S235556

In the Supreme Court of the State of California

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

FELIX CORRAL RUIZ, II,

Defendant and Appellant.

Case No. S235556

Fifth Appellate District Fifth, Case No. F068737
Tulare County Superior Court, Case No. VCF241607J
The Honorable Joseph A. Kalashian, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUE PRESENTED

The Court has requested briefing on the following issue:

May a trial court properly impose a criminal laboratory analysis fee (Health & Saf. Code, § 11372.5, subd. (a)) and a drug program fee (Heath & Saf. Code, § 11372.7, subd. (a)) based on defendant's conviction for conspiracy to commit certain drug offenses?

INTRODUCTION

There currently is a conflict of legal authority regarding whether the fees set forth under Health and Safety Code sections 11372.5 and 11372.7 are punitive in nature. In *People v. Vega* (2005) 130 Cal.App.4th 183, 194 (*Vega*), the Second District Court of Appeal (Division Seven) held that the criminal laboratory analysis fee set forth in Health and Safety Code section 11372.5, subdivision (a), does not apply to conspiracy to transport or possess cocaine because the fee did not constitute "punishment" under Penal Code section 182, subdivision (a). (*Vega*, *supra*, at pp. 185, 194-195.) In contrast, in *People v. Sharret* (2011) 191 Cal.App.4th 859 (*Sharret*), the Second District Court of Appeal (Division Five) held that the criminal laboratory analysis fee is punitive for the purposes of Penal Code section 654, and thus subject to a stay. (*Sharret*, at p. 869.) Most recently, in *People v Watts* (2016) 2 Cal.App.5th 223 (*Watts*),[1] the First District Court of Appeal (Division 1) held that the criminal laboratory analysis fee is not punishment in deciding whether the fee is subject to penalty assessments. (*Id.* at pp. 234-235.)

Appellant asserts that the issue presented here depends on whether the fees imposed by the trial court under Health and Safety Code sections

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[1] *People v. Watts*, *supra*, 2 Cal.App.5th 223, was published on August 8, 2016, after the petition for review was granted in this case. Neither party filed a petition for review in *Watts*.

11372.5 and 11372.7 constitute "punishment" under Penal Code section 182. (AOB 11.) Relying primarily on the holdings in *Vega* and *Watts*, appellant contends that the fees are not punishment and, therefore, should be stricken.

Characterizing the fee is unnecessary because the trial court properly imposed both the criminal laboratory analysis fee and the drug program fee for appellant's conspiracy to transport methamphetamine conviction under the plain language of Penal Code section 182, subdivision (a). This section requires that a conspiracy conviction be punishable in the same fashion as is provided for that felony. Since Health and Safety Code section 11379 requires that a defendant convicted under that section be charged a fee under both Health and Safety Code sections 11372.5 and 11372.7, the same should hold true for a defendant convicted of a conspiracy to commit that felony offense.

Nonetheless, even if the issue here depends on the characterization of the fees, the trial court properly imposed each one because the predominate nature of the fees is punitive when compared to other fees and fines.

STATEMENT OF THE CASE

Appellant's criminal charges arose out of a multi-agency task force surveillance and court-ordered electronic monitoring investigation of drug distribution in Visalia and Tulare counties by Norteño gang members and associates. During his jury trial in the Tulare County Superior Court, appellant entered into a plea agreement with the prosecution in which he agreed to plead no contest, in relevant part, to conspiracy to transport methamphetamine (Pen. Code, § 182, subd. (a);Health & Saf. Code, § 11379; count 5). (4 CT 865; 9 RT 183-184, 187-189, 191.)[2]

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[2] "CT" refers to the four-volume Clerk's Transcript on Appeal. "RT" refers to the eight-volume Reporter's Transcript on Appeal (vols. 1, (continued...)

Pursuant to the recommendation of probation, the trial court imposed $600 in fees and penalty assessments for appellant's conspiracy conviction, which included a $50 criminal laboratory analysis fee pursuant to Health and Safety Code section 11372.5 and a $100 drug program fee pursuant to Health and Safety Code section 11372.7. (Conf. CT 24, 27; 11 RT 204.)[3]

On appeal, appellant argued that the fees imposed under Health and Safety Code sections 11372.5 and 11372.7 were unauthorized because they do not apply to a conspiracy conviction. (*Vega, supra*, 130 Cal.App.4th at p. 194.) The Court of Appeal disagreed with appellant's contention, finding the reasoning in *Sharret* to be more persuasive than that in *Vega*.

