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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DONACIANO PELAEZ CORTEZ,

Defendant and Appellant.

B231470

(Los Angeles County
Super. Ct. No. KA092445)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Carol Williams Elswick, Judge. Affirmed as modified, remanded with directions.

Julia J. Spikes, 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, Assistant Attorney General, Victoria B. Wilson and Chung L.
Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Donaciano Pelaez Cortez appeals from his judgment of conviction of multiple offenses. His sole contention on appeal is that the trial court failed to specify the statutory basis for the imposition of penalty assessments on two separate fines. Respondent argues that the reporter's transcript of the sentencing hearing establishes that the trial court gave the statutory basis for the fines imposed although the abstract of judgment does not correctly reflect the trial court's oral pronouncement. We are urged to remand with directions to the trial court to correct the abstract of judgment. We agree with, and adopt, respondent's position and remand for correction of the abstract of judgment.

FACTUAL AND PROCEDURAL SUMMARY

Since Cortez challenges only the imposition of fines, we provide only a brief summary of the underlying crimes. Cortez was charged and convicted of crimes arising from a robbery at a restaurant (counts 1 and 2, Pen. Code, § 211¹), possession of methamphetamine (count 5, Health & Saf. Code, § 11377, subd. (a)), permitting a loaded weapon in a vehicle (count 6, § 12034, subd. (a)²), and evading police officers in a subsequent pursuit (count 7, Veh. Code, § 2800.1, subd. (a)). The jury found an allegation that Cortez personally used a firearm not true. In a bifurcated trial, the jury found true allegations that Cortez had suffered a prior strike conviction under the Three Strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)), a prior serious felony conviction within the meaning of section 667, subdivision (a)(1), and had served a prior prison term (§ 667.5, subd. (b)). Cortez was sentenced to a total term of 12 years and four months in prison and various fines and fees were imposed. Cortez filed a timely notice of appeal.

¹ Statutory references are to the Penal Code unless otherwise indicated.

² Effective January 1, 2012, section 12034, subdivision (a) was repealed and reenacted without substantive change as section 26100. (Stats. 2010, ch. 711, § 6; see also Law Revision Comments to section 26100. (See Cal. Law Revision Com. Deering's Ann. Penal Code (2012 supp.) foll. § 26100, p. 611.)

DISCUSSION

Cortez argues that the trial court failed to specify the statutes authorizing the imposition of a penalty assessment in connection with a \$50 lab fee under Health and Safety Code section 11372.5. The abstract of judgment also fails to specify the statutory basis for these penalty assessments. He contends the trial court failed to itemize the penalty assessments on a \$10 crime prevention fine imposed under section 1202.5. He also asserts that it is unclear whether a surcharge under section 1465.7 was applied to the lab fee or the crime prevention fine because it does not amount to 20 percent of either fine.

Respondent concedes that the abstract of judgment is incomplete, but points out that the trial court orally specified the basis for the challenged fines at the sentencing hearing.

At sentencing, the trial court advised Cortez it would impose fees and fines to be paid from prison earnings. The court listed a number of fines not challenged in this appeal. Then it said that it was imposing a \$10 crime prevention fine, “plus penalty assessment, pursuant to Penal Code section 1202.5.” The court also said it would impose “a \$50 lab fee, plus penalty assessment pursuant to Health and Safety Code section 11372.5.”

The court’s minute order stated that a \$10 crime prevention fund fine pursuant to section 1202.5 was imposed as to count 1, “plus penalty assessments in the amount of \$28.00 and a 20 [percent] state surcharge in the amount of \$2.00, for a total of \$40.” As to count 5, the methamphetamine charge, the minute order stated that Cortez was ordered to “pay a \$50.00 lab analysis fee, plus penalty assessments in the amount of \$120.00 and a 20 [percent] state surcharge in the amount of \$10.00, for a total of \$180, pursuant to Health [and] Safety Code section 11372.5.” The abstract of judgment reflects a “fine” of \$38 plus a “criminal surcharge” of \$12 under section 1465.7 and a laboratory fee under Health and Safety Code section 11372.5, subdivision (a) of \$170.

