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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. DAVID ALLEN KNIGHT, Defendant and Appellant.	A126294 (Alameda County Super. Ct. No. C158207)

I.

INTRODUCTION

A jury found appellant David Allen Knight guilty of second degree murder (Pen. Code, § 187, subd. (a)[1]) and attempted voluntary manslaughter (§§ 664,192, subd. (a).) The jury also found that appellant personally used a deadly weapon, a knife, in the commission of these offenses. (§ 12022, subd. (b)(1).) Appellant first claims the prosecutor's closing argument created prejudicial error because it contained "mischaracterizations of the law of voluntary manslaughter." Appellant next contends that the trial court abused its discretion, and violated his right to due process and a fair trial, by admitting evidence that the surviving victim was threatened at the preliminary hearing by appellant's nephew. Lastly, appellant claims that the imposition of a $60 assessment was an improper retroactive application of Government Code section 70373, because his crimes were committed before the statute took effect. We affirm.

[1] All undesignated statutory references are to the Penal Code except where otherwise noted.

II.

FACTS AND PROCEDURAL HISTORY

On the evening of September 26, 2006, appellant went to Dale Burrell's apartment at 6928 Fresno Street in East Oakland to see Akiba Finister, a woman with whom he engaged in drug use and nonexclusive sex. There were numerous people in the apartment and everyone acknowledged there was heavy drug and/or alcohol use that evening. Appellant and Finister were in a locked bedroom, and there were sounds of an argument coming from the room. Burrell knocked on the door to check on Finister's wellbeing. Appellant flung open the bedroom door. Burrell could see Finister lying on the floor in a fetal position, not moving. Appellant then grabbed Burrell and stabbed him approximately six times. Appellant fled the premises and rode away on his bicycle.

When the police responded to the premises at around 1:30 a.m., they found Finister's dead body in the bedroom. She had been stabbed repeatedly, and had a total of 67 stab wounds on her body. Blood taken at the time of Finister's autopsy showed the presence of codeine, oxycodone, naproxen, and methamphetamine.

On August 15, 2007, the police received an anonymous call with information that appellant was staying in Bakersfield. Appellant was arrested the next day when investigating officers went to Bakersfield where appellant was staying at the home of his nephew, Nathan Meredith, Jr.

Appellant testified at trial in his own defense. He stated that he and Finister began a sexual relationship about a month after they met in January or February of 2006. He testified, "[w]e got high pretty much every day." Finister used methamphetamine and sometimes Ecstasy. Appellant smoked rock cocaine, the effects of which vary according to the grade. He testified it can "make you jittery," it can make "[you] want to keep chasing . . . the high," or it can "make you paranoid."

Finister called appellant on September 26, 2006, about some money appellant was to give her. As appellant put it, she "was mad" and "going off." Appellant agreed to see Finister after he got off work. His car was not running, so he set out on a borrowed bicycle. He made several stops en route during which he smoked cocaine—first at his

former sister-in-law's, then during a dice game, then at a "shooting gallery" where people went to inject drugs. At the last stop, the "shooting gallery," he got a couple of "outfits," or syringes for shooting crystal meth, because he knew that was what Finister wanted.

When appellant arrived at the Fresno Street apartment, Burrell took the bike into the kitchen and gave appellant some water. Appellant smoked more cocaine, but eventually went into the bedroom where Finister was standing in front of the mirror combing her hair, "mad about something." He was not mad at her. Eventually, she "lost it" and hit him on the collar bone with an iron.

At that point, appellant felt hurt and mad. He balled up his fist and punched Finister "pretty hard" in the face.[2] She fell to the floor. When she got back up, appellant noticed that she had a knife in her hand with a blade about six to seven and a half inches long. They fought for the knife and appellant got it from her before she was able to cut him. She then came at him with a ball peen hammer. She swung it at him but did not hit him.

Appellant then began to "hit" Finister with the knife. He was aware of the first time he stabbed her but "[e]verything else after that . . . I was in a zone." When appellant became aware of Burrell knocking at the door, he "snatched the door open and I remember stabbing him." Appellant did not know how many times he stabbed Burrell or why. He had no reason to be mad at Burrell. He "wasn't in the right state of mind," and "didn't have an intention of killing no one."

Appellant left the Fresno Street apartment on his bike and discarded the knife. He knew he had stabbed Burrell, and he knew Finister was "in bad condition because of the fight . . . we had," but he did not call for help. After about a week in Oakland, he went to Bakersfield where he stayed with his nephew, Nathan Meredith, Jr., until he was arrested.

