IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA Plaintiff and Respondent *vs* OCTAVIO AGUILAR, Defendant and Appellant	No. S213571 D.C.A.No: A135516 Contra Costa County Superior Court No. 51202696

First Appellate District, Division Four
Contra Costa County Superior Court
Hon. Thomas M. Maddock , Judge

APPELLANT'S REPLY BRIEF

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By Appointment of the Court
under the First District Appellate Project
Independent Case System

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The question presented in this appeal is whether this Court's decision in *People v. McCullough* (2013) 56 Cal.4th 589 extends to court ordered payments of attorney fees (Pen. Code, § 987.8[1]) and costs of probation supervision (Pen. Code, § 1203.1b)[2]

Because the question was inceptionally one of case interpretation, appellant has argued that, based on *McCullough's* own mode of analysis, an appellate claim of insufficient evidence to support the trial court's recoupment orders was not forfeited by failure to interpose an objection at trial. In *McCullough*, this Court distinguished the booking fee statute from other statutory provisions explicitly providing "procedural safeguards and guidelines," explicitly referencing sections 1203.1b and 987.8 (*McCullough,* at pp. 598-599.) Based on this criterion, the procedural protections and substantive guidelines contained in sections 1203.1b

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1 All statutory references are to the Penal Code unless otherwise noted.

2 As formulated, the question also includes at least a partial re-examination of *McCullough's* decision with respect to "booking fees" (Gov. Code, §29550, subd, (d)(1)).

and 987.8 take those statutes *out* of the ambit of the *Welch-Scott* [3] forfeiture rule. More fundamentally, even if the statutory scheme had not explicitly provided procedural protections, they are implied as a matter of due process (*People v. Amor* (1974) 12 Cal.3d 20, 29-31) so that the delineating factor *McCullough* relied upon would arise from general due process principles. On these bases, appellant was entitled to notice of his hearing rights and to a findings on the merits. On appeal, without objection below, a defendant can contest the jurisdictional defect and/or insufficiency of the evidence underlying the order or judgment. (*People v. Butler* (2003) 31 Cal.4th 1119, 1126; *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 17; *Palpar, Inc. v. Thayer* (1947) 82 Cal.App.2d 578, 584; Code Civ. Pro., § 647.[4])

Respondent answers by citing a string of cases which hold that, except for legally unauthorized orders, all discretionary sentencing choices not objected to at trial are forfeited on appeal. Respondent's argument tacitly assumes that the recoupment orders in question here are criminal sentencing choices. Although respondent's argument brings the determinative issue in this case to the fore, respondent is wrong.

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3 *People v. Welch* (1993) 5 Cal.4th 228 ("*Welch*"); *People v. Scott* (1994) 9 Cal.4th 331 ("*Scott*")

4 In pertinent part: "All of the following are deemed excepted to: the verdict of the jury; the final decision in an action or proceeding; an interlocutory order or decision, finally determining the rights of the parties, or some of them; an order or decision from which an appeal may be taken; ..."

A. The Recoupment Orders in Question issue from Jurisdictionally Distinct Civil Proceedings which require their Own Notice and which may be contested on Appeal for Jurisdictional Defect and Evidentiary Sufficiency like any Final Order or Judgment

It is settled that "[p]rocedural due process imposes constraints on governmental decisions which deprive individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 332; *Goldberg v. Kelly* (1970) 397 U.S. 254, 268-271; "*Some Kind of Hearing,*" Judge Henry Friendly (1975) 123 U. Pa. L. Rev. 1267.)

Thus, the primary question in this case is by what authority and in what manner the State of California can exact or deprive appellant of personal property belonging or accruing to him. It cannot seriously be contended that, because appellant had been convicted of a criminal offense, the State could set up a toll booth at the prisoners' docket and ring him up for whatever amounts for whatever "costs" it deems expedient, as he is carted off to prison.

