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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

FRYDA BRYAN,

Defendant and Appellant.

C067092

(Super. Ct. No. SF109307B)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL DALE TROUT,

Defendant and Appellant.

C067748

(Super. Ct. No. SF109307A)

Defendants Fryda Bryan and Michael Dale Trout were convicted of various offenses arising from the operation of a meth lab. On appeal, they both challenge the denial of their motions to suppress evidence recovered from the house where the lab was

located, as well as challenging various aspects of the fines, fees, and penalties imposed on them. Trout also contends the trial court erred in failing to instruct the jury sua sponte on the lesser included offense of attempted manufacture of methamphetamine and in failing to stay his punishment for possession of methamphetamine pursuant to Penal Code section 654.

We find no merit in defendants' challenges to the search of the house where the meth lab was located and no merit in Trout's claim of instructional error. We agree, however, that Trout's sentence for possessing methamphetamine should have been stayed pursuant to Penal Code section 654, and we also conclude that both cases must be remanded for proper calculation and documentation of all fines, fees, and assessments imposed. Accordingly, we will affirm the convictions, but modify Trout's judgment to stay his sentence for possessing methamphetamine and remand both cases for further proceedings on the fines, fees, and penalties.

FACTUAL AND PROCEDURAL BACKGROUND

In August 2008, Stockton police searched a residence on Sunnyside Avenue for a suspected meth lab pursuant to a search warrant. Bryan and Trout were both present when the police arrived to search the house; the house was rented to Bryan. Inside and outside the house, the police found numerous items associated with the manufacture of methamphetamine, including empty boxes of allergy medication containing pseudoephedrine or ephedrine, lye drain opener, and hydrogen peroxide. They also found methamphetamine and a shotgun. Both defendants had the smell of methamphetamine manufacturing on them.

Bryan and Trout were each charged with manufacturing methamphetamine, possession of ephedrine or pseudoephedrine with the intent to manufacture methamphetamine, possession of hydriodic acid with the intent to manufacture methamphetamine, and possession of methamphetamine, along with various enhancements. Trout was also charged with being a felon in possession of a firearm.

Before trial, both defendants challenged the search warrant and moved to suppress the evidence from the house. The trial court (Judge Bernard Garber) quashed the warrant on the ground the underlying affidavit was insufficient to establish probable cause for the search of the house on Sunnyside. The People then sought to justify the search as a warrantless probation search. Officer Steven Cole of the Stockton Police Department testified that prior to the search, he had determined that Trout was on searchable probation; he had determined that the PG&E bill on the Sunnyside house was in Trout's name; he had seen Trout working on the security camera above the front door; and he had seen a motorcycle that was registered to Trout in front of the house numerous days in a row at different hours of the day and night. There was also evidence that when he was in jail, Trout told his mother, "[I]t's my house. I give you permission to go there."

The trial court determined the search was a valid probation search of Trout's residence. Bryan's attorney then argued that the police failed to "give knock notice" before conducting the search. The court concluded there was "substantial compliance with knock notice" and denied the motions to suppress.

The jury found both defendants guilty of all charges against them with the exception of the felon in possession charge against Trout, on which the jury deadlocked. (That charge was eventually dismissed.) The trial court (Judge William Murray) imposed a six-year prison term on Bryan but suspended execution of the sentence and placed her on probation. The court imposed a 19-year prison term on Trout, based in part on enhancements for three prior drug convictions and a prior strike conviction for assault on a peace officer.

DISCUSSION

I

Denial Of The Motions To Suppress

A

Knock-And-Announce

Trout contends the trial court erred in finding that the officers who conducted the search substantially complied with the knock-and-announce requirement. He further contends that because of the knock-and-announce violation, the search violated his Fourth Amendment rights, and the evidence resulting from the search should have been suppressed. We conclude that even if there were a knock-and-announce violation here (a point we do not decide), suppression of evidence pursuant to the exclusionary rule was not available to Trout as a remedy for that violation.

In *Hudson v. Michigan* (2006) 547 U.S. 586 [165 L.Ed.2d 56], the United States Supreme Court confronted the question of “whether the exclusionary rule is appropriate for violation of the knock-and-announce requirement.” (*Id.* at p. 590 [165 L.Ed.2d at pp. 63-64].) A majority of the court concluded that “the social costs of applying the exclusionary rule to knock-and-announce violations are considerable; the incentive to such violations is minimal to begin with, and the extant deterrences against them are substantial--incomparably greater than the factors deterring warrantless entries when *Mapp* [v. *Ohio* (1961) 367 U.S. 643 [6 L.Ed.2d 1081]] was decided. Resort to the massive remedy of suppressing evidence of guilt is unjustified.”¹ (*Hudson*, at p. 599 [165 L.Ed.2d at p. 69].)

