

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS R. CHAVEZ,

Defendant and Appellant.

B190270

(Los Angeles County
Super. Ct. No. VA092864)

MODIFICATION OF PUBLISHED
PORTIONS OF THE OPINION;
ORDER DENYING REHEARING
WHICH IS NOT TO BE INCLUDED
IN THE OPINION

[CHANGE IN JUDGMENT]

1. Insert as a new sentence on page 10, line 16 after the citations to legislative history and before the sentence commencing “We are convinced . . .”: “None of the foregoing legislative committee reports contains a single phrase, sentence, or paragraph which suggests that the deduction specified in Government Code section 70375, subdivision (b) refers to the calculation of the state court construction penalty imposed on the defendant. If such an unprecedented and unwieldy manner of calculating a financial penalty were contemplated by the Legislature, it most likely be discussed in a committee report.”

* Pursuant to California Rules of Court, rules 8.1100 and 8.1110(a), this opinion is certified for publication with the exception of part II (D).

2. On page 13, lines 11 through 23, delete the following:

“What we have said in connection with the drug laboratory fee previously applies to the section 1465.8, subdivision (a)(1) \$20 court security fee. Thus, there must be imposed on the 1465.8, subdivision (a)(1) \$20 court security fee: a section 1464, subdivision (a) penalty assessment of \$20; a \$14 Government Code section 76000, subdivision (a) penalty assessment; a \$4 section 1465.7, subdivision (a) state surcharge; and a \$10 Government Code section 70372, subdivision (a) state court construction penalty. And, as noted the two penalty assessments in section 1464, subdivision (a) and Government Code section 76000, subdivision (a), are subject to the Government Code section 70372, subdivision (a) state court construction penalty. Accordingly, on the section 1464, subdivision (a) penalty assessment of \$20, there is imposed a \$10 state court construction penalty. On the \$14 Government Code section 76000, subdivision (a) penalty assessment, there is to be imposed a \$7 Government Code section 70372, subdivision (a) state court construction penalty. The trial court is to personally insure the abstract of judgment is corrected to comport with the modifications we have ordered. (*People v. Acosta* (2002) 29 Cal.4th 105, 109, fn. 2; *People v. Chan* (2005) 128 Cal.App.4th 408, 425-426.)”

3. In the place of the matters specified in paragraph 2, insert the following: The issue of whether the penalty assessments, state surcharge, and state court construction penalty applies to the court security fee is very, very close. Although not dispositive, section 1465.8¹ defines the \$20 court security fee as a fee rather than a fine, assessment,

¹ Section 1465.8 states in its entirety: “(a)(1) To ensure and maintain adequate funding for court security, a fee of twenty dollars (\$20) shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. [¶] (2) For the purposes of this section, ‘conviction’ includes the dismissal of a traffic violation on the condition that the defendant attend a court-ordered traffic violator school, as authorized by Sections 41501 and 42005 of the Vehicle Code. This security fee shall be deposited in accordance with subdivision (d), and may not be included with the fee

or penalty. This is in contrast to the Health and Safety Code section 11372.5, subdivision (a) drug laboratory fee which, as we have noted, is statutorily defined as an increment of a fine. (See fn. 2, *supra*; *People v. Martinez, supra*, 65 Cal.App.4th at p. 1522; *People v. Sanchez, supra*, 64 Cal.App.4th at p. 1332.) As we will note, of greatest consequence are the words chosen by the Legislature. (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 826; *People v. Jones* (1993) 5 Cal.4th 1142, 1146.)

To begin with, as to the penalty assessments, section 1464, subdivision (a) states, “[T]here shall be levied a state penalty, in an amount equal to ten dollars (\$10) for every ten dollars (\$10) or fraction thereof, upon every *fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses*, including all offenses” (Italics added.) Government Code section 76000, subdivision (a) provides, “In each county there shall be levied an additional penalty of seven dollars (\$7) for every ten dollars (\$10) or fraction thereof which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every *fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses*” (Italics added.) Strictly speaking, the term “fee” is not precisely the same as the words “fine, penalty, or forfeiture.” Moreover, unlike Health and Safety Code section 11372.5, subdivision (a), the Legislature has not designated the court security fee as an increment of a fine. Also,

calculated and distributed pursuant to Section 42007 of the Vehicle Code. [¶] (b) This fee shall be in addition to the state penalty assessed pursuant to Section 1464 and may not be included in the base fine to calculate the state penalty assessment as specified in subdivision (a) of Section 1464. [¶] (c) When bail is deposited for an offense to which this section applies, and for which a court appearance is not necessary, the person making the deposit shall also deposit a sufficient amount to include the fee prescribed by this section. [¶] (d) Notwithstanding any other provision of law, the fees collected pursuant to subdivision (a) shall all be deposited in a special account in the county treasury and transmitted therefrom monthly to the Controller for deposit in the Trial Court Trust Fund. [¶] (e) The Judicial Council shall provide for the administration of this section.”