Nor do the statutes so provide. "[P]roceedings to assess attorney's fees against a criminal defendant involve the taking of property, and therefore require due process of law, including notice and a hearing." (*People v. Poindexter* (1989) 210 Cal.App.3d 803, 809, citing *People v. Amor, supra*, 12 Cal.3d 20, 29-30; *People v. Richards* (1976) 17 Cal.3d 614, 620 [courts are not "mere collection agencies."].)

The relevant statutes provide for notice and hearing and determination.

They *also* provide that the amounts assessed may be enforced as a *civil judgment.* (Penal Code §§ 1203.1b, subds (d) & (f); 987.8, subds. (e) & (f); Gov. Code §§ 29550, subd. (d)(1) & 29550.1.) [5]

There is no reason to think that the Legislature meant anything other than what it said. The assessments may be enforced as civil judgments because they *are* civil judgments.

The Legislature had a choice. Assuming no other impediments, it could have designated costs of representation, probation supervision and booking as an imposable *punishment.* However, were it to do so, it would have to comply with

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5 In pertinent parts: § 1203.1b, subd. (d): ".... Execution may be issued on the order issued pursuant to this section in the same manner *as a judgment in a civil action.* The order to pay all or part of the costs shall not be enforced by contempt." Section 1203.1b, subd. (f): "....a defendant ... may petition .... to modify or vacate its previous judgment on the grounds of a change of circumstances with regard to the defendant's ability *to pay the judgment.* ..." [Italics. Added.]

Section 987.8, subd. (e): may be enforced in the manner provided for enforcement of money judgments generally but may not be enforced by contempt. [¶] Any order entered under this subdivision is subject to relief under Section 473 of the Code of Civil Procedure. Section 987.8, subd.(f) "... the order shall have the same force and effect as a *judgment in a civil action* and shall be subject to enforcement against the property of the defendant in the same manner as any other *money judgment.*"

Gov. Code, §29550, subd, (d)(1): " A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a *civil action*, but shall not be enforceable by contempt.

the dictate of *Apprendi v. New Jersey* (2000) 530 U. S. 466 and a jury verdict would be required on all facts necessary to imposition of the punishment, including such facts as quantification of damages. (*Southern Union Co. v. U.S.* (2012) 567 U.S. ___ , slip 7 [132 S.Ct. 2344]; *Cunningham v. California* (2007) 549 U.S. 270, 295.)

Alternatively, the Legislature could provide that the assessment of costs proceed as a *civil* matter and that is what it did. It bears note that the "costs" (of supervision) and "fees" (for attorney services) are not civil sanctions *attendant upon* conclusion of a civil suit. They are not, in that sense, "civil costs" or "costs of suit" as those terms are commonly used. There has been no civil suit against the defendant only a criminal one. But they are civil judgments for the recoupment of costs in a criminal case.

"The procedure provided by section 987.8 is either a civil action, or a special proceeding of a civil nature. (See Code Civ. Proc., §§ 22, 23, 312, 363.)" *People v. Barger* (1979) 97 Cal.App.3d 661 663.) It is held upon *conclusion* of the criminal proceedings in the trial court. (§ 987.8, subd. (b); *People v. Phillips* (1994) 25 Cal.App.4th 62, 73; *People v. Turner* (1993) 15 Cal.App.4th 1690, 1695; *People v. Spurlock* (1980) 112 Cal.App.3d 323, 328.)

