory references are to this code unless otherwise indicated), the court found true he had a prior strike (§§ 667, subds. (d), (e)(1), 1170.12, subds. (b), (c)(1)) and a serious felony prior (§ 667, subd. (a)(1)). The court denied defendant's motion to strike the prior and sentenced defendant to 13 years. It also ordered him to pay a \$40 court security fee (§ 1465.8, subd. (a)(1)), a restitution fine, and a criminal conviction assessment.

Defendant contends his conviction should be reversed because the evidence was insufficient to support a finding he acted with gross negligence and the prosecutor violated his right to remain silent by using his prearrest silence as an adoptive admission. He also argues the court abused its discretion by refusing to strike his prior conviction and erred in imposing a \$40 instead of a \$30 court security fee. The Attorney General agrees about the fee, as do we. The fee is ordered reduced to \$30. In all other respects, the judgment is affirmed.

FACTS

Around 4:30 a.m., a vehicle driven by Richard Pettigrew at 70 to 80 miles per hour fatally crashed into the back of defendant's truck underneath the overpass for Ball Road while going southbound on the number three lane of the 57 freeway. Defendant was stopped in the number three lane, not "moving at all," with his taillights, but not emergency flashers, on. His truck was straight in the lane, not angled like defendant was trying to pull over to the shoulder. Nor was there traffic blocking him from doing so. After the collision, the truck moved slowly to the shoulder at "parking lot speed."

At 4:30 a.m., it was “pretty dark out” and “very dark” underneath the overpass. Under the overpass, only one of two lights was working and the ambient lighting was “restricted.”

When CHP officers arrived, defendant emitted a strong odor of alcohol, had slurred speech and red, watery eyes, swayed side to side, and was wearing two wristbands clubs use for customers to purchase alcohol. As Officer James Hackett approached defendant’s truck, defendant got out of the driver’s seat and walked toward the rear. When Hackett conducted a nystagmus test, defendant complied with his directions but thereafter crouched down and refused to stand. Defendant complained “his ankle hurt, and he couldn’t stand up or do any more field sobriety tests,” despite having “walk[ed] normally prior to the test . . . except for the impairment from the alcohol” Hackett was concerned “defendant would attempt to flee on foot” because “[h]e was being evasive in regards to the questioning and investigation.” Hackett clarified defendant was not “verbally . . . [but] physically evasive. He would not stand there and converse . . . about the collision or what was happening with him.” Defendant became increasingly belligerent and “was in denial of the situation, the accident, . . . his intoxication, . . . [and] his responsibility for the events.” Although defendant “could have been in shock,” “his demeanor was uncooperative and unresponsive and just disconnected from the responsibility of the situation.”

Officer Randy O’Brien spoke to defendant next. Defendant was emotional and crying. When O’Brien asked him where he was coming from, defendant first answered “he was coming from a concert, but then later told [him] he was coming from a friend’s house.” O’Brien inquired if defendant’s car had mechanical problems, to which defendant replied, “I don’t fucking know” before saying, “No.” In response to questioning, defendant told O’Brien he had pain in his left shin, was not a diabetic, did not take insulin, had had nothing to drink, was not under the care of a doctor or dentist, had not taken any medication but was allergic to codeine, and had not had any recent

surgeries. Defendant did not respond to questions about whether he was sick, where he was going, or when he last slept or ate. He became confrontational and angry, “and . . . was just uncooperative at answering, vague in answering questions.” He started cursing and was sarcastic in his answers. Several times defendant said, “I don’t fucking remember. I don’t fucking know. Can you give me a second; how about that?” Upon being asked again if he had been drinking, “defendant stopped crying and . . . said, ‘Just take me to jail.’” O’Brien questioned why he would do that and defendant said, “Well, you are grilling me.” At O’Brien’s request, defendant attempted to complete a horizontal gaze nystagmus test but had difficulty doing so. O’Brien also asked if he remembered what happened, to which defendant said, “stopped cars on the freeway right in front of me; there is nothing possibly could happen[.]”