¹ Trout characterizes *Hudson* as a plurality decision, but that is not true. Justice Scalia wrote the main opinion, which consisted of four parts. (*Hudson v. Michigan*, *supra*, 547 U.S. at pp. 588-602 [165 L.Ed.2d at pp. 62-71].) Justices Breyer, Stevens, Souter, and Ginsburg dissented. (*Id.* at p. 604 [165 L.Ed.2d at p. 73].) Justice Kennedy declined to join part IV of Justice Scalia’s opinion, but concurred in the judgment and

Inexcusably, Trout does not mention *Hudson* in his opening brief. In his reply brief, Trout argues that *Hudson* does not “necessarily provide the ‘bright-line rule’ that [the People] argue[] it does.” He points to a decision by a Missouri appellate court -- *State v. Gibbs* (2007) 224 S.W.3d 126 -- for the proposition that “suppression of evidence is still required where there is a violation of knock-notice requirements involving [a warrantless probation search].” But *Gibbs* does not stand for that proposition. In *Gibbs*, the defendant sought to suppress evidence the police obtained after making a warrantless and nonconsensual entry into a motel room to make a felony arrest. (*Id.* at pp. 130-135.) The appellate court decided that, notwithstanding *Hudson*, suppression of the evidence was still required by *Payton v. New York* (1979) 445 U.S. 573 [63 L.Ed.2d 639] in that circumstance because there was insufficient evidence of any exigent circumstances necessary to justify a “no knock” entry. (*Gibbs*, at pp. 134-135.)

We have no quarrel with the decision in *Gibbs*, because a warrantless search following a “no knock” entry to make a felony arrest that was not justified by exigent circumstances is readily distinguishable from a search pursuant to a lawful warrant following a failure to knock and announce, which is what was at issue in *Hudson*. (See *Hudson v. Michigan, supra*, 547 U.S. at p. 604 [165 L.Ed.2d at p. 72], conc. opn. of Kennedy, J.) It is true that here, the search was not made pursuant to a valid warrant; it was, however, a valid probation search. Moreover, as the appellate court explained in *In re Frank S.* (2006) 142 Cal.App.4th 145, a case involving a parole search, the “contention that *Hudson* applies only where the police have a search warrant is not persuasive.”

joined in parts I through III, noting that “the Court’s holding is fully supported by” those parts. (*Id.* at p. 604 [165 L.Ed.2d at pp. 72-73].) Justice Kennedy specifically described the court’s holding as follows: “[I]n the specific context of the knock-and-announce requirement, a violation is not sufficiently related to the later discovery of evidence to justify suppression.” (*Id.* at p. 603 [165 L.Ed.2d at pp. 71-72].) Thus, five justices joined the ruling that the exclusionary rule is not available as a remedy for a violation of the knock-and-announce requirement.

(*Frank S.*, at p. 152.) This is so because the rule in *Hudson* “turns on the nature of the constitutional violation at issue, not the nature of the police’s authority for entering the home. The interest asserted by defendant is that protected by the prohibition on warrantless home searches and arrests, namely, the right to shield one’s person and property from the government’s scrutiny. [Citation.] But violation of the knock-and-announce rule did not implicate that interest. As in *Hudson*, because ‘the interests that were violated in this case have nothing to do with the seizure of the evidence, the exclusionary rule is inapplicable.’ ” (*Frank S.*, at p. 152.)

Noting the decision in *Frank S.*, Trout contends “current California law has not extended [*Hudson*’s] holding beyond cases involving parolees” and “*Hudson* should not be extended to cases [like this one] involving probationers.” He offers no valid reasoning for making such a distinction, however, and we cannot imagine one. *Hudson* stands for the proposition that evidence obtained in an otherwise valid search cannot be suppressed just because the police failed to comply with the knock-and-announce requirement before engaging in that search. As we see it, it does not matter whether the search at issue was pursuant to a valid search warrant or was justifiable as a parole search or a probation search; the rationale of *Hudson* applies equally to any of those situations. Because suppression of evidence pursuant to the exclusionary rule was not available as a remedy to Trout even if the police violated the knock-and-announce requirement, Trout’s challenge to the denial of his suppression motion is without merit.