In her closing argument, appellant's counsel argued that "from the evidence . . . you can make a rational conclusion that [appellant] was not acting with an intent to kill."

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[2] The doctor who performed Finister's autopsy testified that in addition to the numerous stab wounds, Finister had a black eye and a contusion of her nose.

Instead, appellant's counsel claimed the evidence established that he acted in self-defense, either reasonably or unreasonably, or upon a sudden quarrel or heat of passion. In rebuttal, the prosecution argued that appellant "has absolutely committed murder in this case."

The jury found appellant guilty of second degree murder of Finister. It also found appellant guilty of attempted voluntary manslaughter of Burrell. At a subsequent court trial, appellant was found to have sustained two prior felony convictions, one of which was both a serious and strike-eligible felony. (§§ 667, subds. (a), (e); 1170.12, subd. (c)(1).)

On September 24, 2009, appellant was sentenced to a total of 36 years to life for the murder of Finister, and to a consecutive 6-year term for the attempted voluntary manslaughter of Burrell. This appeal followed.

III.

DISCUSSION

A. Prosecutorial Misconduct

Appellant claims the prosecutor committed misconduct on several occasions during her closing argument by "skewing crucial aspects" of the law of voluntary manslaughter. In the course of her closing argument, the prosecutor repeatedly told the jury that in determining whether appellant could be found to have acted upon a sudden quarrel or heat of passion, the jury was to focus their attention on the reasonableness of appellant's conduct in repeatedly stabbing Finister as contrasted with making a determination of whether the circumstances preceding the stabbing were such as to amount to adequate provocation. Appellant claims the prosecutor's argument was essentially the same as the argument deemed improper in *People v. Najera* (2006) 138 Cal.App.4th 212 (*Najera*) and constituted "a serious misstatement of the law" requiring reversal of his conviction.

In her closing argument, the prosecutor addressed how the facts fit with the required findings in the jury instructions defining the different types of murder. The prosecutor then turned to the question of manslaughter. She stated: "Manslaughter is

when there is a murder, but there is a very, very good excuse for that crime." Defense counsel objected to the use of the word "excuse," asserting that "manslaughter is not simply defined in terms of excuse." The court reminded the jury that the instructions would control if there were a difference between counsel's argument and the instructions.

The prosecutor continued her discussion of voluntary manslaughter. "One type of voluntary manslaughter is when you have an unlawful killing with an intent to kill, but it's upon a sudden quarrel or heat of passion that the crime occurs." The prosecutor referred to the instructions the court would give, then described sudden quarrel or heat of passion as follows: "Murder can be reduced to a voluntary manslaughter if an ordinary reasonable person in the same circumstances *would have that reaction*." (Italics added.) She distinguished between anger and heat of passion, and posed the question whether "*a reasonable person [would] stab someone over and over* and over again that was disarmed and unarmed." (Italics added.) Answering her own question, she indicated that "a reasonable person would have left the room."

After a discussion of actual, but unreasonable belief in the need to self-defend, the prosecutor returned to heat of passion manslaughter with a hypothetical example of a distraught father whose son has been molested and the molester boasting about having gotten away with it. The prosecutor described the spontaneous killing of the molester in mid-boast with a weapon close at hand as a manslaughter, not a murder, asserting a reasonable person would be provoked by the circumstances.

A recess was taken and counsel objected to any use of hypotheticals to illustrate the difference between murder and manslaughter. Once trial resumed, the court again reminded the jury that "comments of counsel are not evidence, they are argument" and that the jury would be instructed on the law. Defense counsel objected again to the use of hypotheticals, arguing that any use of "an obvious case" would mislead the jury into thinking that the facts needed to be just as compelling in order to convict. The court overruled defense counsel's objection and reiterated "this is argument and illustration."