Blood drawn from defendant at 6:22 a.m. at the hospital showed a blood alcohol content (BAC) of .20, meaning an hour and fifty minutes earlier it would have been at least .22 percent. Officer Scott Taylor opined defendant’s truck was stopped when Pettigrew collided with him because of the damage to both vehicles, the manner in which Pettigrew’s car traveled underneath defendant’s, and “the totality of the investigation,” including “statements and the physical evidence that [defendant] was stopped” At the tow yard, Officer Alvin Yamaguchi, who had 23 years of experience in reconstructing fatal accidents performed tests showing there was no gas in defendant’s truck. In his opinion, the truck was out of gas at the time of the collision.

Defense expert Mortimer Moore testified defendant’s truck was traveling between 21.2 and 29.2 miles per hour at the time it was struck, and that the speed increased between 21 and 28 miles per hour after the impact. In rebuttal, Orange County District Attorney investigator Wesley Vandiver disagreed, stating Moore’s report was based on unrealistic numbers and inflated post-collision speeds. According to Vandiver, killing the ignition of a truck going 65 miles per hour would result in it rolling 1,700 feet before it stopped, and 1,500 feet for it to slow down to 20 miles per hour. With

Pettigrew's vehicle hitting defendant's truck at 74 miles per hour, the truck would have been stopped at the time of the collision, with Pettigrew's vehicle pushing the truck 350 feet. There was no evidence defendant's engine was running when it went to the shoulder and Vandiver opined it was because there was no gas in the truck at the time of the accident.

DISCUSSION

1. Substantial Evidence of Gross Negligence

Defendant contends the evidence was insufficient to support the jury's finding that he acted with gross negligence when he committed the vehicular manslaughter. We disagree.

When determining whether the evidence at trial was sufficient to support defendant's convictions “we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.] ‘We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility. [Citation.]’ [Citation.]” (*People v. Wyatt* (2010) 48 Cal.4th 776, 781.)

“Gross negligence is the exercise of so slight a degree of care as to raise a presumption of conscious indifference to the consequences. [Citation.] ‘The state of mind of a person who acts with conscious indifferences to the consequences is simply, “I don’t care what happens.”’ [Citation.] The test is objective: whether a reasonable

person in the defendant's position would have been aware of the risk involved. [Citation.]” (*People v. Bennett* (1991) 54 Cal.3d 1032, 1036.) Although “gross negligence cannot be shown by the *mere fact* of driving under the influence and violating the traffic laws” (*People v. Von Staden* (1987) 195 Cal.App.3d 1423, 1427), it “may be shown from *all* the relevant circumstances, including the manner in which the defendant operated his vehicle, the level of his intoxication, and any other relevant aspects of his conduct” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1207).

Ochoa deemed the following facts to be sufficient to support the trial court's finding of gross negligence: “that defendant, (a) having suffered a prior conviction for driving under the influence of alcohol, (b) having been placed on probation, (c) having attended traffic school, including an alcohol awareness class, and (d) being fully aware of the risks of such activity, nonetheless (e) drove while highly intoxicated [with a blood alcohol level of .15 percent], (f) at high, unsafe and illegal speeds [of 65 to 70 miles an hour on the freeway at 1:50 a.m.], (g) weaving in and out of adjoining lanes, (h) making abrupt and dangerous lane changes (i) without signaling, and (j) without braking to avoid colliding with his victims' vehicle.” (*People v. Ochoa, supra*, 6 Cal.4th at p. 1208.)

The record here likewise support's the jury's gross negligence finding. Defendant had previously driven under the influence of alcohol in September 2000, when his truck rolled over onto the right shoulder of the road, causing the roof to cave in and the windows to shatter. He had bloodshot eyes, slurred speech, omitted a strong odor of alcohol, and told the responding officer he had drank “a lot” of Bud Lights. As a result, he underwent a six-week driving under the influence program, including 12 hours of education, 18 two-hour group meetings, and 15 one-on-one counseling sessions. First time offenders such as defendant were repeatedly told they could not “play stupid anymore,” were lucky to be in the program because no one was hurt but “could face a

stronger consequence [including prison] if [they] harm[ed] . . . or killed [someone]” These facts show defendant was fully aware of the risks of drinking and driving.