B

Investigation Of Residency

Citing *People v. Tidalgo* (1981) 123 Cal.App.3d 301, Bryan argues that “[w]here police do not know who owns or possesses a residence, and such information can be easily obtained, it is incumbent upon them to attempt to ascertain such information.” To the extent Bryan is contending that under *Tidalgo* a motion to suppress evidence obtained in a probation search of a residence must be granted if it is determined that the police did

not adequately investigate whether the residence was that of the defendant, Bryan is mistaken.

The issue in *Tidalgo* was “the correctness of the lower court’s dismissal of the proceeding on the basis that a search exceeded the terms of the search condition contained in [the defendant]’s terms of probation.” (*People v. Tidalgo, supra*, 123 Cal.App.3d at p. 303.) The terms of the defendant’s probation allowed law enforcement officers to search his residence. (*Id.* at pp. 303-304.) The trial court determined that the house where the search occurred was not the defendant’s residence and it was unreasonable for the officers who conducted the search to believe otherwise, and the appellate court upheld those determinations as based on substantial evidence. (*Id.* at pp. 307-308.)

At best, *Tidalgo* stands for the proposition that where the terms of a defendant’s probation authorize a warrantless search of his residence, the fruits of a probation search of a particular residence should be suppressed where the officers conducting the search had no reasonable basis for believing that residence was the defendant’s residence, and the residence was not in fact the defendant’s residence. The adequacy of any investigation conducted by the searching officers prior to conducting the search is relevant only to the extent that the investigation fails to provide the officers with sufficient information to support a reasonable belief that the defendant is residing at the location to be searched.

Here, Bryan contends (without citation to the record on appeal) that “the only information officers had [before conducting the search] was . . . that [Trout] visited the site, and that a utility bill was in his name.” Even a brief glance at the record, however, reveals that Bryan’s assertion is untrue. In upholding the validity of the search as a probation search, the trial court expressly found that it was appropriate for officers to search the house on Sunnyside Avenue because “they had done surveillance. They had seen him there on many occasion[s]. His motorcycle was there. And the officer said his

name was on PG&E. [¶] And then also on that transcript, People's Number 1, he's talking to his mother at the jail afterwards and said to her it's his house and he gave permission to her to go in there."

To the extent Bryan's argument based on *Tidalgo* can be understood as a challenge to the sufficiency of the evidence to support the trial court's determination that Trout resided at the house on Sunnyside Avenue, her argument is without merit because she has failed to present us with all the relevant evidence in the light most favorable to the People and thus has failed to carry her burden of showing the evidence was insufficient to support the trial court's decision. (See *People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1574.)

C

Probable Cause

Citing a Ninth Circuit case (*U.S. v. Howard* (9th Cir. 2006) 447 F.3d 1257), Bryan contends "law enforcement must have probable cause to believe that a parolee [i]s a resident of a house to be searched pursuant to a parole condition." Bryan further contends that "[o]fficers in [this] case had only a fraction of the information deemed insufficient in *Howard*, and made no efforts to investigate the information they had. Therefore, they can not [*sic*] possibly have had probable cause to believe that Mr. Trout lived at the residence they searched." Just as with her argument based on *Tidalgo*, however, in making this argument Bryan fails to present us with all the relevant evidence in the light most favorable to the People regarding what the officers knew and what they did prior to searching the house on Sunnyside Avenue. Accordingly, her argument is without merit.

D

Good Faith

Bryan contends the good faith exception to the exclusionary rule does not apply here because the officers did not act in objective good faith. According to Bryan, "the

officers had conflicting information, therefore they knew that one of the two sources of information was in error. . . . The officers chose to rely upon the information that suited their purpose.”

Frankly, this argument is incomprehensible. It is true that the residence address Trout had registered with the probation department was an apartment on Olivera Road, while the utilities on the Sunnyside Avenue house were registered in his name. These appear to be the “two sources of information” to which Bryan refers in her argument. But the good faith exception to the exclusionary rule has nothing to do with this case. The pertinent question is whether there was sufficient evidence to support the trial court’s determination that Trout resided on Sunnyside Avenue, notwithstanding that he had told the probation department sometime in the past that he lived on Olivera Road. As we have noted already, Bryan has failed to present a proper argument challenging the sufficiency of the evidence to support the trial court’s determination of Trout’s residency. Accordingly, we are bound by the court’s finding that Trout resided on Sunnyside Avenue, and in light of that fact, the good faith exception to the exclusionary rule simply has nothing to do with this case.

