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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

AARMAYL ABDULLAH,

Defendant and Appellant.

D060027

(Super. Ct. No. SCD221160)

APPEAL from a judgment of the Superior Court of San Diego County, William H. Kronberger, Jr., Judge. Affirmed in part; reversed in part.

The jury convicted Aarmayl Abdullah (also known as Aarmayl Crawford)¹ of possessing cocaine base for the purpose of sale (Health & Saf. Code, § 11351.5; count 1); transporting a controlled substance (Health & Saf. Code, § 11379, subd. (a); count 2);

¹ At his preliminary hearing, Aarmayl Abdullah testified that his true name is Aarmayl Crawford. Throughout trial, the defendant was referred to as Mr. Crawford. In various pleadings in the record, the defendant is referred to as Aarmayl Crawford. For consistency, we shall refer to him as Crawford throughout this opinion.

possessing methamphetamine for the purpose of sale (Health & Saf. Code, §11378; count 3); and felony child endangerment (Pen. Code,² § 273a, subd. (a); count 4).

Prior to the jury rendering its verdict, Crawford's counsel requested a section 1368 hearing regarding Crawford's competence. The matter of Crawford's competence, however, did not proceed to trial until after the jury provided its verdict regarding the criminal charges against Crawford. A second jury ultimately found Crawford was mentally competent.

A third jury found true the allegations that Crawford previously suffered convictions for transporting and possessing methamphetamine for the purpose of sale within the meaning of Health and Safety Code section 11370.2, subdivision (c).

The court sentenced Crawford to prison for seven years, consisting of the mid-term of four years for count 1, plus three years for the prior controlled substances conviction allegation. The sentences for counts 2, 3, and 4 were imposed concurrently, and the prior controlled substance conviction allegations on counts 2 and 3 were stayed.

Crawford appeals, contending substantial evidence does not support his conviction of felony child endangerment. He also maintains the court committed reversible error by improperly instructing the jury regarding child endangerment and failing to sua sponte give an amplifying instruction for the definition of "likely." In addition, Crawford insists that substantial evidence does not support the court's finding that he has the ability to pay

² Statutory references are to the Penal Code unless otherwise specified.

a \$570 drug program fee. Finally, Crawford asserts the abstract of judgment needs to be modified to reflect the correct criminal justice administration fee.

We agree with Crawford that substantial evidence does not support the court's finding that he has the ability to pay his drug program fee. We also conclude the abstract of judgment should be modified to list the correct criminal justice administration fee. We otherwise affirm the judgment.

FACTS

Prosecution

San Diego Police Detective Ray Morales was assigned to the department's narcotics unit and had been surveilling the residence located at 4064 Broadway in San Diego on the afternoon of June 10, 2009. When he saw Crawford driving away from the residence in a Honda Civic without a license plate, Detective Morales directed an officer in a marked patrol car to initiate a traffic stop. Officer Jorge Rosales pulled over the Civic. Crawford was the only person in the car.

Officer Rosales searched Crawford and found a cigarette box in his right front pocket. Inside the cigarette box were three small baggies containing a white substance that looked like crystal methamphetamine. Inside Crawford's wallet, and inside one of his pockets, was about \$1,100 in cash.³

Detective James Clark also was assigned to the department's narcotics unit. In the late afternoon and early evening of June 10, 2009, he and Detective Morales searched

³ The Drug Enforcement Administration (DEA) seized the cash.

Crawford's residence. In Crawford's bedroom, Detective Clark found a red box on a shelf of the headboard. The red box was in plain sight and was three or four feet from the floor. Inside the box was a plastic baggie containing nine pieces of rock cocaine. Each piece was individually wrapped in cellophane. Two scales were found in the bedroom. One was under the bed and the other was on a small table next to the bed.

Detective Morales found an empty plastic baggie containing a white residue next to a used methamphetamine pipe on the small table, next to the digital gram scale. On the floor at the foot of the bed was a plastic bag. The bag was not sealed. When Detective Morales opened the bag, the first thing he saw was a cylindrical M&M minis candy container. Inside the M&M container were two small baggies containing crystal methamphetamine. One end of the M&M container was easily opened with "a flick of the thumb." The bag on the floor also held a used methamphetamine pipe that was wrapped in tissue paper. Inside another black plastic bag were 50 to 100 unused plastic baggies in various sizes.