Nevertheless, he drove while highly intoxicated [with a blood alcohol level of at least .22 percent], and was stopped in the middle of the freeway because he had run out of gas. Additionally, although his truck’s headlights and taillights were on, its emergency flashers were not, and it was dark under the overpass at 4:30 a.m. with only one of two freeway lights working and “restricted” ambient lighting. Defendant contends both O’Brien and Vandiver “agreed that road conditions and visibility were such that Pettigrew could have avoided the collision.” But this is basically a request we reweigh the evidence, which we will not do.

Although defendant refers to evidence he was moving slowly instead of being stopped, he acknowledges he violated Vehicle Code section 22400 by doing either. But he claims such violation “while driving under the influence was not sufficient to prove gross negligence.” The cases he cites, however, merely held “gross negligence cannot be shown by the *mere fact* of driving under the influence and violating the traffic laws.” (*People v. Von Staden, supra*, 195 Cal.App.3d at p. 1427; *People v. Hansen* (1992) 10 Cal.App.4th 1065, 1075.) In so holding, *Von Staden* specifically noted the distinction between a prosecutor’s ability to “show gross negligence based on a *high level* . . . as opposed to the mere act . . . of intoxication.” (*People v. Von Staden, supra*, 195 Cal.App.3d at p. 1427.) “[O]ne who drives with a very high level of intoxication is indeed more negligent, more dangerous, and thus more culpable than one who drives near the legal limit of intoxication” (*Id.* at p. 1428.) “A high level of intoxication sets the stage for tragedy long before the driver turns the ignition key.” (*People v. Bennett, supra*, 54 Cal.3d at p. 1038.) Thus, “the finding of gross negligence required to convict a defendant of gross vehicular manslaughter may be based on the overall circumstances surrounding the fatality . . . , [including the level of i]ntoxication . . . and its effect on the defendant’s driving” (*Id.* at p. 1040.)

Moreover, the underlying “unlawful act” need not be inherently dangerous to establish the vehicular manslaughter offense. (*People v. Wells* (1996) 12 Cal.4th 979, 982.) Rather, the act “must be dangerous under the circumstances of its commission,” and “[a]n unlawful act committed with gross negligence would necessarily be so.” (*Ibid.*)

Defendant also argues his running out of gas was “nothing more than ordinary negligence.” But he did not merely run out of gas. The jury could have reasonably found defendant’s high level of intoxication led him to not realize he had run out of gas in time to turn on his emergency lights and coast to the right shoulder, instead stopping in the middle of a freeway lane under a dark overpass.

Defendant maintains there was no evidence the low on gas warning light was on. On the contrary, Officer Yamaguchi testified that when he turned the truck’s ignition on at the tow yard, after recharging its battery, the warning light was on and the gas gauge registered on empty. From that the jury could have reasonably inferred the light was on when defendant was driving. Defendant further claims there was no evidence to show he ignored the light or failed to notice it. But that could have been inferred from his truck being positioned straight in the lane, rather than being angled, and his failure to coast to the shoulder as he could have done had he not ignored or failed to notice the light. Vandiver testified a truck would roll 1,700 feet if its ignition was turned off while going 65 miles per hour.

Defendant cites several cases that involved much more egregious and reckless behavior on the part of the drivers than his actions here. But we cannot say as a matter of law the jury was unreasonable in finding that defendant’s actions constituted gross negligence. As such, we reject defendant’s insufficiency claim. Considering all of the relevant circumstances, substantial evidence supports the jury’s conclusion that defendant acted with gross negligence.