In their procedural aspects, sections 987.8 and 1203.1b are considered "analogous" (*People v. Adams* (1990) 224 Cal.App.3d 705, 713); but even on its face, section 1203.1b, subdivision (d) characterizes the order as "a judgement in a

civil action." In addition, subdivision (a) specifies that a defendant shall be informed that he "is entitled to a hearing, that includes the right to counsel...." Such an advisement would be unnecessary if the proceeding were a mere continuation of the criminal case of which he is the subject. [6]

In so providing, the Legislature adapted a long-accepted dichotomy. It is a principle as old as the Common Law itself that criminal and civil proceedings entail distinct and different jurisdictions. Traditionally, recovery of *private damages* ensuing from the commission of a *public* offense required the initiation of a separate and distinct civil action, at which the criminal conviction (whether by plea or verdict) could be used as non-conclusive evidence in the case. (*People v. Dailey* (1991) 235 Cal.App.3d Supp. 13, 15-16 [overview]; *Vaughn v. Jonas* (1948) 31 Cal.2d 586, 596 [use of conviction]; *Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.*, (1962) 58 Cal.2d 601, 605.)

The cost and inconvenience of maintaining separate actions is obvious. Equally obvious are the advantages of piggy-backing recoupment proceedings onto the criminal case where personal jurisdiction over the defendant (for civil purposes) is acquired *ipso facto* and where the evidence as well as additional facts investigated by the probation department are freshly before the court, obviating cumbersome indirect documentary proof from a prior proceeding. (See e.g.

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6 Section 987.8 does not contain a "right to counsel" provision, presumably to avoid an endless regression.

People v. Richards, supra, 17 Cal.3d, at p. 616 [restitution].) What results is not killing two birds with one stone but rather two stones – a criminal stone and a civil stone both – being cast at the defendant on a single occasion.

The legislative decision to tack recoupment hearings on to criminal sentencing certainly makes *practical* sense but it has resulted in legal confusion, as respondent's tacit assumption that the orders in question are *in pari materia* with sentence choices and restitution *fines* shows.

In sum, the imposition of costs and fees ensues from an abbreviated but essentially complete separate civil proceeding attendant upon the conclusion of a criminal trial. It is precisely because the *res* of the matter is civil in nature that the Legislature provided for *notice* in the first place. If it the proceedings were merely a continuance of the criminal matter, notice was already given upon the filing of the accusatory pleading.

Once the "what" of the matter is identified the consequences fall seamlessly into place. Because the trial court's imposition and order for the payment of fees is a *civil judgement*, the rules applying to appeals from judgments apply.

> "Under Code of Civil Procedure, section 647, 'the final decision' is 'deemed to have been excepted to' and the insufficiency of the findings to support the judgment may be urged on appeal although appellant neither excepted to the findings nor sought their amendment. (*Wilcox v. Sway*, 69 Cal.App.2d 560, 564.)" (*Palpar, Inc. v. Thayer, supra*, 82 Cal.App.2d, at p. 584.)

It is axiomatic that sufficiency of evidence may be contested on any

judgement without prior objection because it is a judgment which like all judgments must be supported by sufficient evidence. (*Tahoe National Bank v. Phillips, supra,* 4 Cal.3d 11, 23, fn. 17 [claim that judgment is not supported by substantial evidence not require objection below]; *People v. Verduzco* (2012) 210 Cal.App.4th 1406. 1421 [no substantial evidence of ability to pay attorney fees "because the court conducted no evidentiary hearing in the matter"]; *People v. Viray* (2005) 134 Cal.App.4th 1186, 1217 [insufficient evidence in support of attorney fee awar not objected below]; *People v. Jones* (1988) 203 Cal.App.3d 456, 461 [Same].) Respondent does not contest this rule. (RAB 12.)

Nor is there any question that a court's failure to give required notice or to conduct a required hearing constitutes a jurisdictional defect which is not waived or forfeited by non-objection below. (*People v. McDowell* (1977) 74 Cal.App.3d 1, 3 [attorney fees]; *People v. Adams, supra,* 224 Cal.App.3d, at p 713 [costs of probation supervision.]) In fact, "because no hearing was conducted, there is no evidence to support the court's finding that defendant had the ability to pay." (*Ibid.*)

In *McCullough* this Court did not explain *why* the existence of statutory "procedural safeguards and guidelines" should provide a demarcation line between forfeited and non-forfeited issues. The answer is that the existence of those "safeguards" signals the initiating of a new and different kind of proceeding. A sentenced defendant does not need to be re-advised of the "procedural safeguards"

applicable to the criminal action of which he has been the subject. The significance of "procedures and guidelines" in the recoupment statutes lies in the fact that they are being specified at all. The fact that they are indicates that what is taking place is something contemporaneous with but legally distinct from criminal sentencing.