SUMMARY OF ARGUMENT

Regardless on how the criminal laboratory analysis fee and drug program fee are characterized, the trial court properly imposed both fees based on appellant's conspiracy conviction. Penal Code section 182, subdivision (a), requires, in relevant part, that a conspiracy to commit a felony "shall be punishable in the same manner and to the same extent as is provided for the punishment of that felony." (Pen. Code, § 182, subd. (a).) Therefore, since a defendant convicted of violating Health and Safety Code section 11379 must pay a criminal laboratory analysis fee under Health and Safety Code section 11372.5 and a drug program fee under Health and Safety Code section 11372.7, one who is convicted for conspiring to commit the same offense shall also pay these fees.

(...continued)
2, 4, 6, 7, 8, 9, & 11). "Conf. CT" refers to single Confidential Clerk's Transcript on Appeal.

[3] In addition to the criminal laboratory analysis fee and drug program fee, appellant was ordered to pay an additional $450 in penalties and assessments. (Conf. CT at 27-28.)

Moreover, since the primary characteristics of the fees set forth under Health and Safety Code sections 11372.5 and 11372.7 are punitive in nature, they constitute punishment for the purposes of a conspiracy conviction pursuant to Penal Code section 182.

ARGUMENT

I. THE TRIAL COURT PROPERLY IMPOSED THE FEES UNDER HEALTH AND SAFETY CODE SECTIONS 11372.5 AND 11372.7

As part of appellant's sentence for his conspiracy conviction, the trial court imposed a $50 criminal laboratory analysis fee pursuant to Health and Safety Code section 11372.5, subdivision (a), and $100 drug program fee pursuant to Health and Safety Code section 11372.7, subdivision (a). Appellant argues that the fees imposed by the trial court under these sections for his conspiracy conviction were unauthorized and should be stricken because they do not constitute punishment. (AOB 7-23.) Respondent disagrees. The plain language of Penal Code section 182, subdivision (a), required that both fees be imposed on appellant's conspiracy conviction. In addition, the more reasonable interpretation of the applicable case law and statutes is that the fees are in fact punitive in purpose and effect and thereby apply to conspiracy convictions under Penal Code section 182, subdivision (a).

A. Relevant Legal Standard and Statutes

The interpretation of statutory language is a question of law which this court reviews de novo. (*People v. Prunty* (2015) 62 Cal.4th 59, 71.) It is well settled that in any case involving statutory interpretation, the court must determine the Legislature's intent so as to effectuate the law's purpose by first examining the statute's words, giving them a plain and common-sense meaning. (*People v. Scott* (2014) 58 Cal.4th 1415, 1421 (*Scott*).) The plain meaning of the language in the statute "is generally the most

reliable indicator of the legislative intent and purpose." (*People v McCullough* (2013) 56 Cal.4th 589, 592 (*McCullough*).) Clear statutory language ends the court's analysis. (*Scott*, at p. 1421.) However, if the statutory language is unclear or ambiguous, the court may "look to a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be rendered, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the statute is a part." (*Ibid.*, internal citations omitted.)

The criminal laboratory analysis fee is set forth in Health and Safety Code section 11372.5, which provides in relevant part:

> (a) Every person who is convicted of a violation of Section ..., 11379, ... of this code, ... shall pay a criminal laboratory analysis fee in the amount of fifty dollars ($50) for each separate offense. The court shall increase the total fine necessary to include the increment. [¶] With respect to those offenses specified in this subdivision for which a fine is not authorized by other provisions of the law, the court shall, upon conviction, impose a fine in an amount not to exceed fifty dollars ($50), which shall constitute the increment prescribed by this section and which shall be in addition to any other penalty prescribed by law. [¶]

(Health & Saf. Code, § 11372.5, subd. (a).)

The drug program fee is set forth in Health and Safety Code section 11372.7, which provides in pertinent part:

> (a) Except as otherwise provided in subdivision (b) or (e), each person who is convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred and fifty dollars ($150) for each separate offense. The court shall increase the total fine, if necessary, to include this increment, which shall be in addition to any other penalty prescribed by law.

(Health & Saf. Code, § 11372.7, subd. (a).)

Neither Health and Safety Code section 11372.5 nor Health and Safety Code section 11372.7 make any reference to persons convicted of

conspiracy to commit felony offenses. Nonetheless, subdivision (a) of Penal Code section 182, provides in relevant part, that defendants who have been convicted of conspiring to commit a felony "shall be punished in the same manner and to the same extent as if provided for punishment of that felony." (Pen. Code, § 182, subd. (a).)

B. The Trial Court was Required to Impose the Fees Because the Plain Meaning of Penal Code Section 182 Mandates the Same Punishment Be Imposed for Conspiracy to Transport Methamphetamine As Is Imposed for Transportation of Methamphetamine

The clear language of Penal Code section 182, subdivision (a), requires that a defendant convicted of conspiracy be punished "in the same manner and to the same extent" as provided for the punishment of the target offense. In this matter, then, appellant should be punished for his conspiracy conviction in the same manner as is provided for the punishment under Health and Safety Code section 11379. Here, that includes not only appellant's period of incarceration but also imposition of mandatory fees on those convicted under this statute.

