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

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THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
ROLAND HOFFMAN,  
  
Defendant and Appellant.

C067697  
  
(Super. Ct. No. 10F03628)

A jury convicted defendant Roland Hoffman of receiving stolen property. (Pen. Code, § 496, subd. (a).)<sup>1</sup> In a bifurcated proceeding, the trial court found that defendant had served four prior prison terms. (§ 667.5, subd. (b).) The court sentenced defendant to a state prison term of seven years (three years, the upper term for the present offense, plus one year for each prior prison term). The court also ordered various fines and fees, which we enumerate below.

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<sup>1</sup> Undesignated statutory references are to the Penal Code.

On appeal, defendant contends that (1) the jail booking fee, classification fee, and presentence report fee must be stricken because there is no evidence defendant has the ability to pay them, and (2) the trial court abused its discretion in imposing the restitution fine and the case must be remanded for an impartial judge to determine the restitution fine imposed under section 1202.4.

We conclude defendant has forfeited his challenge to the fees because he failed to object to the fees imposed by the trial court. With regard to the restitution fine, we conclude the trial court did not abuse its discretion when it imposed the restitution fine. As to the fines and fees imposed, the abstract of judgment does not specify the statutory bases for the fines and fees. Therefore, we must remand the matter for correction of the abstract of judgment. The judgment is affirmed.

## **DISCUSSION**

### *Summary of Facts*

Because defendant's contentions do not attack the jury verdict or the true finding on his prior prison terms, we need not discuss the facts in detail. In a nutshell, defendant entered a business at a time when the employees were working in the back, went behind the counter, unplugged the cash register, and carried it out of the store. A surveillance camera detected his actions, but the employees discovered the theft only after his departure. A passerby on the street saw defendant slam the

cash register repeatedly into the ground, pick up a piece of it, and carry it toward a car. The business owners had paid about \$300 for the register, and it contained about \$200 in cash when stolen.

## I

### *The Jail Booking Fee, Classification Fee, and Presentence Report Fee*

The fees imposed by the trial court at sentencing included, among others, a main jail booking fee of \$287.78 and a main jail classification fee of \$59.23 (Gov. Code, § 29550.2), and a presentence probation investigation and report fee of \$702 (§ 1203.1b). Before the trial court imposed sentence, defense counsel asked the court to "consider giving [defendant] minimum fines and fees." However, counsel did not object to the fees the court imposed, even after the court asked whether there was anything counsel wanted to address at that time.

Defendant contends these fees must be stricken because the trial court failed to find, as required by the statutes under which the fees were imposed, that he has the ability to pay them. The People assert that defendant has forfeited the issue because he did not object to the fees in the trial court.<sup>2</sup> We conclude the issue is forfeited.

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<sup>2</sup> In defendant's reply brief, he asserts that counsel's request for "minimum fines and fees" amounted to an objection to the fines and fees the court imposed thereafter. This contention is forfeited because defendant has raised it first in the reply brief without showing why he could not have raised it

This court has held that a defendant's failure to object to a fine under section 1202.4 at the time it is imposed based on the ability to pay forfeits the issue for purposes of appeal. (*People v. Crittle* (2007) 154 Cal.App.4th 368, 371.)

Defendant relies on *People v. Pacheco* (2010) 187 Cal.App.4th 1392, in which the Court of Appeal, Sixth District, held that the issue of ability to pay with regard to an order for payment of attorney fees could be raised for the first time on appeal if "based on the insufficiency of the evidence to support the order or judgment." (*Id.* at p. 1397.)

However, in *People v. Crittle, supra*, in addition to deeming forfeited the defendant's claim that the trial court failed to make an ability-to-pay determination, we concluded that the defendant also forfeited his contention that "nothing in the record show[ed] he had the ability to pay," a sufficiency of the evidence claim. (*People v. Crittle, supra*, 154 Cal.App.4th at p. 371.) We cited *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468, in which this court concluded that a defendant had forfeited the issue of his ability to pay a restitution fine when he failed to raise any objection on this basis at the time the fine was imposed. In so holding, we noted: "[B]ecause the appropriateness of a restitution fine is fact-specific, as a matter of fairness to the People, a

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earlier. (*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8.) In any event, as we have shown, counsel remained silent after the court imposed the fines and fees.

defendant should not be permitted to contest for the first time on appeal the sufficiency of the record to support his ability to pay the fine. [Citations.] A challenge to the sufficiency of evidence to support the imposition of a restitution fine to which defendant did not object is not akin to a challenge to the sufficiency of evidence to support a conviction, to which defendant necessarily objected by entering a plea of not guilty and contesting the issue at trial." (*Id.* at pp. 1468-1469.)