E

Use Of Evidence

Bryan contends that “[t]he fruits of the search were unjustifiably used against her, since [she] did not consent to the search, did not consent to a probation search against Mr. Trout, and had no reason to have any other than an expectation of privacy in her home.” The authorities Bryan cites, however, do not support her argument. The part of *People v. Haskett* (1982) 30 Cal.3d 841, 857 Bryan cites had to do with the adequacy of a co-occupant’s consent to search; no probation search was involved there at all. And *People v. Robles* (2000) 23 Cal.4th 789, 797, 800 provides only that the police must know of the defendant’s probation status beforehand for a warrantless search to be justified as a probation search. Here, Bryan herself admits that “[l]aw enforcement went to Mr.

Trout’s probation officer . . . before searching, and confirmed that Mr. Trout was on searchable probation.”

Beyond *Haskett* and *Robles*, Bryan provides no other authority for the proposition that the fruits of a valid probation search cannot be used against a co-occupant if the co-occupant did not consent to the search. In the absence of any such authority, we reject Bryan’s argument that the evidence was unjustifiably used against her.

II

Instruction On Attempted Manufacture Of Methamphetamine

Trout contends the trial court erred in failing to instruct the jury sua sponte on attempted manufacture of methamphetamine as a lesser included offense of manufacture of methamphetamine. We disagree.

“The trial court is obligated to instruct the jury on all general principles of law relevant to the issues raised by the evidence, whether or not the defendant makes a formal request. [Citations.] ‘That obligation encompasses instructions on lesser included offenses if there is evidence that, if accepted by the trier of fact, would absolve the defendant of guilt of the greater offense but not of the lesser.’ [Citations.] ‘To justify a lesser included offense instruction, the evidence supporting the instruction must be substantial--that is, it must be evidence from which a jury composed of reasonable persons could conclude that the facts underlying the particular instruction exist.’ ” (*People v. Burney* (2009) 47 Cal.4th 203, 250.)

“[A]ttempt is a lesser included offense of any completed crime.” (*In re Sylvester C.* (2006) 137 Cal.App.4th 601, 609.) “An attempt to commit a crime consists of two elements: a specific intent to commit the crime, and a direct but ineffectual act done toward its commission.” (Pen. Code, § 21a.)

Here, Trout was convicted of violating Health and Safety Code section 11379.6, subdivision (a). “[T]he conduct proscribed by section 11379.6 encompasses the initial and intermediate steps carried out to manufacture, produce or process” a controlled

substance. (*People v. Jackson* (1990) 218 Cal.App.3d 1493, 1504.) Thus, for Trout to prevail on his claim of instructional error, we must be able to conclude that on the evidence presented, there was substantial evidence for a reasonable jury to conclude that Trout intended to manufacture methamphetamine and that he engaged in a direct act toward the manufacture of methamphetamine, but the act in which he engaged did not qualify as an initial step carried out to manufacture, produce, or process methamphetamine. And because Trout bears the burden of affirmatively demonstrating error, it falls to him to affirmatively demonstrate to us the existence of the substantial evidence necessary to justify the conclusion that the trial court should have instructed on attempt. (Cf. *People v. Sanghera, supra*, 139 Cal.App.4th at p. 1573.)

Trout has not met his burden. In arguing “there was substantial evidence to support the giving of an instruction on attempt,” Trout does not set forth all of the material evidence bearing on whether the jury could have reasonably found that he engaged in a direct act toward the manufacture of methamphetamine that did not qualify as an initial step carried out to manufacture, produce, or process methamphetamine. (See *People v. Sanghera, supra*, 139 Cal.App.4th at p. 1572 [sufficiency of the evidence determined based on review of the “whole record”].) Instead, he points to only two isolated bits of testimony by the prosecution expert. First, he notes that “[w]hile the prosecution expert testified that in his opinion, the lab was ‘active,’ he also admitted that he could not be certain that the drugs he found came from the lab that they were investigating.” Second, he noted that the expert “also testified that he could not tell within a reasonable scientific certainty that the tubing he analyzed was used in any manufacturing.”