although not dispositive, none of the legislative committee reports prepared when section 1465.8 was enacted refer to any penalty assessment being imposed on the court security fee. (Assembly 3d reading analysis of Assem. Bill No. 1759 (2003-2004 Reg. Sess.) as amended Mar. 11, 2003; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1759 (2003-2004 Reg. Sess.) as introduced; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1759 (2003-2004 Reg. Sess.) as amended June 25, 2003; Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill No. 1759 (2003-2004 Reg. Sess.) as amended July 27, 2003; Rep. prepared by Assem. Budget Com. on Assem. Bill No. 1759 (2003-2004 Reg. Sess.) as amended July 27, 2003.) Section 1465.8 was part of budget trailer bill relating to the judicial branch which was enacted on an urgency basis. (See *Ibid.*; Legis. Counsel's Dig., Assem. Bill No. 1759, Stats. 2003, ch. 159 (2003-2004 Reg. Sess.)) There is no evidence of a calculation by any branch of California government including, most importantly the Legislature, that additional income was expected in the form of penalty assessments imposed on the section 1465.8 court security fee as part of the effort to balance the state budget. Moreover, the section 1464, subdivision (a) and Government Code section 76000, subdivision (a) penalty assessments are those "imposed and collected by the courts for criminal offenses" The section 1465.8 court security fee is not always imposed as a result of a criminal conviction. It is also imposed where bail is posted where no court appearance is necessary or when a case is to be dismissed because the violator attends traffic school. (§ 1465.8, subs. (a)(1), (c).)

Of further consequence is the application of the rule of lenity which we have applied while discussing the inapplicability of the section 1465.7 20 percent state surcharge on the section 1202.4, subdivision (b)(1) and 1202.45 restitution fines. (*People v. Oates* (2004) 32 Cal.4th 1048, 1068; *People v. Avery, supra*, 27 Cal.4th at p. 57; *In re Tartar, supra*, 52 Cal.2d at p. 257.) On one hand, a fee, which involves money, is like a "fine, penalty, or forfeiture." On the other hand, the Legislature has chosen specific terminology to define different ways of raising revenue: the Government Code section

70372, subdivision (a) state court construction *penalty*; the Health and Safety Code section 11372.5, subdivision (a) laboratory fee which is defined as an increment of a *fine*; the section 1202.4, subdivision (b)(1) and 1202.45 restitution *finer*; the section 1465.7 state *surcharger*; and the section 1465.8, subdivision (a)(1) court security *fee*. Here, the term used by the Legislature, a fee, is not the same as the words “fine, penalty, or forfeiture” appearing in the penalty assessment statutes. Each side of the controversy has equal logical weight and, therefore, the application of the rule of lenity weighs in defendant’s favor. Taken collectively, these reasons lead us to hold that the section 1464, subdivision (a) and Government Code section 76000, subdivision (a) penalty assessments do not apply to the section 1456.8, subdivision (a)(1) court security fee.

The same is true as to the section 1465.7, subdivision (a) state surcharge and the Government Code section 70372, subdivision (a) state court construction penalty. The section 1465.7, subdivision (a) 20 percent state surcharge is imposed only on a base *fine*. The Government Code section 70372, subdivision (a) state court construction penalty is imposed on “upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses” As we have explained, the section 1464, subdivision (a) and Government Code section 76000, subdivision (a) penalty assessments are inapplicable to the section 1456.8, subdivision (a)(1) \$20 court security fee. For the same reasons, the state surcharge and court construction penalty do not apply to the 1456.8, subdivision (a)(1) court security fee.

4. On page 17 in the disposition, after the second sentence, insert:
The trial court shall personally insure the abstract of judgment is corrected to comport to with the modifications in the judgment.

5. The rehearing petition and the supplemental rehearing petition are denied.

TURNER, P.J.

ARMSTRONG, J.

MOSK, J.