People v. Athar (2005) 36 Cal.4th 396, 399 (*Athar*), is instructive. In that case, the jury found defendant guilty of conspiracy to commit money laundering and found true a money laundering enhancement. He was sentenced on both. (*Ibid.*) On appeal, he argued that the requirement of Penal Code section 182, subdivision (a), that the conspiracy conviction is punishable in the same manner as the target felony refers only to the base term of the target felony offense without any enhancements. (*Id.* at pp. 404-405.) This Court disagreed, finding that the statute specifically refers to "'the punishment of that felony' (§ 182, subd. (a)) and thus includes all punishment for money laundering, including enhancements, depending on how much money was laundered, and whether the amount laundered was pled and proven." (*Id.* at p. 405.)

Since a defendant convicted of violating Health and Safety Code section 11379 is required to pay a criminal laboratory analysis fee under Health and Safety Code section 11372.5, subdivision (a), a defendant who has been convicted of conspiracy to commit that drug offense is similarly required to pay that fee under the plain meaning of Penal Code section 182, subdivision (a), regardless of the fee's nature. Penal Code section 182, subdivision (a) makes both a person who conspires to commit a felony and a person who commits the target offense equally culpable. As this Court held in *Athar*, "section 182 requires sentencing to the same extent as the underlying target offense, ..." (*Athar*, *supra*, 36 Cal.4th at p. 406.) Necessarily, then, a defendant who has been convicted of a conspiracy should pay the same fee under Health and Safety Code section 11372.5 as a defendant who has been convicted of the target offense.

Appellant points out that the *Vega* court held that fees imposed under Health and Safety Code section 11372.5 are not "punishment" and thus cannot be imposed on the conspiracy drug offense. (*Vega*, *supra*, 130 Cal.App.4th at p. 194.) However, this conclusion is contrary to the plain meaning of the Penal Code section 182, subdivision (a), which *directs* the court to the target drug offense to determine the appropriate punishment for the conspiracy drug offense. Under Health and Safety Code section 11372.5, subdivision (a), the trial court is required to impose a criminal laboratory analysis fee of $50 for specified drug offenses, including a violation of Health and Safety Code section 11379. Whether it is characterized as punitive is irrelevant for purposes of imposition of fees for a conspiracy conviction under Health and Safety section 11379.

The same argument holds true for Health and Safety Code section 11372.7, even though the trial court must first determine if the defendant has the ability to pay the drug program fee. (Health & Safety Code, § 11372.7, subd. (b).) If a defendant is found to have the ability to pay the

fee, the court shall impose it on a drug offense. Under Penal Code section 182, subdivision (a), the same should occur on a conspiracy conviction for that drug offense. Again, whether the fee is punitive is of no significance.

C. Because the Fees Are Punitive, the Trial Court Properly Imposed Them Here

Even if characterization of the fees is necessary to determine whether they were properly imposed by the trial court, both the criminal laboratory analysis fee and the drug program fee constitute punishment and thus should be upheld.

1. The primary purpose and effect of the criminal laboratory analysis fee (Health & Saf. Code, § 11372.5) are punitive

In determining the character of the criminal laboratory analysis fee, the initial question is whether the Legislature intended it to be punishment. (*People v. Alford* (2007) 42 Cal.4th 749, 755 (*Alford*).) The Court has previously explained: "[W]hat constitutes punishment varies depending upon the context in which the question arises. But two factors appear important in each case: whether the legislature intended the provision to constitute punishment and, if not, whether the provision is so punitive in nature or effect that it must be found to constitute punishment despite the Legislature's contrary intent." (*People v. Castellanos* (1999) 21 Cal.4th 785, 795; accord *Alford*, at p. 755.) If a court concludes that the Legislature intended the charge as punishment, the inquiry ends. (*People v. Hanson* (2000) 23 Cal.4th 355, 361 (*Hanson*).)

Courts have employed certain factors in determining whether a charge constitutes punishment, including: (1) the statute designates the charge as a penalty (*People v. Batman* (2008) 159 Cal.App.4th 587 (*Batman*); (2) the fee or fine is imposed only in criminal matters (*Hanson, supra*, 23 Cal.4th at p. 361; *People v. Sharret, supra*, 191 Cal.App.4th at p. 870); (3) the fee

or fine is mandatory (*Hanson*, at p. 362; *Sharret*, at p. 870); (4) the fee or fine applies to every criminal fine, penalty, and forfeiture (*Batman*, at p. 590); (5) the charge is assessed in proportion to the defendant's criminal culpability (*Hanson*, at p. 362; *Batman*, at p. 590); and (6), the fee or fine will be used primarily for law enforcement purposes (*Sharret*, at p. 870; *Batman*, at p. 590).

