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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

EARL ANTHONY LYONS,

Defendant and Appellant.

E061561

(Super.Ct.No. FMB1400154)

O P I N I O N

APPEAL from the Superior Court of San Bernardino County. Frank Gafkowski, Jr., Judge. Affirmed with directions.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Peter Quon, Jr. and Anthony Da Silva, Deputy Attorneys General, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant, Earl Anthony Lyons, appeals from his conviction of being a felon in possession of a firearm (Pen. Code, § 29800, subd. (a)) and possession of methamphetamine for sale (Health & Saf. Code, § 11378) following his entry of a plea of guilty to those charges. He contends his trial counsel was ineffective for failing to file a motion to quash or traverse the search warrant, for conceding that the unsealed portion of the warrant established probable cause, and for allowing him to enter a plea and waive his right to appeal the suppression issue. Defendant next requests this court to review the sealed portion of the search warrant affidavit and the in camera hearing to determine whether the trial court erred in denying his motion to unseal the search warrant and disclose the confidential informant. Finally, defendant contends his criminal laboratory fee should be reduced to \$50 plus penalty assessments.

We will order the abstract of judgment corrected to reflect the proper amounts of fees and assessments. We find no other error, and we affirm.

II. FACTS AND PROCEDURAL BACKGROUND

A. *The Search Warrant*

On March 24, 2014, San Bernardino County Sheriff's Deputy Bruce Southworth submitted a search warrant affidavit, the probable cause section of which stated:

“I have received information from Detective Thornburg and citizens about Marijuana and methamphetamine sales at 73934 Casita Drive in Twentynine Palms. The resident is Earl Lyons (040564). Earl Lyons has an extensive criminal history for

narcotic [related] offenses that include possession and sales. Earl Lyons lives at the location and his California Driver's License reflects the same address. Vehicles at the location are registered to Earl and Davida Lyons. Davida Lyons (091766) has also been contacted at the residence for a prior incident.

“On 03/04/14, Deputy Thornburg was conducting surveillance at 73934 Casita Drive. He observed a vehicle bearing California Plate 43305D1 leave the residence. Deputies conducted a traffic stop on the vehicle and contacted Michael Torchia. After further investigation, Torchia was arrested for [Health and Safety Code section] 11359, Marijuana for Sales. The vehicle Torchia was driving was registered to a Gary Lyons.

“I have received additional information towards the probable case. Due to the nature of that information it will be listed as CONFIDENTIAL and I am requesting the CONFIDENTIAL portion of the probable cause be sealed.”

The magistrate found probable cause and issued the warrant.

B. The Search

Deputies went to defendant's home on March 25, 2014, to execute the search warrant. Defendant told them where narcotics and two firearms were located in his house. Defendant stated the drugs were for his friends to use at his upcoming birthday party, and he stated he did not sell any drugs. The deputies recovered powdered cocaine, rock cocaine, methamphetamine, and marijuana, along with drug paraphernalia. The deputies also located a loaded .45-caliber semiautomatic handgun and a .22-caliber rifle, as well as additional ammunition for both firearms.

C. The Motion to Unseal the Warrant and Disclose the Confidential Informant

On May 20, 2014, defendant moved to unseal the search warrant and disclose the confidential informant. The prosecution filed an ex parte motion seeking court review of the sealed affidavit, and on June 3, 2014, the trial court held an in camera hearing for that purpose, following which the trial court denied the motion to unseal the warrant.

D. Defendant's Guilty Plea, Sentence, and Certificate of Probable Cause

On July 1, 2014, defendant entered a plea of no contest to being a felon in possession of a firearm (Pen. Code, § 29800, subd. (a)) and possession of methamphetamine for sale (Health & Saf. Code, § 11378). On the plea form, defendant initialed a condition stating: "I waive and give up any right to appeal from any motion I may have brought or could bring and from the conviction and judgment in my case since I am getting the benefit of my plea bargain."

The trial court sentenced defendant to concurrent upper terms of three years for each offense. The court also ordered defendant to pay a "\$246 criminal lab analysis fee to be collected by the Department of Corrections." However, the minute order and abstract of judgment state that defendant was ordered to pay a "Lab Fee of \$300.00 imposed pursuant to -- , payable through Department of Corrections." Finally, the trial court dismissed a count of possession for sale of cocaine base. (Health & Saf. Code, § 11351.5.)

Defendant filed a notice of appeal and requested a certificate of probable cause, stating that the officers had come to his house without cause, and he had entered his plea

under duress because his attorney was ineffective in failing to file a motion to suppress evidence as he had promised to do. The trial court granted defendant's request for a certificate of probable cause.

III. DISCUSSION

Although as noted above, defendant initialed a statement on the plea form indicating he was waiving his right to appeal, because the trial court thereafter issued a certificate of probable cause, we will therefore address the issues on the merits.

A. *Assistance of Counsel*

Defendant contends his trial counsel was ineffective for failing to file a motion to quash or traverse the search warrant, for conceding that the unsealed portion of the warrant established probable cause, and for allowing him to enter a plea and waive his right to appeal the suppression issue.

Defendant has requested this court to review the sealed portion of the search warrant affidavit and the in camera hearing to determine whether the trial court erred in denying his motion to unseal the search warrant and disclose the confidential informant. We have done so, and we have determined that the sealed portion of the warrant, either standing alone or in conjunction with the unsealed portion, established probable cause. We have further determined that defendant was not entitled to learn the identity of the informant; the informant provided no exculpatory information. (*Davis v. Superior Court* (2010) 186 Cal.App.4th 1272, 1277.)

