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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
ANDRE LASHIN,  
  
Defendant and Appellant.

C065713  
  
(Super. Ct. Nos.  
62-97795, 62-96644,  
62-97616)

Pursuant to a plea agreement involving three separate cases, defendant Andre Lashin entered no contest pleas to corporal injury on a spouse or cohabitant (Pen. Code, § 273.5, subd. (a))<sup>1</sup> with an enhancement for personally inflicting great bodily injury (§ 12022.7, subd. (e)), second degree burglary (§ 459), receiving stolen property (§ 496, subd. (a)), and being under the influence of a controlled substance (Health & Saf.

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<sup>1</sup> Further statutory references are to the Penal Code unless otherwise specified.

Code, § 11550, subd. (a)). In exchange for his pleas, numerous charges were dismissed and it was agreed he would receive five years' formal probation with the suspended execution of a term of 10 years four months in state prison. Defendant was sentenced in accordance with this agreement.

Defendant appeals, contending the trial court's written probation order does not accurately reflect the fines and fees it assessed when pronouncing sentence. He also claims the court was not permitted to impose a fine in addition to ordering him to make payments to a battered women's shelter. Defendant's final contention is that the court did not assess his ability to pay before ordering payment of the costs of preparing the presentence report and probation supervision. We conclude the matter must be remanded to the trial court for clarification of its order.

#### PROCEDURAL BACKGROUND<sup>2</sup>

Following defendant's previously described no contest pleas, the trial court referred his matters to the probation department for a presentence report. The presentence report contained recommended terms and conditions of probation, including the following fines and fees: (1) a \$400 payment to the domestic violence fund; (2) a \$400 payment to a battered women's shelter; (3) a \$100 fine plus penalty assessments and a

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<sup>2</sup> We dispense with a recitation of the facts underlying defendant's convictions as they are not relevant to the issues he raises on appeal.

20 percent surcharge on the base fine pursuant to section 1465.7; (4) \$350 for the cost of preparing a presentence report; (5) probation supervision/service fees of \$20 per month; (6) \$25 for each drug test; (7) a \$25 administration screening fee; (8) a \$30 fine for each offense pursuant to section 1465.8; (9) a \$200 restitution fine; (10) a suspended probation revocation fine of \$200; and (11) a \$30 assessment fee per offense pursuant to Government Code section 70373.

At the sentencing hearing, defendant's attorney informed the court he had reviewed the presentence report and the proposed order with defendant and that he had no comments. The trial court stated it was "going to adopt the recommendations of probation." In addition to suspending execution of sentence and setting forth various terms and conditions of probation, the court ordered defendant to "pay the following fines and fees: \$400 assessment to the domestic violence fund, \$100 assessment to the Placer Women's Center, \$30 court security fee, \$30 criminal assessment fee, and \$100 state restitution fine." The court also suspended a \$100 state restitution fine "pending revocation of probation." The court ordered "all the other standard terms as set forth in the probation officer's report" and "adopt[ed] the fines as recommended by probation."

Defendant signed the probation order, which set forth fines and fees nearly identical to those recommended in the presentence report.

## DISCUSSION

Defendant complains that the probation order prepared by the court clerk contains "a variety of fines, fees, and conditions which were never imposed by the trial court." According to the People, the court's oral pronouncement that it was adopting the fines and recommendations of probation was sufficient to permit imposition of the amounts recommended in the presentence report. Because the trial court's intent in this regard is unclear, we conclude the matter must be remanded for the court to provide clarification.

However, in the present matter, contrary to the trial court's statement that it was adopting the recommendations of probation, it orally imposed a payment to a battered women's shelter and a restitution fine that differed from the amounts recommended in the presentence report.<sup>3</sup> Moreover, the only costs or fees mentioned in the court's oral pronouncement were a court security fee (\$ 1465.8) and a criminal assessment fee (Gov. Code, § 70373), and the court did not specify that these were to be imposed *in each case*, as is statutorily required and was recommended in the presentence report.<sup>4</sup>

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<sup>3</sup> The People concede that the probation order should be amended to reflect the amounts orally imposed by the court at sentencing for these items.