In this matter, nearly all of those factors support the conclusion that the Legislature intended the criminal laboratory analysis fee as punishment. First, although labeled a "fee," the criminal laboratory analysis fee is an increment of a fine imposed by the court and thus is a fine. (See *Sharret*, *supra*, 191 Cal.App.4th at p. 870; *People v. McCoy* (2007) 156 Cal.App.4th 1246, 1252 ["The laboratory fee is an increment of the total fines imposed by the trial court"]; *People v. Martinez* (1998) 65 Cal.App.4th 1511, 1522 (*Martinez*) [Health and Safety Code section 11372.5 defines the criminal laboratory analysis fee as an increase to the total fine and therefore is subject to penalty assessments]; *People v. Sanchez* (1998) 64 Cal.App.4th 1329, 1332 ["Although identified as a laboratory fee, the sum imposed pursuant to Health and Safety Code section 11372.5 is also described as an increment of a fine . . . a fine is part of a judgment"].) Second, the criminal laboratory analysis applies only to a criminal conviction for specific drug offenses and not to civil cases. (See *Hanson*, *supra*, 23 Cal.4th at p. 361; *Sharret*, *supra*, 191 Cal.App.4th at p. 870; cf. *Alford, supra*, 42 Cal.4th at p. 756; *People v. Fleury* (2010) 182 Cal.App.4th 1486, 1492 (*Fleury*).) Third, the criminal laboratory analysis fee is mandatory. (See *Hanson*, at p. 362; *Sharret*, at p. 870.) Fourth, the amount of the criminal laboratory analysis fee is related to a defendant's culpability because it applies to each separate conviction of a violation of specified sections of the Heath and Safety Code governing controlled substances. (See *Sharret*, at p. 870.) Fifth, the funds collected by the fee are transferred from the courts to the county treasurer in

the same way that other criminal fines, forfeitures, and monies are transferred and are to be used for law enforcement purposes only, not a capital improvement project as a budget balancing tool. (See *Sharret*, at p. 870; *Batman, supra*, 159 Cal.App.4th at p. 590; cf. *Alford*, at p. 758.) Finally, the total amount of the fee can be high enough to act as a deterrent. (*Sharret*, at p. 870; cf. *Alford*, at p. 758; *Fleury*, at p. 1492.) In this case, for example, the $50 criminal laboratory analysis fee was less than 10% of all the fees and penalties assessed. Based on these factors, the Legislature intended the criminal laboratory analysis fee to be punitive.

The criminal laboratory analysis fee is similar to the restitution fine under Penal Code section 1202.4, which this Court determined to be punitive for ex post facto purposes. (*Hanson, supra*, 23 Cal.4th at pp. 361-362.) Like the restitution fine, the criminal laboratory analysis fee is described, albeit internally, as a fine and penalty; the fee is mandatory and related to the crime for which the defendant was convicted; and the charge is assessed in proportion to the defendant's criminal culpability.

The criminal laboratory analysis fee is also comparable to the DNA penalty assessment set forth in Government Code section 76104.6, which was determined to be punitive. (*Batman, supra*, 159 Cal.App.4th at pp. 590-591.) Much like the DNA penalty assessment, the criminal laboratory analysis fee is imposed only on criminal convictions, the amount of the charge is proportionate to the defendant's culpability, and it is used primarily for law enforcement purposes.

A finding that the criminal laboratory analysis fee is punitive is consistent with the determination that a state court facilities construction penalty assessment (Gov. Code, § 70372) is punitive. (*People v. High* (2004) 119 Cal.App.4th 1192, 1197.) As is the case with the court facilities construction penalty assessment, the criminal laboratory analysis fee is

described as a penalty and funds collected are used for the benefit of law enforcement. (Health & Saf. Code, § 11372.5, subds. (a), (b).)

The conclusion that the criminal laboratory analysis fee constitutes punishment is not undermined by this Court's decision in *Alford*. In that case, in an ex post facto context, this Court found that Penal Code section 1465.8 court security fee not to be punishment. (*Alford, supra*, 42 Cal.4th at p. 755-757.) This Court noted that "[f]ines arising from convictions are generally considered punishment." (*Id.* at p. 757.) However, "several countervailing" factors undermine a punitive characterization of the court security fee. (*Ibid.*) For instance, the purpose of the fee was not to punish but to maintain adequate funding for court security; the fee applied to both criminal and civil matters; it was enacted as a mere budget measure; it was labeled as a "fee" not a "fine"; and the amount of the fine was neither dependent on the seriousness of the offense nor excessive. (*Id.* at pp. 757-759.)