Defendant further contends his trial counsel was ineffective for allowing him to enter a plea from which he derived no significant benefit. He was sentenced to concurrent terms of three years for each of the two counts to which he pled guilty, and he argues it was likely he would have received concurrent terms if he had been convicted after trial. Defendant omits the fact that as a result of his plea agreement, a count of possession of cocaine base for sale (Health & Saf. Code, § 11351.5) was dismissed. Moreover, he could have received consecutive rather than concurrent sentences for his offenses if he had gone to trial. We note that the search warrant affidavit indicated he had an extensive prior history of narcotics offenses, including possession and sales. Under these circumstances, we reject the contention that defendant received no benefit from his plea bargain.

In his briefs on appeal, defendant has requested reversal of the judgment and remand with directions to allow him to withdraw his plea “unless this court determines[] that the sealed portion of the warrant either standing alone or in conjunction with the unsealed portion established probable ca[use], and that [he] was not entitled to learn the identity of the informant” We have concluded that the warrant was supported by probable cause. Defendant’s additional contentions of ineffective assistance of counsel are therefore moot.

B. Criminal Laboratory Fee

Defendant contends his criminal laboratory fee should be reduced to \$50 plus penalty assessments, for a total of \$205.

Health and Safety Code section 11372.5, subdivision (a) provides that every person convicted of certain crimes, including possession of a controlled substance, shall “pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense.” In *People v. Voit* (2011) 200 Cal.App.4th 1353, the court held that the trial court had “adequately pronounced judgment by imposing a specific fine and generally referring to the applicable penalty assessments.” (*Id.* at p. 1373.) In *People v. Sharret* (2011) 191 Cal.App.4th 859, 864, the court approved pronouncement of a laboratory fee and drug program fee “‘*plus penalty assessment.*’” The court explained: “[T]rial courts frequently orally impose the penalties and surcharge . . . by a shorthand reference to ‘penalty assessments.’ The responsibility then falls to the trial court clerk to specify the penalties and surcharge in appropriate amounts in the minutes and, more importantly, in the abstract of judgment.” (*Ibid.*)

Here, however, the trial court did not refer to penalty assessments, even in general terms. In *People v. High* (2004) 119 Cal.App.4th 1192, 1200, the court stated: “Although we recognize that a detailed recitation of all the fees, fines and penalties on the record may be tedious, California law does not authorize shortcuts.” The court stated that “[a]ll fines and fees must be set forth in the abstract of judgment.” (*Ibid.*; accord, *People v. Lopez* (2013) 218 Cal.App.4th Supp. 6, 12 [although trial court referred to fees and fines, its silence as to amounts and bases required remand even though specifics were contained in the minute order and sentencing memorandum].) We may correct the errors on appeal. (*People v. Turner* (2002) 96 Cal.App.4th 1409, 1415.)

The parties do not dispute that a \$50 laboratory analysis fee was properly imposed. (Health & Saf. Code, § 11372.5.) The People argue that the trial court could also properly impose a \$150 state penalty assessment (Pen. Code, § 1464, subd. (a)(1)) and a \$46 processing fee (Pen. Code, § 1205, subd. (d)). However, the statutes the People cite do not specify those amounts.

Penal Code section 1464, subdivision (a)(1) states that “there shall be levied a state penalty in the amount of ten dollars (\$10) for every ten dollars (\$10), or part of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed and collected by the courts for all criminal offenses” Here, because defendant’s base laboratory analysis fee was \$50, his penalty under Penal Code section 1464, subdivision (a)(1) should therefore be \$50.

Penal Code section 1205, subdivision (d) provides: “Nothing in this section shall be construed to prohibit the clerk of the court, or the judge if there is no clerk, from turning these accounts over to another county department or a collecting agency for processing and collection.” That subdivision does not specify any amount of a penalty, fine, assessment, or fee and therefore does not support the People’s argument that a \$46 processing fee was justified under that statute.

Defendant acknowledges that he was also required to pay a penalty of \$50 under Penal Code section 1464, subdivision (a)(1); an assessment of \$7 for every \$10, for a total of \$35, under Government Code section 76000, subdivision (a)(1); an assessment of \$5 for every \$10, for a total of \$25, under Government Code section 70372, subdivision

(a)(1); an assessment of \$2 for every \$10, for a total of \$10, under Government Code section 76000.5, subdivision (a)(1); and an assessment of 20 percent of the base fine, for a total of \$10, under Penal Code section 1465.7.

In addition to those enumerated fees, defendant was required to pay an assessment of \$1 for every \$10, for a total of \$5, under Government Code section 76104.6, subdivision (a)(1); and an assessment of \$4 for every \$10, for a total of \$20, under Government Code section 76104.7, subdivision (a). We will order the abstract of judgment to be corrected accordingly.

IV. DISPOSITION

The trial court is directed to enter a new minute order and abstract of judgment indicating that defendant is required to pay a laboratory analysis fee of \$50 under Health and Safety Code section 11372.5, subdivision (a); a penalty of \$50 under Penal Code section 1464, subdivision (a)(1); an assessment of \$35 under Government Code section 76000, subdivision (a)(1); an assessment of \$25 under Government Code section 70372, subdivision (a)(1); an assessment of \$5 under Government Code section 76104.6, subdivision (a)(1); an assessment of \$20 under Government Code section 76104.7, subdivision (a); an assessment of \$10 under Government Code section 76000.5, subdivision (a)(1); and an assessment of \$10 under Penal Code section 1465.7. In all other respects, the judgment is affirmed.

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KING

J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.