<sup>4</sup> Defendant acknowledges the statutory requirement that these fees be imposed in each case, and he does not object to the requirement in the written probation order that he pay this amount.

Based on these discrepancies, it is unclear what the court meant when it stated it was adopting the recommendations and "fines" suggested by the probation department. It is possible the court was referring only to the remaining \$100 fine, along with the penalty assessments and surcharge associated with that fine. To the extent this was the case, we note the court was not authorized to order defendant to pay both a fine and an "assessment" to a battered women's shelter. (§ 1203.097, subd. (a) (11) (A).)

The remaining costs and fees not mentioned by the court were all subject to a determination of defendant's ability to pay. (§ 1203.1b [cost of presentence report and probation supervision]; § 1203.1ab [drug testing]; Gov. Code § 29550, subs. (c) & (d) (2) [criminal justice administration fee].) The record does not reflect this determination was made, except for a statement in the presentence report regarding the cost of probation supervision. Nor does it appear defendant was fully advised of his right to a hearing on this issue.<sup>5</sup> The People are correct that this issue may be deemed forfeited for purposes of appeal if a defendant fails to object in the trial court. (*People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1072.) The problem in the present matter is that it may have been the trial court's intent not to impose the remaining costs and fees. We

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<sup>5</sup> The probation order signed by defendant states that he has a right to a hearing on his ability to pay "booking and incarceration fees." A defendant is entitled to a hearing on his ability to pay *all* probation costs. (§ 1203.1b, subd. (a).)

note that, in response to a request by defendant's attorney at the plea hearing, the court stated it would consider at sentencing waiving the fee for a presentence report. The court's intent could also be inferred from its imposition of a battered women's shelter assessment that was lower than recommended in the presentence report, as imposition of this payment is also subject to a defendant's ability to pay. (§ 1203.097, subd. (a)(11).) The court's intent is unclear, and the matter must be remanded for clarification.

We note other anomalies in the written probation order. The order fails to delineate which fines and costs are conditions of probation and which are not. An order for probation costs may not be a condition of probation. (*People v. Hart* (1998) 65 Cal.App.4th 902, 907.) The same reasoning applies to the cost of drug testing. This is also the case for a court security fee and a criminal justice assessment fee. (*People v. Alford* (2007) 42 Cal.4th 749, 756 [\$ 1465.8]; *People v. Castillo* (2010) 182 Cal.App.4th 1410, 1413-1414 [Gov. Code, § 70373].) On the other hand, payment to a battered women's shelter (§ 1203.097, subd. (a)(11)) and payment of a booking fee (Gov. Code, § 29550, subd. (d)(2)) are required by statute to be conditions of probation.

Furthermore, the written probation order directs defendant to pay a probation supervision fee of \$1,200, rather than the \$20 per month recommended in the presentence report. This was improper, "as the liability to pay such costs accrues only as each month of supervision occurs and, unless defendant

successfully completes the probationary period, may never exist.”<sup>6</sup> (*People v. Hart, supra*, 65 Cal.App.4th at p. 906.)

Finally, the probation order fails to specify the statutory bases for each fine, fee, and cost imposed. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200; *People v. Eddards* (2008) 162 Cal.App.4th 712, 717-718.) All of these issues should be addressed upon remand of the matter.

#### DISPOSITION

Defendant’s convictions are affirmed. The matter is remanded to the trial court with directions to specify whether defendant is required to pay the costs of preparing a presentence report, probation supervision, and drug testing. The court is ordered to prepare an amended probation order, or an amended abstract of judgment if defendant is no longer on probation, containing its determinations in this regard, in addition to correcting the amount of the restitution fine, the suspended probation revocation fine, and the payment to the

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<sup>6</sup> In fact, the record reflects that, less than two weeks after defendant was placed on probation, a petition for revocation of probation was filed based on allegations that he committed numerous new offenses. Although this court has not been apprised of the disposition of the revocation petition, it may well be that defendant’s period of probation supervision was particularly brief.

battered women's shelter, and specifying the statutory bases for all fines, fees, and costs imposed.

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NICHOLSON, Acting P. J.

We concur:

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ROBIE, J.

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HOCH, J.