2. *Violation of Right to Remain Silent*

During closing argument, the prosecutor pointed out how defendant stopped responding the moment Hackett started the DUI investigation, crouching down and claiming his leg hurt despite moving fine earlier. The prosecutor then talked about two jury instructions, CALCRIM No. 362 (consciousness of guilt: false statements) and CALCRIM No. 357 (adoptive admissions). As to the latter, he argued, “CALCRIM 357 is an instruction called adoptive admission. You remember that Officer O’Brien and Officer Hackett asked [defendant] several questions . . . ‘Where had you been? How much have you been drinking? What happened in the collision?’ [¶] And [defendant] to a lot of those things was completely silent, didn’t answer at all out at the scene or said, ‘Oh, I don’t . . . know the things. This just occurred.’ That instruction CALCRIM 357 tells you that if you are confronted with being, basically being accused of a crime, and you don’t deny it in any way, that you also can infer that you have a consciousness of your guilt. You know that you are guilty, and you don’t want to play any part in answering that question.”

Defendant argues the prosecutor violated his Fifth Amendment right to remain silent by using his prearrest silence as an adoptive admission to prove guilt. He concedes he did not object to the prosecutor’s argument but asserts an objection would have been futile given the court’s prior ruling on his objection to CALCRIM No. 357 as being inappropriate based on the facts. The court had found the instruction applicable because “there were some statements that went without answer” and defendant’s cross-examination of the officers suggested he “might have been injured in the accident and not understood what is going on” But defendant’s contention on appeal is that the prosecutor’s argument “was an improper use of CALCRIM No. 357,” not that the instruction was improperly given. The overruling of an objection on one ground does not mean an objection on a different ground will be overruled. (*People v. Livingston* (2012) __ Cal.4th __, __ [2012 WL 1432307, p. 10].) Because defendant has not shown an

objection would have been futile, his failure to object to the prosecutor's argument forfeits his claim. (*Ibid.*)

Even if not forfeited, the contention lacks merit. Under the law of adoptive admissions, “[i]f a person is accused of having committed a crime, under circumstances which fairly afford him an opportunity to hear, understand, and to reply, and which do not lend themselves to an inference that he was relying on the right of silence guaranteed by the Fifth Amendment to the United States Constitution, and he fails to speak, or he makes an evasive or equivocal reply, both the accusatory statement and the fact of silence or equivocation may be offered as an implied or adoptive admission of guilt.’ [Citation.]” (*People v. Jennings* (2010) 50 Cal.4th 616, 661.) “‘For the adoptive admission exception to apply, . . . a direct accusation in so many words is not essential.’ [Citation.]” (*People v. Riel* (2000) 22 Cal.4th 1153, 1189.) We thus reject defendant's claim “the prosecutor was unable to point to any accusations or declarative statements made by the officers that [he] failed to deny.” Even if that were required, O'Brien specifically asked if defendant had been drinking, in response to which, “defendant stopped crying and . . . said, ‘Just take me to jail.’”

Defendant relies on *People v. Garcia* (2009) 171 Cal.App.4th 1649, which was ordered depublished by the California Supreme Court on June 10, 2009 (S171622) and may not be cited (Cal. Rules of Court, rule 8.1115(a)). Acknowledging the depublication in his reply brief, defendant maintains the legal principle for which he cited *Garcia* remains pertinent. He also recognizes “the general rule that evasive, silent or equivocal replies can constitute an adoptive admission of guilt” but claims it only applies “‘under circumstances . . . which do not lend themselves to an inference that he was relying on the right of silence guaranteed by the Fifth Amendment to the United States Constitution,’” quoting *People v. Riel, supra*, 22 Cal.4th at p. 1189. According to defendant, the evidence showed he “was relying on his right to remain silent when he did not answer the officer[s'] questions” and unlike the cases cited by the Attorney General

he “did not state he was unwilling to talk to the officers and then continue to talk and provide incriminating evidence.” Rather, he “attempted to assert his right to remain silent from the start[;] . . . tried to avoid talking to the officers and was largely nonresponsive to their questions[; and] neither confessed nor gave information that incriminated himself.”