When Detective Morales picked up the digital gram scale that was beneath the bed, he found more baggies of methamphetamine. Inside Crawford's bedroom closet was a container of MSN 1000. Detective Morales recognized it as a substance often used to cut methamphetamine. Paperwork inside the bedroom had Crawford's name and the address of 4064 Broadway. Detectives Clark and Morales had entered Crawford's bedroom together to conduct the search. The door to the bedroom was open. Based on clothing and other items in the bedroom next to Crawford's room, it appeared to be a

young girl's room. Nothing unusual was found in the girl's bedroom or anywhere else in the house.

Crawford was transported to police headquarters in downtown San Diego for processing. During the booking process, Crawford spontaneously volunteered, "Hey, I'm not a major dealer." Detective Clark responded, "I know you're not the cartel; you're just the small-time dealer." Crawford next said, "I need the money. Dealing is all I know. I love my children."

Detective Clark estimated the nine pieces of cocaine base found in the red box were worth approximately \$140. The total value of all of the methamphetamine found on Crawford's person and inside his house was about \$300 to \$325. In Detective Clark's opinion, Crawford possessed the controlled substances for the purpose of sale.

A forensic chemist analyzed the substances in the three baggies found inside the cigarette box in Crawford's pocket. All three of the baggies contained methamphetamine. The baggies found near the scale beneath the bed also contained methamphetamine. All nine of the individually wrapped rocks found inside the red box on the headboard contained cocaine base.

Dr. Wendy Wright was a pediatrician who worked at Rady Children's Hospital, as well as the Polinsky Children's Center, a receiving home for children in protective custody. Dr. Wright was familiar with the risks associated with children coming into contact with methamphetamine and cocaine base, and she had treated such children in the past. The worst case scenario was that children had died from exposure to such drugs. Because a child is smaller than an adult, it obviously requires a lesser amount of drugs to

cause damage to a child. Dr. Wright further testified that methamphetamine was a stimulant that causes all of the organs, including the heart, to be "revved up," which could lead to tachycardia or a heart attack. Methamphetamine also affects the brain and could cause seizures. It could increase the temperature of a child's body to 106 or 107 degrees, resulting in death. Rock cocaine, or cocaine base, is also a stimulant and has a similar effect on children as methamphetamine.

The parties stipulated that on June 10, 2009, Crawford's daughter A., who was born in 2003, had been in his care and custody.

Defense

Thomas Ormsby owned a construction company and Crawford had worked for him for more than three years. He described Crawford as a "very excellent father." Crawford suffered a severe head injury in an accident in December 2007 and was unable to work afterwards. He initially had trouble walking and talking, but he has since recovered. When Crawford worked for Ormsby, he was routinely drug tested and never failed a test. After the accident, Ormsby thought Crawford was using drugs. On cross-examination, Ormsby was of the opinion that keeping methamphetamine inside a brightly colored candy container in a bag on the floor was "very stupid to do." He also agreed "[a]n excellent father would not be using drugs."

Neena Salaam was a youth director at the mosque Crawford and his mother attended and she had known Crawford since he was about seven years old. She described Crawford as "an excellent parent." Salaam would have a lesser opinion of him as a

parent if it was true that he had kept methamphetamine inside a candy container on the floor of his bedroom. Mohammad Hassan, a family friend, provided similar testimony.

Aminah Crawford is Crawford's sister and had known him his whole life. In 2007, Aminah lived with Crawford and his daughter for about six weeks after she moved to San Diego from Las Vegas. She moved in about one month before Crawford's accident. She stayed in her niece's bedroom and thought Crawford was "a wonderful father." She also testified that Crawford's bedroom had a lock on the door.

Crawford's mother, Ameerah Crawford Johnson, also testified. She described Crawford as a functioning addict. Even when he was using drugs, he always took care of his daughter. Johnson could tell when Crawford was using methamphetamine because "he would lose weight and become very taut in the face." When Johnson was asked if her opinion of Crawford changed when she heard he had been charged with possession for sale, she responded: "Selling's not his thing. Can't get a user to sell. They use up all the product."

Prior to Crawford's 2007 accident, he had gone through rehab and had stopped using drugs. A couple of years later, around the time of his arrest in this matter, he had begun to use drugs again.

