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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS ST. ANDREW,

Defendant and Appellant.

B231745

(Los Angeles County  
Super. Ct. No. MA 051105)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Christopher G. Estes, Judge. Affirmed in part; reversed in part and remanded.

Suzann E. Papagoda, 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, Paul M. Roadarmel, Jr., and  
David A. Voet, Deputy Attorneys General, for Plaintiff and Respondent.

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Thomas St. Andrew appeals from the judgment entered following a jury trial that resulted in his conviction of misdemeanor battery against a spouse (Pen. Code, § 243, subd. (e)(1).)<sup>1</sup> The trial court suspended imposition of sentence and placed appellant on probation for five years under certain terms and conditions. The court also ordered appellant to pay attorney fees in the amount of \$1,242.

At trial, evidence was presented that on November 25, 2010, about 1:00 a.m., Angelique Madrid, appellant's wife, refused to allow appellant, against whom she had a restraining order, to enter their home in Lancaster. Appellant forced his way inside and during an altercation, he struck Angelique once on each shoulder and once at the back of her neck. She was hurt "somewhat" physically.

Appellant's sole contention on appeal is the award of attorney fees must be reversed, because such award was imposed without notice and a hearing as to appellant's present ability to pay all or a portion of the award, and the trial court made no determination as to such ability. (§ 987.8, subd. (b); see also, subd. (f).)

Respondent concedes error but urges the appropriate remedy is a remand for the proper procedure to be followed rather than simply striking the attorney fee award.

We reverse the \$1,242 attorney fee award and remand the matter for further proceedings before the trial court.

### **DISCUSSION**

Appellant contends, and respondent acknowledges, the record reflects he was not advised of the trial court's intent to require him to pay the cost of the legal assistance provided; no hearing was held; and no determination was made by the trial court concerning appellant's ability to pay all or a portion of the fees awarded. These omissions necessitate the reversal of the \$1,242 attorney fee award and remand of the matter with directions to the trial court to follow the proper procedure in determining whether an award of attorney fees is appropriate and the amount of such fees, if any.

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<sup>1</sup> All further section references are to the Penal Code.

“Prior to the furnishing of counsel or legal assistance by the court, the court shall give notice to the defendant that the court may, after a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel. The court shall also give notice that, if the court determines that the defendant has the present ability, the court shall order him or her to pay all or a part of the cost. The notice shall inform the defendant that the order shall have the same force and effect as a judgment in a civil action and shall be subject to enforcement against the property of the defendant in the same manner as any other money judgment.” (§ 987.8, subd. (f).)

“In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court . . . , the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided.”<sup>2</sup> (§ 987.8, subd. (b); see also *People v. Flores* (2003) 30 Cal.4th 1059, 1068 (*Flores*) [on remand, trial court’s directive to correct notice and hearing errors unaffected by statutory six-month limitation from pronouncement of judgment to conduct hearing on defendant’s ability to pay].)

Neither the clerk’s transcript nor the reporter’s transcript reveals any indication that appellant was notified prior to the imposition of the attorney fee award that he might be required to reimburse the county for the cost of the legal assistance provided to him. At sentencing, defense counsel requested a fee waiver or fee evaluation for the domestic violence classes imposed as a condition of probation. The trial court indicated the court

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<sup>2</sup> The record does not reflect the trial court ordered appellant to appear before a county officer regarding appellant’s ability to pay all or a portion of the legal assistance provided him.

had no objection to application of the income scale of the domestic violence program to appellant. The trial court imposed the \$1,242 attorney fee award without objection or comment by defense counsel. Although the court inquired and obtained appellant's understanding of and consent to the terms and conditions of probation, the court made no such inquiry of, nor did appellant consent to, the attorney fees imposed against him.

The record unequivocally reflects no notice was provided appellant of the trial court's intent to impose attorney fees; the requisite hearing was not conducted; and the trial court made no determination of appellant's ability or inability to pay the award in full or in part. The trial court thus committed reversible error in imposing any attorney fee award. Remand to correct these errors is mandated. (*Flores, supra*, 30 Cal.4th at pp. 1068-1069; *People v. Polk* (2010) 190 Cal.App.4th 1183, 1212; see generally, *People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397 [objection unnecessary where insufficient evidence of defendant's ability to pay attorney fees].)

#### **DISPOSTION**

The \$1,242 attorney fee award is reversed. The matter is remanded for further proceedings consistent with the views expressed in this opinion. In all other respects, the judgment is affirmed.

FLIER, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.