Contrary to defendant’s view of the evidence, the record shows he complied with Hackett’s instructions for the nystagmus test before crouching down, refusing to stand, and complaining “his ankle hurt” so he “couldn’t stand up or do any more field sobriety tests” and was “physically evasive.” And when O’Brien interviewed him, defendant answered many questions despite being silent, confrontational, and uncooperative on others. He also attempted to follow O’Brien’s instructions for a subsequent nystagmus test. These facts do not lead to an inference defendant was invoking the right to remain silent.

In *People v. Bowman* (2011) 202 Cal.App.4th 353, the defendant “voluntarily spoke with a police detective after receiving *Miranda* [*v. Arizona* (1966) 384 U.S. 436] warnings. Although [he] did not respond to certain questions during the interview, there is no evidence he told the detective he wanted to cease all further questioning, asked for an attorney, or otherwise unambiguously indicated he wanted to invoke his right of silence. [Citations.]” (*Id.* at p. 364.) *Bowman* concluded that under those circumstances *Doyle v. Ohio* (1976) 426 U.S. 610, 619 [96 S.Ct. 2240, 49 L.Ed2d 91], prohibiting the prosecution from using a defendant’s postarrest, post-*Miranda* silence to impeach the defendant’s trial testimony, did not bar the prosecutor from using the defendant’s “selective silence as adoptive admissions.” (*People v. Bowman, supra*, 202 Cal.App.4th at p. 364.)

The same analysis pertains to this case involving prearrest, pre-*Miranda* warnings. Defendant voluntarily answered certain questions and never indicated he

wanted to stop all questioning or invoke his right to remain silent. Consequently, there was no violation of his right to remain silent.

Although not cited by either party, *People v. Waldie* (2009) 173 Cal.App.4th 358 noted the Supreme Court has not yet ruled “on the constitutionality of the use of prearrest, pre-*Miranda* silence as substantive evidence of guilt” and that the federal Courts of Appeals have taken opposing views. (*Id.* at pp. 365-366.) In *Waldie*, a detective testified he was conducting a child molestation investigation and the defendant promised to call the detective but never did, despite a dozen phone calls from the detective. *Waldie* agreed with the defendant the prosecution could not use defendant’s nonresponse to the police phone calls as evidence of guilt in the case-in-chief (*id.* at p. 364), observing: “If the police are allowed to call a suspect persistently and then offer his unwillingness to respond as evidence of guilt, a defendant would never be able to claim the protection of freedom of incrimination. A different result might be indicated if the detective had called defendant only one time or a few times. But testimony about repeated phone calls and apparent evasiveness by defendant is constitutionally infirm” (*id.* at p. 366). *Waldie* nevertheless found any error was harmless beyond a reasonable doubt. (*Id.* at p. 367.)

In contrast to *Waldie*, the officers here did not engage in repeated or persistent phone calls and no invocation of the right to remain silent can be inferred from the facts. Moreover, in *Waldie* the defendant’s evasiveness was from an interview with the police—a refusal to speak. Defendant did not refuse to speak. He responded to many questions, and although some of his answers may have been vague and confrontational, that constitutes speech, not silence. Whether a defendant has invoked his right to counsel or the right to remain silent is a question of fact to be determined considering all the circumstances. (*People v. Musselwhite* (1998) 17 Cal.4th 1216, 1238.) The facts in this case do not amount to an assertion of the right to remain silent.

3. Denial of Motion to Strike Prior

Defendant contends the court abused its discretion by denying his motion to strike his prior conviction under section 1385 in the furtherance of justice. We are unpersuaded.

Section 1385, subdivision (a) authorizes a trial court to strike prior felony conviction allegations “in furtherance of justice” in cases brought under the “Three Strikes” law. (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 529-530.) In determining whether or not to do so, the trial court “must consider whether, in light of the nature and circumstances of [the defendant’s] present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161.)