Respondent cites *People v. Sharret* (2011) 191 Cal.App.4th 859 (*Sharret*), which approved a procedure in which the trial court orally imposes penalty fees which are then specified by the court clerk in the abstract of judgment. The *Sharret* court explained: “The trial court orally imposed the \$50 criminal laboratory analysis fee ([Health & Saf. Code,] § 11372.5) and the \$150 drug program fee ([Health & Saf. Code,] § 11372.7) ‘plus penalty assessment.’ The oral pronouncement of judgment controls over any discrepancy with the minutes or the abstract of judgment. [Citations.] In Los Angeles County, trial courts frequently orally impose the penalties and surcharge discussed above by a short-hand reference to ‘penalty assessments.’ The responsibility then falls to the trial court clerk to specify the penalties and surcharge in appropriate amounts in the minutes and, more importantly, the abstract of judgment. This is an acceptable practice.” (*Id.* at p. 864, italics omitted.)

The procedure to be followed for fines triggered in Los Angeles County by imposition of the \$10 fine under section 1202.5, subdivision (a) was explained by the court in *People v. Castellanos* (2009) 175 Cal.App.4th 1524: “[W]hen a full \$10 section 1202.5, subdivision (a) fine is imposed, trial courts in Los Angeles County must also impose seven additional sums: the . . . section 1464, subdivision (a)(2) penalty assessment; the . . . Government Code section 76000, subdivision (a)(1) penalty assessment; the . . . Government Code section 76000.5, subdivision (a)(1) penalty assessment; the . . . section 1465.7, subdivision (a) state surcharge; the . . . Government Code section 70372, subdivision (a)(1) state court construction penalty; the Government Code section 76104.6, subdivision (a)(1) . . . deoxyribonucleic acid penalty; and the Government Code section 76104.7, subdivision (a) . . . deoxyribonucleic acid state-only penalty.” (*Id.* at p. 1530.)

The *Sharret* court explained that the \$50 laboratory analysis fee under Health and Safety Code section 11372.5 triggers the mandatory imposition of the following penalty assessments and surcharge in Los Angeles County: “the criminal laboratory analysis fees . . . are subject to the following: a . . . state penalty under Penal Code section 1464, subdivision (a)(1); a . . . county penalty pursuant to Government Code section 76000,

subdivision (a)(1); a . . . Penal Code section 1465.7, subdivision (a) state surcharge; a . . . Government Code section 70372, subdivision (a)(1) state court construction penalty; a . . . Government Code section 76000.5, subdivision (a)(1) emergency medical services penalty; a . . . Government Code section 76104.6, subdivision (a)(1) deoxyribonucleic acid penalty; and a . . . Government Code section 76104.7, subdivision (a) state-only deoxyribonucleic acid penalty. [Citations.]” (*Sharret, supra*, 191 Cal.App.4th at pp. 863-864.)

As to count 1, the correct penalty assessments on the \$10 fine under section 1202.5 are: 1) \$10 (§ 1464, subd. (a)(1)); 2) \$7 (Gov. Code, § 76000, subd. (a)(1)); 3) \$2 (§ 1465.7, subd. (a)); 4) \$5 (Gov. Code, § 70372, subd. (a)(1)); 5) \$2 (Gov. Code, § 76000.5, subd. (a)(1)); 6) \$1 (Gov. Code, § 76104.6, subd. (a)(1)); and 7) \$3 (Gov. Code, § 76104.7, subd. (a)). The total assessments are \$30 for a total of \$40. (*People v. Castellanos, supra*, 175 Cal.App.4th at p. 1530.)

As to the \$50 laboratory fee imposed under Health and Safety Code section 11372.5 on count 5, the correct penalty assessments are: 1) \$50 (§ 1464, subd. (a)(1)); 2) \$35 (Gov. Code, § 76000, subd. (a)(1)); 3) \$10 (§ 1465.7, subd. (a)); 4) \$25 (Gov. Code, § 70372, subd. (a)(1)); 5) \$10 (Gov. Code, § 76000.5, subd. (a)(1)); 6) \$5 (Gov. Code, § 76104.6, subd. (a)(1)); and 7) \$15 (Gov. Code, § 76104.7, subd. (a)). The total assessments are \$150 for a total of \$200. (*People v. Sharret, supra*, 191 Cal.App.4th at pp. 863-864.) We remand to the trial court with directions to amend the abstract of judgment to specify the penalty assessments with correct amounts as to counts 1 and 5.

DISPOSITION

The matter is remanded for correction of the abstract of judgment in accordance with the views expressed in this opinion. In all other respects the judgment is affirmed. The clerk of the superior court is directed to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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EPSTEIN, P. J.

We concur:

MANELLA, J.

SUZUKAWA, J.