In her rebuttal argument, the prosecutor again returned to the topics of sudden quarrel and heat of passion. The prosecutor argued that even if Finister attacked

appellant first and incited his passions, he killed her before anything serious happened to him. Under those circumstances, the prosecutor argued, a reasonable person would realize there was no necessity to kill: "That is not the type of provocation, quarrel or self-defense *that would justify stabbing somebody repeatedly and killing them*." (Italics added.)[3]

Appellant claims the italicized portions of the prosecutor's argument in this case suffers from the same infirmity as the argument found to be improper in *Najera*, *supra*, 138 Cal.App.4th 212. During final argument in *Najera*, the prosecutor argued that in determining whether the defendant acted in the heat of passion, the jury had to employ "a reasonable, ordinary person standard. (*Id*. at p. 223.) The prosecutor then implored, "*Would a reasonable person do what the defendant did?* Would a reasonable person be so aroused as to kill somebody? That's the standard." (*Ibid*., original italics.) In rebuttal, the prosecutor stated: " '[*T*]*he reasonable, prudent person standard. . .* [*is*] *based on conduct, what a reasonable person would do in a similar circumstance.* Pull out a knife and stab him? I hope that's not a reasonable person standard.' " (*Ibid.*, original italics.)

The *Najera* court observed that "[a]n unlawful homicide is upon ' "a sudden quarrel or heat of passion" ' if the killer's reason was obscured by a ' "provocation" ' sufficient to cause an ordinary person of average disposition to act rashly and without deliberation. [Citation.]" (*Najera*, *supra*, 138 Cal.App.4th at p. 223.) "The focus is on the provocation—the surrounding circumstances—and whether it was sufficient to cause a reasonable person to act rashly. How the killer responded to the provocation and the

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[3] During her argument, the prosecutor also focused on the issues of express malice and intent to kill. The prosecutor claimed the vicious stabbing of Finister demonstrated that appellant must have intended to kill her and harbored malice aforethought when doing so. This portion of the prosecutor's argument was proper and contained no misstatement of the law. (See *People v. Barbosa* (1991) 228 Cal.App.3d 1619, 1630-1631 [existence of 22 stab wounds about the back and shoulders renders it inconceivable that any reasonable jury could find appellant was the killer without also finding he acted with requisite intent to kill].)

reasonableness of the response is not relevant to sudden quarrel or heat of passion." (*Ibid.*)

The court held that the prosecutor's remarks were misleading and a misstatement of law. The court said that the record showed that the jury was misled by the remarks because during deliberations, it made an inquiry to the trial court concerning that very point. (*Najera, supra,* 138 Cal.App.4th at p. 224.) However, in *Najera,* despite the error, the court concluded that no reversal was necessary. The court explained that the remarks did not require a reversal as the victim's conduct that precipitated the attack—calling the defendant a " 'faggot' "—did not demonstrate adequate provocation as a matter of law. (*Id.* at p. 226.) Thus, the error was harmless, as in the first instance, appellant was not entitled to instructions on voluntary manslaughter. (*Ibid.*)

We find the prosecutor's argument in this case shared many similarities with the improper argument in *Najera* because it focused on "[h]ow the killer responded to the provocation and the reasonableness of the response . . . ." (*Najera, supra,* 138 Cal.App.4th at p. 223.) It invited jurors to consider what would or would not be *a reasonable response* to the provocation. More specifically, the prosecutor's argument allowed, if not encouraged, jurors to consider whether the provocation would cause an average person to do what appellant did—stab someone 67 times.

The parties debate whether *Najera* was correctly decided. Respondent argues that "[i]t is questionable to ask a jury to evaluate the effect of allegedly provoking circumstances on reason in a complete vacuum." Appellant counters that *Najera* simply applied the longstanding principles of the law of voluntary manslaughter. We need not analyze whether *Najera* was correctly decided, because even assuming that the prosecutor's argument was improper and should not have focused on appellant's reaction to the provocation, reversal is not required under the facts of this case.

First, we find the appellant forfeited any claim of prosecutorial misconduct by failing to object on the ground raised here. While appellant's trial counsel objected to the prosecutor's argument on various grounds, such as using hypotheticals to illustrate the different types of homicide, the law requires a more specific objection in order to

preserve the issue of prosecutorial misconduct for appeal. " ' "[A] defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety. [Citation.]" ' [Citation.]" (*People v. Rundle* (2008) 43 Cal.4th 76, 157, overruled on another point in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.)