Unlike the court security fee, the criminal laboratory analysis fee is described as an increment of the total fine; the fine is imposed only upon criminal convictions; the amount of the fine is proportionate to the defendant's culpability because it may be imposed for every violation of the specified offenses in Health and Safety Code section 11372.5; the fee is collected for law enforcement purposes only, not for budgetary reasons; and the amount of the fee plus penalties and assessments may be high enough to act as a deterrent.

Likewise, the reasoning in *People v. Fleury, supra*, 182 Cal.App.4th 1486, does not undercut the conclusion that the criminal laboratory analysis fee is punitive. In *Fleury*, the Court of Appeal found that the $30 court facilities assessment under Government Code section 70373 is punitive neither in purpose or effect for the following reasons: (1) the assessment was enacted to ensure and maintain adequate funding for court facilities; (2)

it was labeled an assessment rather than a fine; (3) it is imposed not only in criminal cases, but also in traffic cases when the violation is dismissed because the violator attends traffic school; and (4) the amount of the assessment is not dependent on the seriousness of the crime and is small enough it does not promote the traditional aims of punishment. (*Fleury*, at pp. 1490-1493.)

Unlike the court facilities assessment, criminal laboratory analysis fees are imposed only in criminal cases, upon persons convicted of specified drug offenses; the statute's language does not indicate that the charges are for an administrative fee or a capital funding project; the fee is mandatory and is based on the defendant's culpability; the funds collected are for specific law enforcement purposes; and the total amount of the fee can act as a deterrent.

Thus, the punitive purpose of the criminal laboratory analysis fee makes evident that the Legislature intended the fee as a criminal penalty and not a civil remedy. Accordingly, the trial court properly imposed it.

Even assuming the Legislature enacted the criminal laboratory analysis fee for a nonpunitive purpose, the fee is sufficiently punitive in effect that it must be found to constitute punishment. (See *Alford, supra,* 42 Cal.4th at p. 756.) First, the fee is for law enforcement purposes only, much like the DNA penalty assessment under Government Code section 76104.6, and does not provide funding for other purposes such as court security or facilities. Second, the statute was not enacted as part of a broader legislative scheme to raise money for noncriminal matters. Third, although the fee is in the amount of $50, it is mandatory, not subject to the defendant's ability to pay, and applies only to criminal drug offenses specified in the statute. Fourth, the mandatory penalties and assessments required under Penal Code section 1464 and Government Code section 76000 make the total amount more severe, unlike the court security fee

assessed under Penal Code section 1465.8. Fifth, the fee promotes the traditional punishment aims of retribution or deterrence, in that the statute requires it be imposed for each separate conviction of the specified offenses. When viewed in the context of these factors, the Health and Safety Code section 11372.5 criminal laboratory analysis fee is substantially punitive in its effect to override any possible contrary legislative intent.

Thus, since the criminal laboratory analysis fee is both punitive in purpose and effect, the trial court properly imposed it for appellant's conspiracy conviction under Penal Code section 182, subdivision (a).

2. The reasoning in *Vega* and *Watts* is unsound

In *People v. Talibdeen* (2002) 27 Cal.4th 1151 (*Talibdeen*), this Court addressed a closely related issue of whether the trial court has discretion to waive penalties associated with the imposition of a criminal laboratory fee under Health and Safety Code section 11372.5. (*Talibdeen*, at p. 1153.) In *Talibdeen*, the trial court imposed a criminal laboratory analysis fee but not the penalty assessments called for under subdivision (a) of Penal Code section 1464 and subdivision (a) of Government Code section 76000 based on such a fee. The People did not object to this omission. (*Ibid,* fn. omitted.) Nonetheless, the Court of Appeal imposed the state and county penalties, concluding that they were mandatory, and not discretionary, sentencing choices. (*Ibid.*) This Court affirmed, holding the penalty assessments applicable to "'every fine, penalty, or forfeiture'" applied to the laboratory analysis fee in Health and Safety Code section 11372.5. (*Id.* at pp. 1153-1154.)

Despite the clear language of *Talibdeen*, appellant argues that the result is not controlling because the Court did not address the issue of whether the criminal laboratory analysis fee was punitive. Appellant asserts that the fees imposed under Health and Safety Code sections

11372.5 and 11372.7 are not punitive. His arguments are based primarily on lower court decisions, specifically *Vega*, *supra*, 130 Cal.App.3d at p. 195, and *Watts*, *supra*, 2 Cal.App.5th at p. 229. However, contrary to the weight of authority, neither case conducted a detailed analysis of the characteristics of the criminal laboratory analysis fee in comparison with other fees and fines in determining whether the Legislature intended the fee to be punishment. The reasoning in these cases is thus unsound.