DISCUSSION

I

THE CONVICTION FOR CHILD ENDANGERMENT

Crawford was convicted under section 273a, subdivision (a), which provides in relevant part: "Any person who, under circumstances or conditions likely to produce

great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered . . ." is guilty of felony child endangerment. Crawford contends substantial evidence does not support his conviction under section 273a, subdivision (a).

When considering a defendant's challenge to the sufficiency of the evidence, we review the entire record most favorably to the judgment to determine whether the record contains substantial evidence from which a rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. We do not reweigh evidence or reassess a witness's credibility and we presume the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) "Unless it is clearly shown that 'on no hypothesis whatever is there sufficient substantial evidence to support the [jury's] verdict[s,]' we will not reverse." (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.) If the circumstances reasonably justify the jury's findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. (*People v. Nelson* (2011) 51 Cal.4th 198, 210.)

Here, Crawford asserts substantial evidence does not show: (1) his daughter was endangered; (2) he willfully caused her to be endangered; (3) the circumstances or conditions were likely to produce great bodily harm; and (4) he was criminally negligent. Despite raising these four separate issues, Crawford fails to explain why substantial

evidence does not support each of these elements. Instead, he argues in general terms, focusing on the lack of evidence that his daughter was endangered. We have no obligation to review the record to find support for Crawford's contentions. (See *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 ["'The appellate court is not required to search the record on its own seeking error.' [Citation.]".]) As such, we only address Crawford's contention that substantial evidence does not support the jury's finding that his daughter was endangered.

Crawford bases his argument on three assertions. The drugs were found only in Crawford's bedroom. Crawford's bedroom door had a lock. There was no evidence that Crawford's daughter went into Crawford's bedroom or otherwise had access to Crawford's bedroom. In making these assertions, Crawford fails to consider the evidence presented at trial supporting his conviction.

Crawford's daughter, A., lived with Crawford in a two-bedroom house. At the time of his arrest, Crawford had sole custody of A. Although all of the drugs were found in Crawford's bedroom, the door to his bedroom was open when the detectives searched the house. The nine rocks of cocaine base were inside a red box on a shelf on the headboard, three or four feet from the floor. Two baggies containing crystal methamphetamine were inside an M&Ms minis candy container in a plastic bag on the floor. More baggies of methamphetamine were found on the floor next to Crawford's bed, near a gram scale.

Despite this considerable evidence, Crawford, relying on *People v. Perez* (2008) 164 Cal.App.4th 1462 (*Perez*), argues that substantial evidence does not support his conviction for child endangerment. We disagree.

In *Perez*, the defendant argued there was insufficient evidence from which the jury could have found that he willfully caused a child's health to be endangered in convicting him under section 273a, subdivision (b). (*Perez, supra*, 164 Cal.App.4th at pp. 1472-1473.) We disagreed and concluded substantial evidence supported the conviction. There, heroin and a syringe were located in an unlocked drawer in a two-foot high end table in the entry room of the house and an uncapped syringe was found on top of the end table. The child had to walk through the entry room to get to her room. In addition, heroin was found in the defendant's bedroom in plain view, and the child testified that she had gone into the defendant's room to see his bird. As such, we determined the jury could have reasonably concluded that leaving drugs in plain view or within easy access of a four-year-old child placed that child at an unreasonable risk. (*Id.* at p. 1473.)

Here, like some of the defendant's drugs and paraphernalia in *Perez, supra*, 164 Cal.App.4th 1462, Crawford kept his drugs in his room, in plain view. Crawford did not store his drugs in locked or otherwise secure containers, but instead, in bags, a candy container, and a red box, all within reach of his daughter like the drugs stored in the end table in *Perez*. Also, Crawford's daughter was not much older than the child in *Perez* and would share a similar natural sense of curiosity. A jury thus reasonably could find that Crawford's daughter would have been enticed to open the bags and containers that contained drugs in his room.

Despite the similarities between this matter and *Perez, supra*, 164 Cal.App.4th 1462, Crawford argues the cases are distinguishable because in *Perez*, the child testified that she entered the defendant's room to look at his bird. Here, there was no evidence that A. ever entered Crawford's room. This lack of evidence does not trouble us. In *Perez*, the subject child only spent a couple of nights per month at the defendant's house. (*Id.* at p. 1466.) In contrast, here, Crawford had full custody of A. She lived with him. As a permanent resident in Crawford's house, it is both reasonable and logical for the jury to infer A. was free to enter any room in the house and would do so.