Alternatively, appellant argues that if we conclude his claim is forfeited, reversal nonetheless is required because trial counsel rendered ineffective assistance for failing to lodge a proper objection. The standard for establishing ineffective assistance of counsel is well settled. In *People v. Pope* (1979) 23 Cal.3d 412, 425, the California Supreme Court set out a two-step test for determining the adequacy of counsel: "[The defendant] must show that trial counsel failed to act in a manner to be expected of reasonably competent attorneys acting as diligent advocates. In addition, [the defendant] must establish that counsel's acts or omissions resulted in the withdrawal of a potentially meritorious defense." Thus, appellant's ineffective assistance of counsel claim will prevail only if he can establish deficient performance, i.e., representation below an objective standard of reasonableness, and resultant prejudice. (*People v. Ledesma* (1987) 43 Cal.3d 171, 216.) "If a defendant has failed to show that the challenged actions of counsel were prejudicial, a reviewing court may reject the claim on that ground without determining whether counsel's performance was deficient. {Citation.]" (*People v. Kirkpatrick* (1994) 7 Cal.4th 988, 1008, overruled on another point in *People v. Doolin*, *supra*, 45 Cal.4th at p. 421, fn. 22.) We turn directly to the question of prejudice.

To demonstrate prejudice, appellant must persuade us there is a reasonable probability that but for his trial counsel's failure to make an objection to the prosecutor's argument setting forth the distinction between murder and manslaughter, appellant would have received a more favorable result. This he cannot do. When appellant's counsel objected to the prosecutor's argument on various grounds, the court repeatedly instructed the jury that if the attorney's comments conflicted with the law in its instructions, the jury should follow the instructions.

Furthermore, when instructed, the jury was told that it should view the instructions as a whole (CALJIC No. 1.01); that if anything said by the attorneys in their arguments or any time during trial conflicted with the court's instructions, the jury was required to follow the instructions (CALJIC No. 1.00); and that the statements made by the attorneys were not evidence (CALJIC No. 1.02)[4] We are entitled to presume that the jurors followed these instructions. (See *People v. Hovarter* (2008) 44 Cal.4th 983, 1005; *People v. Boyette* (2002) 29 Cal.4th 381, 436; *People v. Valladares* (2009) 173 Cal.App.4th 1388, 1400.)

Appellant questions whether the jury was given any instruction that correctly set forth the legal boundaries under which a homicide may be reduced from murder to manslaughter, which would cure any possible confusion created by the prosecutor's argument. Here, the jury was instructed in the language of CALJIC No. 8.42, the standard instruction explaining sudden quarrel or heat of passion and provocation. Specifically, CALJIC No. 8.42 instructed the jury that the pivotal question was "whether or not, at the time of the killing, the reason of the accused was obscured or disturbed by passion to such an extent as would cause the ordinarily reasonable person of average disposition to act rashly and without deliberation and reflection, and from passion rather than from judgment."

CALJIC No. 8.42 is explicit, clear, and describes the standard for adequate provocation using almost the same language as our Supreme Court in *People v. Steele* (2002) 27 Cal.4th 1230: "As we explained long ago, . . . 'this heat of passion must be such a passion as would naturally be aroused in the mind of an ordinarily reasonable person under the given facts and circumstances,' because 'no defendant may set up his own standard of conduct and justify or excuse himself because in fact his passions were aroused, unless further the jury believe that the facts and circumstances were sufficient to

[4] The jury was also given the instructions in written form to refer to during deliberations.

arouse the passions of the ordinarily reasonable man.' [Citation.]" (*Id.* at pp. 1252-1253.)

The jury was additionally instructed the People bore the burden of proving beyond a reasonable doubt that the killing was not committed under the heat of passion or upon a sudden quarrel. And unlike *Najera*, where the jury expressed some confusion during deliberations about whether the defendant's conduct was a relevant topic in assessing the level of provocation (*Najera*, *supra*, 138 Cal.App.4th at p. 224), the jury in our case signaled no such confusion. We therefore conclude that any confusion about the law created by the prosecutor's closing argument was cured by directing the jury to the instructions, including CALJIC No. 8.42, which correctly set forth the applicable legal principles.

B. Evidence of Threatening a Witness

Appellant contends the trial court abused its discretion and violated his constitutional right to a fair trial by admitting evidence that Burrell, the surviving stabbing victim, was threatened at the preliminary hearing by appellant's nephew. Appellant argues that the minimal probative value of this evidence "was vastly outweighed by its tendency to poison the jury against him . . . ." He claims this error was compounded by the court's refusal to instruct the jury with a defense pinpoint instruction[5] as to the lack of relevancy of this evidence to appellant's degree of culpability for the charged crimes.