Taking the first point first, the testimony to which Trout refers was the expert’s testimony that he could not say within a reasonable scientific certainty whether some methamphetamine found in the house on Sunnyside Avenue was manufactured in the lab found at the house. This testimony obviously did not constitute substantial evidence

supporting an instruction on attempt. The fact that it could not be determined whether certain methamphetamine was manufactured in the lab on Sunnyside Avenue would not have supported a jury verdict that no initial step was carried out to manufacture, produce, or process methamphetamine in that lab. In fact, in giving the testimony on which Trout relies, the prosecution expert explained that the finished methamphetamine in question “did not come from -- from the [drugs] that are in the process of being made because they’re in the process of being made, and that’s finished.” In this manner, the expert referred back to his earlier testimony that “[m]ethamphetamine manufacturing was definitely taking place” at the residence. Thus, the expert’s testimony was that while methamphetamine was definitely being manufactured at the residence, he could not determine whether the finished methamphetamine found at the house had been manufactured at that lab. Understood in this context, the expert’s testimony was plainly not substantial evidence that only an attempt to manufacture occurred.

The second bit of the expert’s testimony on which Trout relies results in the same conclusion. In that testimony, the expert identified certain black plastic tubing in a photograph taken at the residence and testified that because he did not test that tubing, he could not tell within a reasonable scientific certainty whether that tubing was used in any manufacture of methamphetamine. More completely, however, the expert explained that he did not test the tubing because “[t]he tubing is only there for the vapors off the reaction,” and “I have solutions that I believed to contain the actual solution -- actual mixture itself.” When counsel asked, “So you check the filter papers but not the tubing?” the expert responded, “That’s correct.” In context, then, the expert’s testimony was that he could not tell whether the tubing was used in the manufacture of methamphetamine because he had other items that provided more direct evidence that methamphetamine was being manufactured and he tested those items instead. Understood in this context, again the expert’s testimony was not substantial evidence that only an attempt to manufacture occurred.

For the foregoing reasons, we reject Trout's claim of instructional error.

III

Penal Code Section 654

Trout was convicted of manufacturing methamphetamine (count 1) and possessing methamphetamine (count 5). The court sentenced him to the midterm of five years on the manufacturing count, doubled to 10 years for a prior strike. The court imposed a concurrent sentence of 32 months on the possession count, noting that "[t]he possession of the methamphetamine in this case arguably occurred on the same occasion and arose out of the same set of operative facts and that [sic] it was possessed [at the same] time and place as the manufacturing activity."

On appeal, Trout contends his sentence for possessing methamphetamine should have been stayed pursuant to Penal Code section 654. The People agree. We agree also. Given the trial court's findings at sentencing that the possession of methamphetamine occurred at the same time as the manufacture of the methamphetamine, and given the absence of any evidence that Trout entertained multiple criminal objectives in committing the two crimes, the sentence for possession must be stayed. (See *Neal v. State of California* (1960) 55 Cal.2d 11, 19.)

IV

Fees And Fines

A

Administrative Surcharge -- Trout

Trout's abstract of judgment shows a \$760 administrative surcharge imposed in connection with the \$7,600 restitution fine, and the clerk's minutes from his sentencing hearing reflect this surcharge as well. On appeal, however, Trout complains that the trial court did not impose the surcharge as part of the oral pronouncement of judgment and therefore it must be stricken from the abstract. The People acknowledge that the court failed to orally impose the surcharge on Trout, but they contend the surcharge was

mandatory and therefore the failure to impose it resulted in an unauthorized sentence that can be corrected at any time.

In support of their argument that the surcharge was mandatory, the People -- in a footnote in their respondent's brief -- ask us to take judicial notice of an order by the San Joaquin County Board of Supervisors, which they purport to quote in the text of their brief. In reply, Trout points out that the People's request for judicial notice does not comply with rule 8.252 of the California Rules of Court, which requires "a separate motion with a proposed order," accompanied by a copy of the matter to be judicially noticed if it is not contained in the record, unless providing a copy is impracticable.

We agree with Trout that the People have not properly requested judicial notice of the alleged order by the San Joaquin County Board of Supervisors, and as a result their argument that the administrative surcharge was mandatory is unsupported by the record. Thus, the People have failed to show that the actual judgment (i.e., the oral pronouncement) was unlawful because the trial court failed to impose the administrative surcharge. Rather than remand for correction of the clerk's minutes and abstract, however, because we are remanding the issue of fines, fees, and penalties to the trial court anyway for proper calculation and documentation (see below), we need not order any other relief on this issue.