The issue presented in *Vega* is the same issue presented here—whether a criminal laboratory analysis fee was properly imposed on a defendant who had been convicted of conspiracy to transport a controlled substance. (*Vega*, *supra*, 130 Cal.App.4th at pp. 193-194.) The *Vega* court noted that whether the fee was properly imposed pursuant to Penal Code section 182 depended on whether the fee is a punishment. The *Vega* court concluded it was not. (*Id.* at p. 194.)

In its analysis, the *Vega* court declined to the rely on the plain language of the statute, concluding that it was not dispositive because Health and Safety Code section 11372.5, subdivision (a), uses both terms "fee" and "fine" in reference to the charge. (*Vega*, *supra*, 130 Cal.App.4th at p. 195.) The *Vega* court also declined to conduct a "needlessly prolonged ... detailed analysis." (*Ibid.*)

Instead, the *Vega* court reasoned that in most cases, the determination can be made based on the purpose of the charge imposed. "Fines are imposed for retribution and deterrence; fees are imposed to defray administrative costs." (*Vega*, *supra*, 130 Cal.App.4th at p. 195.) The court held "the main purpose of Health and Safety Code section 11372.5 is not to exact retribution against drug dealers or to deter drug dealing (given the amount of money involved in drug trafficking a $50 fine would hardly be noticed) but rather to offset the administrative cost of testing the purported drugs the defendant transported or possessed for sale in order to secure his

conviction." (*Ibid.*) It reasoned: "The legislative description of the charge as a 'laboratory analysis fee' strongly supports our conclusion, as does the fact the charge is a flat amount, it does not slide up or down depending on the seriousness of the crime, and the proceeds from the fee must be deposited into a special 'criminalistics laboratories fund' maintained in each county by the county treasurer." (*Ibid.*)

By failing to conduct an in-depth analysis to determine if the criminal laboratory analysis fee constitutes punishment (as the court in *Sharret* did), the *Vega* court ignored a number of significant factors that support the conclusion that the Legislature intended the criminal laboratory fee as an additional punishment for certain drug crimes. For instance, criminal laboratory analysis fees are mandatory and are imposed only on persons convicted of specified drug offenses. They do not apply to civil matters. The statute does not indicate that the fee is an administrative user fee. Nor was the fee merely part of a budget measure. The fees are transferred from the courts to the county treasurer in the same manner as other criminal fines or forfeitures are transferred. The fees collected are for law enforcement purposes, specifically, for the purpose of analyzing substances collected in criminal investigations of drug crimes. (Health & Saf. Code, § 11372.5, subd. (b).) Accordingly, the purpose of the fee directly relates to crime itself. Thus, despite the use of the word "fee" in the statutory language, the primary characteristics of the criminal laboratory analysis fee are punitive.

The *Vega* court also concluded that that the main purpose of the criminal laboratory analysis fee is not to "exact retribution against drug dealers or to deter drug dealing" but rather to offset the administrative cost of testing of the drugs involved in the offense. (*Vega*, *supra*, 130 Cal.App.4th at p. 195.) However, although the base criminal laboratory fee is $50, the amount is significantly increased when mandatory penalties and assessments are added. In this case, for example, the total amount due,

apart from the fee imposed under Health and Safety Code section 11372.7, is $500. Thus, contrary to the *Vega* court's finding, the total amount of the fee, plus penalties and assessments, can act as a deterrent on drug dealing, particularly if the defendant is convicted of more than one offense enumerated in Health and Safety Code section 11372.5. In addition, unlike the court security fee imposed under Penal Code section 1465.8, the criminal laboratory analysis fee is imposed for law enforcement purposes only.

The *Vega* court noted that the legislative description of the charge as a "laboratory analysis fee" supported its conclusion that the fee was nonpunitive. [4] (*Vega*, *supra*, 130 Cal.App.4th at p. 195.) However, the same court also admitted in its opinion that the label the Legislature placed on the section is not dispositive because it uses both "fees" and "fines" in the section's language. (*Ibid.*)

Also flawed is the *Vega* court's reasoning that the criminal laboratory analysis fee is not a penalty because it is a flat amount that does not slide up or down depending on the seriousness of the crime. (*Ibid.*) On the contrary, "the fee is assessed in proportion to the defendant's culpability insofar as it applies to each separate conviction of a violation of specified sections of the Health and Safety Code governing controlled substances." (*Sharret*, *supra*, 191 Cal.App.4th at p. 870.)