Crawford, however, places great weight on the existence of a lock on his bedroom door. He implies that this fact alone required the jury to infer that A. did not have access to his room. Yet, the mere fact that there was a lock on Crawford's bedroom door does little to advance his contention. Crawford does not cite to any evidence offered at trial showing that his bedroom door was routinely locked. At best, Crawford's sister mentioned Crawford's bedroom door had a lock, but she did not testify that the door was regularly locked. Further, the detectives found Crawford's bedroom door open when they searched the house.

In summary, when the evidence is viewed in the light most favorable to the judgment, there is substantial evidence to support Crawford's conviction of child endangerment in count 4.

II

JURY INSTRUCTIONS

A. CALCRIM No. 821

Crawford claims the court erred by providing the jury with a modified CALCRIM No. 821 instruction. In the second paragraph of the instruction, Crawford asserts the instruction should have been as follows: "One, the defendant while having care or custody of a child willfully caused or permitted a child to be placed in a situation where the child's person or health *was* endangered." Crawford insists that the court improperly modified the instruction by replacing the word "was" with "might have been." As a threshold matter, we note that Crawford's argument is not supported by the record and borders on misrepresentation to the court. There is nothing in the record that leads us to believe the court modified CALCRIM No. 821 as Crawford contends. Instead, the court gave CALCRIM No. 821 as it existed at the time of trial. No party objected to this instruction or asked for further clarifying instructions. In 2011, however, the instruction was modified with the word "was" replacing the phrase "might have been" in the second paragraph. (Compare CALCRIM No. 821 (2010) with CALCRIM No. 821 (2011).) In Crawford's opening brief, he fails to appreciate that CALCRIM No. 821 was changed after his trial, but instead continually argues the court altered the instruction without reason.

By failing to object to or request a specific jury instruction at trial, Crawford forfeited this claim on appeal, unless the claimed error affected Crawford's substantial rights. (§ 1259; *People v. Flood* (1998) 18 Cal.4th 470, 482, fn. 7.) "Ascertaining

whether claimed instructional error affected the substantial rights of the defendant necessarily requires an examination of the merits of the claim--at least to the extent of ascertaining whether the asserted error would result in prejudice if error it was." (*People v. Andersen* (1994) 26 Cal.App.4th 1241, 1249.) We conclude that Crawford has not shown that the claimed error affected his rights; thus, he has forfeited his claim.

We review a claim of instructional error de novo. (*People v. Posey* (2004) 32 Cal.4th 193, 218.) "Review of the adequacy of instructions is based on whether the trial court 'fully and fairly instructed on the applicable law.' [Citation.]" (*People v. Ramos* (2008) 163 Cal.App.4th 1082, 1088.) In determining whether error has been committed in giving jury instructions, we consider the instructions as a whole and assume jurors are intelligent persons, capable of understanding and correlating all jury instructions which are given. (*Ibid.*) " 'Instructions should be interpreted, if possible, so as to support the judgment rather than defeat it if they are reasonably susceptible to such interpretation.' [Citation.]" (*Ibid.*) "The crucial assumption underlying our constitutional system of trial by jury is that jurors generally understand and faithfully follow instructions." (*People v. Mickey* (1991) 54 Cal.3d 612, 689, fn. 17.)

Here, the court instructed the jury under CALCRIM No. 821 as follows:

"The defendant is charged in Count 4 with child abuse likely to produce great bodily harm. To prove that the defendant is guilty of this crime, the People must prove that:

"One, the defendant while having care or custody of a child willfully caused or permitted the child to be placed in a situation where the child's person or health might have been endangered.

"Two, the defendant caused or permitted the child to be endangered under circumstances or conditions likely to produce great bodily harm;

"And, three, the defendant was criminally negligent when he caused or permitted the child to be in danger.

"Someone commits an act willfully when he or she does it willingly or on purpose.

"A child is any person under the age of 18 years.

"Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

"Criminal negligence involves more than ordinary carelessness, inattention, or mistake in judgment. A person acts with criminal negligence when:

"One, he or she acts in a reckless way that creates a high risk of death or great bodily harm;

"And two, a reasonable person would have known that in acting in that way would create such a risk.

"In other words, a person acts with criminal negligence when the way he or she acts is so different from the way an ordinarily careful person would act in the same situation, that his or her act amounts to disregard for human life or indifference to the consequences of that act."