The orders for payment of attorney fees, probation supervision costs and booking costs are not criminal sentencing choices but civil judgments. Because they are judgments *in their own right* they may be contested on appeal for insufficiency of evidence without prior objection.

B. Respondent's Authorities do not Mandate a Different Conclusion.

Respondent proffers no reply to the potential impact of *Apprendi, supra,* 530 U. S. 466, on the issues in this case. Likewise, respondent makes no answer to appellant's argument that requiring a defendant to "alert" the prosecution to procedural or evidentiary deficiencies in its case requires him to assist in his own prosecution. Based on its own view of expediencies, respondent's basic contention is simply that the *Welch-Scott* rule of forfeiture applies.

Respondent fails to recognize the fundamental distinction at issue. Virtually all the cases it relies upon (RAB 6-7) involved a failure to object to a criminal *fine* or a discretionary choice in criminal sentencing.[7] Those cases are not

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7 The two partial exceptions are *People v. Hodges* (1999) 70 Cal.App.4th 1348

authority on the issue of sufficiency of evidence claims with respect to a contemporaneous civil judgement. Nor do they bridge the gap.

Prior to *People v. Welch, supra,* 5 Cal.4th 228, the prevailing view was that failure to object to discretionary sentence choices did not forfeit the issue on appeal. (*Id.*, at p. 232-233.) *Welch* adopted the contrary minority view, distinguishing cases involving "pure questions of law" and "correctable legal error." (*Id.*, at p. 235-236.) *Welch* was followed by *People v. Scott, supra*, 9 Cal.4th 331, which held that "the waiver doctrine should apply to claims involving the trial court's failure to properly make or articulate its *discretionary sentencing choices*." (*Id.,* at p. 354 [italics added].)

However, recoupment orders are not "sentencing choices" whether mandatory or discretionary. They are legally separate proceedings held *in conjunction* with criminal sentence. The evolution of sections 987.8 and 1203.1b was somewhat haphazard and confusion has centered around whether these recoupment hearings had to be temporally separate from the sentencing hearing. As a result, the intermediate appellate decisions on which respondent relies lost sight of the fact that whensoever the hearing was held it was a jurisdictionally

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which involved non-objection to a probation condition and a booking fee and which the court disposed of with a single dismissive sentence without any analysis; and *People v. Gonzalez* (2003) 31 Cal.4th 745 which involved forfeited objections to dual use of enhancement facts and to one aspect of victim restitution as to which a hearing was held. Neither case is authority for propositions not considered. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1211.)

distinct procedure. As a result, they also lost sight of the fact that (1) notice and advisement are functionally akin to complaint and arraignment; and (2) the recoupment order made at sentencing is akin to a civil judgement.

The earliest version of section 987.8 provided simply that in any case where a defendant was afforded counsel, "the court shall make a determination of the present ability of the defendant to pay all or a portion of the cost of counsel." (*People v. Amor, supra,* 12 Cal.3d 20, 21 fn. 1.) As noted, *Amor* held that the statute "does not sanction imposition of liability without the procedural requisites of due process." (*Id,* at p. 29.) Accordingly, *Amor* implied requirements of notice, hearing, discovery, confrontation, cross-examination, "and other procedural devices" as a matter of fundamental due process. (*Id.,*at p. 30.) But the only reason these requirements had to be implied at all was the fact that recoupement proceedings were *not* "part" of the criminal process but rather a civil proceeding held in conjuction with it. If the recoupment matter were simply a subordinate criminal sentencing issue, due process was satisfied by defendant's existing *trial* rights.