Finally, contrary to the *Vega* court's finding, the fee is not imposed simply to defray administrative costs but is used exclusively for law enforcement purposes to fund "(1) costs incurred by criminalistics laboratories providing microscopic and chemical analysis for controlled

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[4] The current heading of Penal Code section 11372.5 is "Criminal laboratory analysis fee; increase in total fine to include increment; criminalistics laboratories fund; surplus funds."

substances, in connection with criminal investigations conducted within ... the county, (2) the purchase and maintenance of equipment for use by these laboratories in performing the analyses, and (3) for continuing education, training, and scientific development of forensic scientists regularly employed by these laboratories." (Health & Saf. Code, § 11372.5, subd. (b).) This purpose is vastly different from the purpose of the court security fee under Penal Code section 1465.8, subdivision (a)(1), which this Court found was established for an unambiguously, nonpunitive purpose of maintaining court security. (*Alford*, *supra*, 42 Cal.4th at pp. 756-757.) Unlike the court security fee, which is unrelated to a specific offender or offense, the law enforcement purposes for the fee under Health and Safety Code section 11372.5 is related to the offense and the offender directly.

The reasoning in *Watts* also is unpersuasive. (AOB 16-22.) In *Watts*, the Court of Appeal concluded that the criminal laboratory analysis fee is a fee, not a fine, penalty, or forfeiture, and thus not subject to penalty assessments. (*Watts*, *supra*, 2 Cal.App.5th at p. 299, 237.) In doing so, the *Watts* court found that *Talibdeen* "is not authority for the proposition that penalty assessments apply to the fee" because *Talibdeen* focused on whether the statutes establishing the penalties gave sentencing courts the discretion to waive those penalties not on whether the penalties were inapplicable to the fee. Thus, this Court assumed that trial courts are required to impose penalties on the criminal laboratory analysis fee without deciding that issue. (*Watts*, *supra*, 2 Cal.App.5th at p. 231.) However, in *Talibdeen*, this Court clearly stated that Penal Code section 1464 and Government Code section 76000 "called for" imposition of penalties on the criminal laboratory analysis fee imposed under Health and Safety Code section 11372.5. (*Talibdeen*, *supra*, 27 Cal.4th at p. 1153.)

The *Watts* court disagreed that references to the phrases "total fine," "fine" and "any other penalty" in subdivision (a) of Health and Safety Code

section 11372.5 established that the fee constitutes a fine or penalty within the meaning of the statutes governing penalty assessments. (*Watts*, *supra*, 2 Cal.App.4th at p. 234.) Instead, the court concluded that "the Legislature intended the crime-lab fee to be exactly what it called it in the first place, a fee, and not a fine, penalty, or forfeiture subject to penalty assessments." (*Watts*, *supra*, 2 Cal.App.5th at p. 231.)

In support of this conclusion, the *Watts* court noted that, when Health and Safety Code section 11372.5 was initially enacted in 1980, the statute "required every person convicted of an enumerated offense to, 'as part of any *fine* imposed, pay an *increment* in the amount of fifty dollars ($50) for each separate offense.'" (*Watts*, *supra*, at p. 234, italics original.) The court found in relevant part: "The elimination of the reference to the fee's being part of the 'fine imposed' and its renaming from an 'increment' to a 'fee' strongly suggest that the Legislature did not intend the fee to be a 'fine, penalty, or forfeiture' because section 11372.5 calls it something else." (*Ibid.*)

As for the statutory language stating that the fees imposed in Health and Safety Code section 11372.5 "shall be in addition to any other penalty prescribed by law," the *Watts* court concluded that this language appears only in the second paragraph of subdivision (a) and applies only to offenses "for which a fine is not authorized by other provisions of law." (*Watts*, *supra*, at p. 234.) Since there are currently no such offenses covered by section 11372.5, the *Watts* court held that "the language in the second paragraph does not control over the language in the first paragraph, which currently applies to all covered offenses." (*Ibid.*)

The *Watts* court's interpretation of the language of Health and Safety Code section 11372.5 is unsound. Through what can only be considered to be a strained analysis, the *Watts* court found, in essence, that subdivision (a) of Health and Safety Code section 11372.5 imposes both a fee (first

paragraph) and a fine (second paragraph). (*Watts, supra*, 2 Cal.App.5th at pp. 231-236.) The *Watts* court guessed at possible reasons why the Legislature purportedly did this but ultimately admitted that it could find little support for its interpretation in the legislative history of Health and Safety Code section 11372.5. (*Watts*, at p. 237.)

No other court has reached the same conclusion. In fact, the *Vega* court declined to base its finding on an interpretation of plain meaning of the language because of its ambiguous use of both "fee" and "fine." (*Vega, supra*, 130 Cal.App.4th at p. 195.) Based on the express language of the statute, a more reasonable interpretation of its meaning is that the fee is punitive in nature, given that the relevant language defines the charge as an increase to the "total fine" and then as a fine in addition to "any other penalty." (Health & Saf. Code, § 11372.5, subd. (a).)