Crawford claims the given CALCRIM No. 821 instruction did not correctly reflect the law. He maintains the instruction relieved the prosecution of having to prove one of the elements of the crime, namely that Crawford endangered his daughter. We disagree.

Crawford does not provide any authority explaining why CALCRIM No. 821 was changed. Nor does he cite to any case indicating the previous version of CALCRIM No.

821 incorrectly stated the law. Our independent research did not uncover any explanation for the change. Indeed, the bench notes are silent on the change as well.

However, even in the absence of any explanation, it is plain to us the instruction was modified to reduce a potential inconsistency between the second paragraph and the third and fourth paragraphs. In the prior version of CALCRIM No. 821, the second paragraph requires the prosecution to prove the defendant willfully caused or permitted the child to be placed in a situation where the child's person or health might have been endangered. As Crawford argues, the jury could have interpreted this portion of the instruction as allowing a conviction simply if there was the possibility of danger, not actual danger. Nevertheless, the next two paragraphs make clear that actual danger must be proved as the third paragraph requires proof that the defendant caused or permitted the child to be endangered and the fourth paragraph requires proof that the child was in danger.

"An instruction can only be found to be ambiguous or misleading if, in the context of the entire charge, there is a reasonable likelihood that the jury misconstrued or misapplied its words." (*People v. Campos* (2007) 156 Cal.App.4th 1228, 1237.) Here, even the previous CALCRIM No. 821 is explicit that the prosecution must prove the child was in actual danger, not just subjected to the potential of danger. As such, the prosecution was not relieved of the burden of proving an element of the offense. We thus

are satisfied that CALCRIM No. 821 as it was provided here did not confuse the jury to such an extent as to warrant reversal.⁴

B. Defining the Term "Likely"

Crawford next claims the court should have sua sponte provided the jury with an additional instruction defining the word "likely" as used in CALCRIM No. 821. He insists the jury could not, within such an instruction, understand that in the technical context of section 273a, subdivision (a), "likely" means present substantial danger. In addition, he argues the instructions given to the jury here were not consistent with our definition of "likely" in *People v. Wilson* (2006) 138 Cal.App.4th 1197 (*Wilson*).

In *Wilson*, for purposes of evaluating a claim of insufficient evidence, we concluded "likely," as used in section 273a, "means a substantial danger, i.e., a serious and well-founded risk, of great bodily harm or death." (*Wilson, supra*, 138 Cal.App.4th at p. 1204.) We did not address whether a jury should have received additional instruction on the meaning of "likely."

However, Division 2 of this appellate district addressed this precise issue in *People v. Chaffin* (2009) 173 Cal.App.4th 1348 (*Chaffin*). Like Division 2, we also conclude, even if we accept Crawford's contention that the jury should have been instructed about the meaning of "likely," the instruction as given was adequate. (*Id.* at p. 1353.)

⁴ As part of his challenge of CALCRIM No. 821, Crawford again contends there was no evidence that A. was in danger. We rejected this contention in section I, *ante*.

As Division 2 noted, "[i]n *People v. Sedeno* (1974) 10 Cal.3d 703,^[5] our Supreme Court held that the failure to give an instruction is harmless error if 'the factual question posed by the omitted instruction was necessarily resolved adversely to the defendant under other, properly given instructions. In such cases the issue should not be deemed to have been removed from the jury's consideration since it has been resolved in another context, . . .' (*Id.* at p. 721 . . .)." (*Chaffin, supra*, 173 Cal.App.4th at p. 1353.)

Here, the jury could have been informed that the term "likely," as we defined it in *Wilson, supra*, 138 Cal.App.4th 1197, means a defendant's willful actions have exposed the child to "a substantial danger, i.e., a serious and well-founded risk, of great bodily harm or death." (*Id.* at p. 1204.) Yet, the court instructed the jury that to convict Crawford of child endangerment, it must find Crawford acted with criminal negligence, i.e., "in a reckless way that creates a high risk of death or great bodily injury," which also meant that he acted with "disregard for human life, or indifference to the consequences of that act."