B

Drug Lab Fee -- Trout

With respect to Trout, the trial court imposed a drug lab fee of \$190 on each count of conviction, for a total of \$760. The court explained that the \$190 on each count "includes the fine, as well as penalty assessments." The court did not state the statutory basis for the drug lab fee or the penalty assessments. The \$760 total appears on the abstract of judgment only as "PAY \$760.00 CRIM. LAB FEE."

On appeal, Trout contends the abstract must be corrected "to set forth how the \$760 was calculated and what the statutory basis is." In support of this contention, he

cites *People v. High* (2004) 119 Cal.App.4th 1192. In *High*, this court held that while “a detailed recitation of all the fees, fines and penalties on the record may be tedious, California law does not authorize shortcuts. All fines and fees must be set forth in the abstract of judgment.” (*Id.* at p. 1200.) “If the abstract does not specify the amount of each fine, the Department of Corrections [and Rehabilitation] cannot fulfill its statutory duty to collect and forward deductions from prisoner wages to the appropriate agency. [Citation.] At a minimum, the inclusion of all fines and fees in the abstract may assist state and local agencies in their collection efforts. [Citation.] Thus, even where the Department of Corrections [and Rehabilitation] has no statutory obligation to collect a particular fee, such as the laboratory fee imposed under Health and Safety Code section 11372.5, the fee must be included in the abstract of judgment.” (*High*, at p. 1200.) We ordered the trial court on remand to “separately list, with the statutory basis, all fines, fees and penalties imposed on each count” and to “prepare an amended abstract reflecting the modifications and corrections ordered by this court.” (*High*, at p. 1201.)

Plainly the trial court’s recitation of the “drug lab fee” here, which did not identify the statutory basis for the fee and did not identify the amount of the fee versus the associated “penalty assessments,” did not comply with our decision in *High*. Accordingly, we will remand with directions to the trial court to properly calculate and list all fines, fees, and penalties as *High* requires.

C

Drug Lab Fee -- Bryan

As part of the order granting probation to Bryan, the trial court imposed “a \$50 lab fee on each count, plus the penalty assessments.” The court further stated that “[t]he drug lab fee has to be applied to each count, so the total aggregate is \$655. That’s \$163.75 times four.”

On appeal, Bryan contends the \$50 drug laboratory fee provided in subdivision (a) of Health and Safety Code section 11372.5 applied to only two of her four convictions

and thus the total aggregate fee should be only half of what the court ordered.

Additionally, Bryan argues that “[t]he fees must be specified as to statutory basis for each part of the total fees ordered under Health and Safety Code section 11372.5.”

The People appear to concede these errors, agreeing that “the issue of the Health and Safety Code section 11372.5 criminal lab fee [should] be remanded back to the trial court for proper calculation.”

Although Bryan received probation and was not committed to the Department of Corrections and Rehabilitation, we see no reason why the reasoning of this court in *High* should not apply equally to fines, fees, and penalties imposed as part of a probation order. Accordingly, we will remand with directions to the trial court to properly calculate and separately list all fines, fees, and penalties.

D

Court Security Fee And Criminal Conviction Fee -- Bryan

With respect to Bryan, the trial court stated, “There’s a court security fee on each count of \$60 total, and a criminal conviction fee of 140 total.” On appeal, Bryan contends the criminal conviction fee (Gov. Code, § 70373, subd. (a)(1)) should have been only \$30 per count of conviction, for a total of \$120, and the court security fee (Pen. Code, § 1465.8) should have been \$40 per count of conviction, for a total of \$160. (She notes that the \$160 figure is correctly reflected in the clerk’s minutes.) The People agree and request that “the matter of the fines, fees, and assessments be remanded back to the trial court for proper calculation.” We shall do so.

DISPOSITION

Defendants’ convictions are affirmed, but the judgment against Trout is modified to stay the sentence for possession of methamphetamine pursuant to Penal Code section 654. Both cases are remanded to the trial court with directions to properly calculate and separately list, with statutory basis, all fines, fees, and penalties imposed on each defendant. With respect to Trout, the trial court is directed to prepare an amended

abstract of judgment and to forward a copy to the Department of Corrections and Rehabilitation.

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

BUTZ, J.