The *Watts* court also concluded that the main purpose of the criminal laboratory analysis fee is to defray administrative costs, and thus is a fee. (*Watts, supra*, 2 Cal.App.5th at p. 235.) Although one purpose of the fee is to offset the costs of testing drugs confiscated in certain drug offenses, this was not the only purpose in enacting Health and Safety Code section 11372.5. A fine or fee can act as deterrence, or as punishment, and can help mitigate the costs of prosecution at the same time. Any particular assessment can seek to achieve more than one of these goals. As discussed, the criminal laboratory analysis fee can be severe enough with penalties and assessments to punish criminal activity, particularly if the defendant committed multiple offenses enumerated in the statute. At the same time, the funds recovered can be used to offset the cost of prosecution and for other law enforcement purposes, such as training. As such, the funds collected under Health and Safety Code section 11372.5 are for law enforcement purposes and not merely to defray administrative costs, as is

the sole purpose of the court security fee under Penal Code section 1465.8, subdivision (a)(1). (*Alford, supra*, 42 Cal.4th at pp. 756-757.)

In sum, the reasoning in *Vega* and *Watts* is unpersuasive and should not be applied in this case.

3. The primary purpose and effect of the drug program fee (Health & Saf. Code, § 11372.7) are punitive

A thorough examination of the characteristics of the drug program fee under Health and Safety Code section 11372.7 also demonstrates that the Legislature intended the fee to be punishment for specific drug offenses.

Like Health and Safety Code section 11372.5, section 11372.7 is an increase to the "total fine," and a fine that is in addition "to any other penalty," thereby describing itself as both a "fine and/or a penalty." (*Sierra, supra*, 37 Cal.App.4th at p. 1696.) In addition, despite the fact that it "is mandatory unless the defendant is unable to pay" (*People v. Clark* (1992) 7 Cal.App.4th 1041, 1050), the fee is imposed only upon a criminal drug conviction and has no application to civil matters. Like Health and Safety Code section 11372.5, the drug program fee is assessed in proportion to the defendant's culpability in that it applies to each separate drug conviction and is used only for law enforcement purposes, including prevention programs in schools and in the community. (Health & Saf. Code, § 11372.7, subd. (c)(2).) As such, the funds are not designed to compensate the government for prosecuting a particular defendant or for a specific capital improvement project but rather constitute additional punishment.

This position is consistent with the holding in *People v. Sierra* (1995) 37 Cal.App.4th 1690, 1696 (*Sierra*). In *Sierra*, the defendant argued that "the drug program fee pursuant to Health and Safety Code section 11372.7 is a *specific* fee created for a *specific* purpose" that "shall be in addition to

any other penalty prescribed by law" and should therefore be imposed only as the last fee after all others have been imposed without any penalty assessment. (*Sierra*, at p. 1694, italics original.) The Court of Appeal for the Fifth Appellate District disagreed, finding that that the drug program fee imposed under section 11372.7 is a "fine and/or a penalty to which the penalty assessment provisions of Penal Code section 1464 and Government Code section 76000 apply." (*Id.* at p. 1695.) The court reasoned that section 11372.7 "defines the drug program fee as an increase to the 'total fine' and later as a fine in addition to 'any other penalty.'" (*Id.* at p. 1695.) According to the court, "[t]he only reasonable interpretation of Health and Safety Code section 11372.7 is that it is a fine and/or a penalty to which the penalty assessment provisions of Penal Code section 1464 and Government Code section 76000 apply." (*Id.* at p. 1696.)

For the same reasons, the drug program fee is sufficiently punitive in its effect to override any possible contrary legislative intent.

In summary, since both the criminal laboratory analysis fee and drug program fee are punitive in purpose, it is evident that the Legislature intended Health and Safety Code section 11372.5 and Health and Safety Code section 11372.7 to be punishment for drug offenses. Even assuming a contrary purpose, the fees' punitive effects override any contrary intention. Thus, the trial court properly imposed both fees as punishment on appellant's conspiracy conviction under Penal Code section 182, subdivision (a).

CONCLUSION

Accordingly, respondent respectfully requests that this Court affirm the judgment, specifically the criminal laboratory analysis fee and drug program fee imposed on appellant for his conspiracy conviction.

Dated: February 23, 2017 Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S ANSWER TO BRIEF ON THE MERITS uses a 13 point Times New Roman font and contains 6,485 words.

Dated: February 23, 2017

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Ruiz** No.: **S235556**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On February 24, 2017, I served the attached **RESPONDENT'S ANSWER TO BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 24, 2017, at Sacramento, California.

_____
Declarant

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