Therefore, by convicting Crawford of child endangerment, the jury necessarily found Crawford's actions "create[d] a high risk of death or great bodily harm." This finding is at least the functional equivalent of a finding that Crawford put his daughter in "substantial danger, i.e., a serious and well-founded risk, of great bodily harm or death, "if not higher. (*Wilson, supra*, 138 Cal.App.4th at p. 1204.) Accordingly, the failure to give an instruction on the legal definition of "likely" could not have been prejudicial to

⁵ *People v. Sedeno, supra*, 10 Cal.3d 703 was overruled on other grounds in *People v. Breverman* (1998) 19 Cal.4th 142, 165.

Crawford because the factual question posed by the omitted definition was resolved adversely to Crawford under the other, properly given, instruction. (See *Chaffin, supra*, 173 Cal.App.4th at p. 1353.)

The record establishes beyond a reasonable doubt that the court's failure to give the jury a legal definition of the term "likely" could not have affected the verdict and was therefore harmless. (See *People v. Flood, supra*, 18 Cal.4th at p. 507.)

III

THE DRUG PROGRAM FEE

The court ordered Crawford to pay drug program fees of \$570 per Health and Safety Code section 11372.7. Crawford challenges this finding, arguing it is not supported by substantial evidence.

The People contend Crawford forfeited this claim because he did not object to the fee during the imposition of judgment. We disagree. Because Crawford claims substantial evidence does not support the judgment, he can raise this issue for the first time on appeal. (See *People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397; *People v. Viray* (2005) 134 Cal.App.4th 1186, 1217; *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1536-1537.)

Under Health and Safety Code section 11372.7, subdivision (b) a court must determine a defendant has an ability to pay before it imposes the fee to be paid. An ability to pay finding must be supported by substantial evidence. (*People v. Pacheco, supra*, 187 Cal.App.4th at p. 1398.) Substantial evidence is evidence that is reasonable, credible, and of solid value. (*People v. Johnson* (1980) 26 Cal.3d 557, 578.) A trial

court abuses its discretion when it orders a fine when there is no factual and rational basis for the amount ordered. (See *People v. Mearns* (2002) 97 Cal.App.4th 493, 502.)

Here, the court did not make an explicit finding that Crawford had the ability to pay the drug program fee. However, the People assert the court's implied finding that Crawford had the ability to pay was based on his statements that he sold drugs to obtain funds to provide for his daughter and other children and he had a \$60,000 a year job waiting for him. We are not persuaded.

Crawford told a detective during his booking that he sold drugs to provide for his family. He reiterated this statement to the probation officer. Yet, even if Crawford was selling drugs, there is no indication in the record that he has any money from these sales. Indeed, all money that Crawford had on his person when he was arrested was ultimately seized by the DEA. There is nothing in the record indicating Crawford has any money saved. Thus, the fact that Crawford had dealt drugs did not establish he had the ability to pay the drug program fee.

Also, we are unimpressed by Crawford's statement that he has a \$60,000 a year job waiting for him. He apparently made this comment when he was trying to convince the probation officer that he should avoid a prison sentence and be granted probation. There is no indication in the probation report that Crawford provided any additional details about this alleged job. There is no suggestion of the identity of the would-be employer or what the job would even entail.

Further, his claim of having a \$60,000 a year job waiting for him contradicts other statements he made to the probation officer. Crawford admitted he was in a car accident,

suffered some kind of "brain injury," and had been out of work, but was receiving disability benefits. Once the disability benefits ran out, Crawford stated he felt he had no other options, but to sell drugs. He would not feel the need to do so if he had a the possibility of a job that paid \$60,000 a year. In short, Crawford's claim that he had a \$60,000 a year job waiting for him is not based in reality. The court could not reasonably rely on this statement in finding Crawford had the ability to pay the drug program fee.

We conclude substantial evidence does not support the court's implied finding that Crawford had the ability to pay his drug program fee. We therefore strike the fee.

IV

THE CRIMINAL JUSTICE ADMINISTRATION FEE

Crawford argues, and the People concede, the abstract of judgment lists a criminal justice administrative fee of \$154, but the court verbally imposed a fee of \$150. We agree and the abstract should be amended to show the correct \$150 amount.

DISPOSITION

The judgment is modified to strike the \$570 drug program fee and change the amount of the justice administrative fee to \$150. The court is directed to amend the abstract of judgment to reflect modification and forward an amended abstract of

judgment to the Department of Corrections and Rehabilitation. In all other aspects, the judgment is affirmed.

HUFFMAN, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.