As we noted in *People v. Gibson, supra*, 27 Cal.App.4th 1466: "The rule that contentions not raised in the trial court will not be considered on appeal is founded on considerations of fairness to the court and opposing party, and on the practical need for an orderly and efficient administration of the law . . . . [Citations.]" (*Id.* at p. 1468.) The reasoning in *Gibson* remains persuasive.<sup>3</sup> Accordingly, we conclude that defendant has forfeited this issue.

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<sup>3</sup> The California Supreme Court granted review in a case raising the same issue. (*People v. McCullough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513 [challenge to sufficiency of evidence to support jail booking fee forfeited by failure to object].) Until the Supreme Court issues further guidance, we continue to adhere to our holding in *Gibson*; i.e., that a failure to object to a fee or fine in the trial court forfeits the issue, even where the statute contemplates a judicial finding on ability to pay and the defendant challenges the sufficiency of the evidence to support such a finding.

## II

### *The Restitution Fine*

Defendant contends that the trial court abused its discretion by imposing a \$1,200 restitution fine (§ 1202.4, subd. (b)), and the matter must be remanded to be reconsidered by an "impartial judge." He asserts that the court had intended to impose only a \$600 fine, but then arbitrarily raised the amount out of irritation with defendant's attitude at the sentencing hearing. This contention lacks merit.

The probation report recommended a \$1,200 restitution fine. However, an unidentified person, whom defendant assumes to be the trial judge, crossed out that number and wrote "\$600" alongside it.

At sentencing, defendant repeatedly interrupted and argued with the court as it explained why it intended to sentence in accordance with the district attorney's statement in aggravation. After the court had asked defendant several times to stop interrupting, the court announced defendant's prison term, then added: "Quite frankly, I was prepared to reduce some of your fines and penalties, but I've rethought that concept. [¶] So in addition to the [seven] years in state prison, you are going to pay a restitution fine of \$1,200 pursuant to [s]ection 1202.4."

We conclude there was no error. The fine imposed was well below the statutory maximum, and defendant has not attempted to show that a fine in that amount could not lawfully have been

imposed under any circumstances. Nor has he shown that the trial court arbitrarily raised the fine because of defendant's "attitude." During the sentencing hearing, the court reviewed defendant's criminal record and stated that the multiplicity and repetitive nature of defendant's criminal conduct demonstrated defendant's "apparent unwillingness to change [his] behavior." We presume that the trial court properly performed its duty. (Evid. Code, § 664.) We also review the trial court's ruling, not its rationale. (*California Aviation, Inc. v. Leeds* (1991) 233 Cal.App.3d 724, 731.) Based on the record, there was no abuse of discretion.

### III

#### *Correction of Abstract of Judgment*

The probation report correctly sets out the statutory bases of all recommended fines and fees. However, the abstract of judgment fails to show the statutory bases of the main jail booking fee, the main jail classification fee, the court facility fee, the probation investigation and presentence report fee, and "all fines/fees payable through court's installment process." We must therefore remand and direct the trial court to prepare a corrected abstract of judgment that specifies the statutes under which these fines and fees are imposed. (*People v. High* (2004) 119 Cal.App.4th 1192, 1200-1201.)

#### DISPOSITION

The judgment is affirmed. The matter is remanded to the trial court with directions to prepare a corrected abstract of

judgment specifying the statutory bases for all fines and fees imposed upon defendant, and to forward a certified copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation.

\_\_\_\_\_ HOCH \_\_\_\_\_, J.

We concur:

\_\_\_\_\_ BLEASE \_\_\_\_\_, Acting P. J.

\_\_\_\_\_ NICHOLSON \_\_\_\_\_, J.