Rulings on the admissibility of evidence are reviewed for abuse of discretion. (*People v. Waidla* (2000) 22 Cal.4th 690, 724.) The court has broad discretion in determining whether evidence is relevant. (*People v. Scheid* (1997) 16 Cal.4th 1, 13-14.) We apply the de novo standard of review to appellant's claim that the court erred in

[5] "Pinpoint instructions" relate specific facts to a legal issue in the case so as to highlight or "pinpoint" the crux of a defendant's case. (*People v. Saille* (1991) 54 Cal.3d 1103, 1119 .) When requested, pinpoint instructions must be given on request only when there is substantial evidence to support them and they are not argumentative or duplicative of other instructions. (*People v. Stanley* (2006) 39 Cal.4th 913, 946; *People v. Catlin* (2001) 26 Cal.4th 81, 152.)

refusing to instruct the jury in the language of his pinpoint instruction. (See *People v. Posey* (2004) 32 Cal.4th 193, 218 [stating that claims pertaining to jury instructions are reviewed de novo].)

The background facts are as follows: On February 14, 2008, Burrell was accompanied by Alameda County Deputy District Attorney Venus Johnson to court for a preliminary hearing in this matter. Johnson told Burrell that the matter would be continued, then accompanied him into the courtroom, where he took a seat near the back. Burrell "was a little nervous that day," so she looked back at him every so often. Members of appellant's family were in the courtroom, including appellant's nephew, Nathan Meredith, Jr., who sat down next to Burrell.

When appellant was brought in, Meredith, Jr. stood over Burrell, looking toward appellant and pointing down, mouthing "I got this." Johnson and Burrell left as soon as a new court date was set. Going out, Burrell seemed "extremely afraid." He told Johnson that Meredith, Jr. had threatened him that he should not be testifying against appellant. They decided to report the threat to the police.

At an Evidence Code section 402 hearing, Sergeant Richard Andreotti of the Oakland Police Department testified that after the threat was reported, he got a warrant and obtained recordings of appellant's phone calls from jail. In taped calls played at the hearing, the prosecutor highlighted several statements made by appellant that she claimed indicated he was coordinating with Meredith, Jr. to "mak[e] sure that the initial court date doesn't happen . . . ." Sergeant Andreotti obtained an arrest warrant for Meredith, Jr. and turned the matter over to the Bakersfield Police Department. Meredith, Jr. was arrested on March 17, 2008.

The court ultimately ruled that Burrell could testify about the threat as it related to his fear of testifying, but that the recordings of appellant's phone calls would be excluded from the prosecution's case in chief under Evidence Code section 352.

At trial, Burrell testified that as a result of the threat, he feared for his life to such an extent that he committed a crime to get put into custody for his safety, that his fear continued when he was released in May 2009 and that he still felt at risk at the time of his

trial testimony. In accordance with the trial court's ruling, the jury heard no evidence that appellant was connected in any way to the threat against Burrell. Appellant's counsel submitted a proposed jury instruction in how the jury should assess the threat evidence, which the court refused as argumentative. The proposed instruction stated: "You have heard testimony about threats made to a witness or witnesses. Such testimony may be considered by you only for the purpose of evaluating the credibility of the testimony of that particular witness. [¶] You are the sole judges of whether or not a threat or threats were made. Other than how you evaluate the credibility of that particular witness or witnesses, the fact that a witness was threatened, if you believe that fact to be true, must not influence how you evaluate the credibility of the other witnesses, or influence how you determine whether an offense or offenses have been proved beyond a reasonable doubt."

At the end of the case, the trial court admonished the jury as follows: "You have heard testimony about threats made to a witness or witnesses. [¶] You are the sole judges of whether or not a threat or threats were made. [¶] Such testimony may be considered by you only for the purpose of evaluating the credibility and reliability of the testimony of the witness."

On appeal, appellant claims that his "right to a fair trial required exclusion of the threats evidence, or at the very least, the giving of a pinpoint instruction precluding the jury from considering the evidence of Meredith's misconduct on the degree of appellant's culpability." We disagree and conclude that evidence of unrelated third party threats was relevant and probative as to Burrell's credibility, and the jury was properly instructed on the consideration of this evidence.