“[A] trial court’s refusal or failure to dismiss or strike a prior conviction allegation under section 1385 is subject to review for abuse of discretion.” (*People v. Carmony* (2004) 33 Cal.4th 367, 375.) “In reviewing for abuse of discretion, we are guided by two fundamental precepts. First, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.” [Citations.] Second, a “decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at pp. 376-377.) That did not occur here.

The court denied the motion to strike the priors based on all of the *Romero* factors, “including the [strike] offense back in 2001, this offense here, [and defendant’s] conduct in between” It noted that from 2001 to 2006, when the current offense occurred, defendant’s “life was a train wreck[and] it is no surprise that this happened. . . . [Y]ou can see something like this coming when you see some of the offenses, all alcohol related.” The court noted the courtroom was packed with supporters for defendant and acknowledged “there is a lot to be said for [defendant]” since 2006. “If he hadn’t changed, there probably wouldn’t be . . . more than three people . . . supporting him because I don’t think his conduct would have supported the number of people he has in here today.”

No abuse of discretion occurred in denying the motion. The prior strike was for an aggravated assault (§ 245, subd. (a)(1)) with a great bodily injury enhancement (§ 12022.7) in which defendant, while intoxicated, punched and choked one victim, who was with his ex-girlfriend, and, together with others, hit and kicked a second victim in the head, rupturing his eardrum. At sentencing, the prosecutor described the attack as a retaliatory group attack involving defendant’s ex-girlfriend.

Six months before committing the strike offense, defendant used a golf club to break a car window while intoxicated and was convicted of vandalism. (§ 594, subd. (b)(1).) Three months before that, defendant was convicted of driving under the influence (Veh. Code, § 23152) after he drove off a cliff. And in 2004, he was convicted for being drunk in public. (§ 647, subd. (f).)

Defendant argues he was only 19 when he committed the strike offense, took responsibility by pleading guilty, and successfully moved for early termination of his five-year formal probation under section 1203.4, after which his guilty plea was set aside, he entered a not guilty plea, and the case was dismissed. Additionally, he “was on formal probation for almost the entire period of time between the prior assault offense and the present offense[and t]he only conviction he sustained during this entire period

was for a misdemeanor” conviction for being drunk in public (§ 647, subd. (f)). He also points to his accomplishments in school and employment, his many supporters, and his completion of an alcohol treatment program, as well as his efforts to help others.

But the court already considered all of this, having read defendant’s lengthy *Romero* motion and the probation report along with its attachments, including the many letters supporting defendant. Defendant is essentially asking this court to reweigh the evidence and substitute our judgment for that of the trial court. This we will not do. “[W]here the record demonstrates that the trial court balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court’s ruling, even if we might have ruled differently in the first instance’ [citation].” (*People v. Carmony, supra*, 33 Cal.4th at p. 378.) The record in this case affirmatively shows the court understood its discretionary authority and weighed all of the competing facts to reach a reasoned and reasonable conclusion. After evaluating the entirety of that information, the court drew its ultimate conclusion and declined to exercise its discretion to strike the prior. Defendant has not shown it abused its discretion in doing so.

4. Court Security Fee

Defendant argues the court erred in ordering him to pay a \$40 court security fee. The Attorney General agrees, as do we. The amendment increasing the fee from \$30 to \$40 did not become effective until over five months after defendant was convicted (§ 1465.8, subd. (a)(1), as amended by Stats. 2010, ch. 720, § 33) and statutes are “presumed to operate prospectively absent an express declaration of retroactivity or a clear and compelling implication that the Legislature intended otherwise. [Citation.]’ [Citation.]” (*People v. Alford* (2007) 42 Cal.4th 749, 753, 754 [“Section 1465.8’s legislative history supports the conclusion the Legislature intended to impose the court security fee to all convictions after its operative date”].) Neither is present in this case.

DISPOSITION

The court security fee imposed on defendant is reduced to \$30 from \$40.
In all other respects, the judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

ARONSON, J.