" 'Evidence a witness is afraid to testify is relevant to the credibility of that witness and is therefore admissible. [Citations.] Testimony a witness is fearful of retaliation similarly relates to that witness's credibility and is also admissible. [Citation.] It is not necessary to show threats against the witness were made by the defendant personally, or the witness's fear of retaliation is directly linked to the defendant for the evidence to be admissible. [Citation.]' [Citation.]" (*People v. Olguin* (1994) 31

Cal.App.4th 1355, 1368 (*Olguin*).) The evidence of third party threats is properly admitted for the limited purpose of showing " 'the witness' state of mind, attitude, actions, bias, [or] prejudice . . . .' [Citation.]" (*Ibid*.) "An explanation of the basis for the witness's fear is likewise relevant to [his or] her credibility and is well within the discretion of the trial court. [Citations.]" (*People v. Burgener* (2003) 29 Cal.4th 833, 869 (*Burgener*); see also *People v. Warren* (1988) 45 Cal.3d 471, 481; *People v. Sanchez* (1997) 58 Cal.App.4th 1435, 1449-1450.)

Consequently, the jury was properly instructed as to the consideration of this evidence. The jury received an instruction limiting the use of "testimony about threats made to a witness" solely to "evaluating the credibility and reliability of the testimony of the witness." This is a correct statement of the law. We are entitled to presume the jury adhered to the trial court's limitations on this testimony and did not use this evidence for any other purpose. (*Olguin*, *supra*, 31 Cal.App.4th at p. 1368.)

We further find the court was not obliged to additionally instruct the jury, in the language proposed by the defense, that they were not to use this evidence to influence how to determine whether an offense (or offenses) has been proved beyond a reasonable doubt. From the instruction that was given, limiting the use of this evidence to Burrell's credibility, the jury would have understood it could not use this evidence to assess appellant's state of mind during the commission of the crimes here. (*People v. Bolden* (2002) 29 Cal.4th 515, 558-559 [a trial court need not give a pinpoint instruction if it "merely duplicates other instructions"].) Given the trial court's admonition as to the limited purpose for which the evidence could be used, its ruling that the probative value of this evidence outweighed the prejudicial effect was within the sound exercise of its discretion. (*Burgener, supra,* 29 Cal.4th at pp. 869-870.)

C. Court Security Assessment

Appellant next asserts that the imposition of the $60 criminal conviction assessment ($30 for each of his convictions) could not legally be imposed because he committed the offense in September of 2006, three years before Government Code section 70373, subdivision (a)(1) (section 70373), authorizing such assessments, was

enacted. We note that he does not claim a violation of the ex post facto doctrine[6], but instead cites the presumption that new statutes are to operate prospectively unless expressly declared to be retroactive "or a clear and compelling implication" that the Legislature intended a retroactive application. (*People v. Hayes* (1989) 49 Cal.3d 1260, 1274.)

Section 70373 became effective on January 1, 2009, with the enactment of Senate Bill No. 1407. (Stats. 2008, ch. 311, § 6.5.) Section 70373 provides: "To ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463 of the Penal Code, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. The assessment shall be imposed in the amount of thirty dollars ($30) for each misdemeanor or felony and in the amount of thirty-five dollars ($35) for each infraction."

Appellant's position that the statute was intended to operate prospectively has been rejected by numerous courts, including the Third District in *People v. Castillo* (2010) 182 Cal.App.4th 1410 (review den. June 10, 2010), the Second District, Division 4, in *People v. Davis* (2010) 185 Cal.App.4th 998, and the Fourth District, Division Two, in *People v. Lopez* (2010) 188 Cal.App.4th 474, 479 (review den. Dec. 15, 2010). All of these courts have concluded that application of section 70373 does not "offend the rule that new laws are presumed to operate prospectively," because the event triggering its imposition is a conviction, not the commission of the offense. (*People v. Davis*, *supra*, 185 Cal.App.4th at pp. 1000.) And as the *Davis* court pointed out, "It has been settled law for over 250 years that a person stands 'convicted' upon the return of a guilty verdict by the jury or by the entry of a plea admitting guilt. [Citations.]" (*Id.* at p. 1001.) This general rule is applicable in the present case. Because the date of appellant's conviction

[6] An ex post facto challenge to section 70373 was rejected by the court in *People v. Brooks* (2009) 175 Cal.App.4th Supp. 1 (*Brooks*).

is June 25, 2009, the date on which the jury returned its verdict, the $60 assessment could legally be applied to this case.

IV.

DISPOSITION

The judgment is affirmed.

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RUVOLO, P. J.

We concur:

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SEPULVEDA, J.

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RIVERA, J.