Section 987.8 was subsequently amended to incorporate *Amor's* holding and to provide for a "separate" hearing. The question then arose in *People v. Phillips, supra,* 25 Cal.App.4th 62, whether this meant that a temporally "separate" hearing was required. *Phillips*, held that a *separate* hearing on a defendant's ability to pay either probation supervision costs or attorney fees was

not required but rather the statute allowed the court to hold a hearing on the issue "as part of the sentencing process." (*Id.*, at pp. 69, 76.)

By the use of that phrase, *Phillips* did not mean that an order for payment of attorney fees became a criminal sentencing *issue*. On the contrary, although there had been no objection below to the either of the recoupment orders (*id.*, at pp. 68, 75), *Phillips* went on to reach and determine defendant's claim that the evidence was insufficient to support a finding of his ability to pay either or the fees in question.[8] Had the ability to pay been a criminal sentencing issue, the failure to object would have forfeited the issue on appeal. Thus, *Phillips* stands for the rule that even though a hearing on these fees may be had *in conjunction* with criminal sentencing, the matter remains a legally distinct proceeding leading to a civil judgement as to which a claim of insufficiency of evidence lies on appeal notwithstanding non-objection below.

Following *Phillips*, the Legislature amended section 1203.1b so as to explicitly provide for notice and a *separate* hearing on an ability to pay probations costs. (*People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1074.) In *Valtakis*, defendant pled guilty after being informed that he would be subject to various *unspecified* "fines." (*Id*, at p. 1069.) At sentencing, upon probation report recommendation defendant was assessed, *inter alia*, a "probation fee of $250 (Pen. Code, § 1203.1)." (*Ibid.*) The report contained "no advisement of a right to a

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8 On the merits the court rejected the claim. (*Id.*, at p. 70.)

separate hearing on that issue" nor any determination of ability to pay. (*Ibid.*) *Valtakis* acknowledged that unless a defendant made informed waiver, "he was entitled to a separate court determination at an evidentiary hearing, most likely sometime before the sentencing hearing" (*Ibid.*) However, the court went on to hold, without any discussion, that there was "no reason to think" that the statutory amendment was designed to abrogate the *Welch-Scott* waiver rule and absent objection below his claim of non-compliance with the statutory pre-requisites was waived. (*Id.*, at p. 1075.) The circularity of *Valtakis'* holding is patent. If a defendant is not given notice and does not know that a right exists he cannot possibly "waive" it or be chastised for failing to object to the State's non compliance.

The circularity resulted from not discerning that the *res* of the matter was a separate proceeding, civil in nature. In reaching its conclusion *Valtakis* cited *People v. Gibson* (1994) 27 Cal.App.4th 1466 and *People v. Forshay* (1995) 39 Cal.App.4th 686, 689-690 which involved a failure to objection to a restitution *fine*. *Valtakis* also cited *People v. Gillard* (1997) 57 Cal.App.4th 136, 165, fn. 18; but that case involved direct *victim* restitution which is an order directly related to the underlying criminality and which has its own highly particular legal evolution. (See *People v. Dailey, supra,* 235 Cal.App.3d Supp. 3; *People v. Richards, supra,* 17 Cal.3d 614; [excess victim restitution]; *People v. Williams* (1966) 247 Cal.

App.2d 394[9])

Lastly, *Valtakis* relied on *People v. Whisenand* (1995) 37 Cal.App.4th_1383, in which the court rejected defendant's appellate claim based on lack of procedural notice of probation costs and attorney fee recoupments. In *Whisenand,* the appellate court found that although no notice as to attorney fees was given, defendant's counsel had participated in lengthy ability-to-pay victim restitution hearings and had never claimed undue surprise. (*Id,* at pp. 1394-1395.) In broad dicta, citing *People v. Neal* (1993) 19 Cal.App.4th 1114, 1124, the court stated "[l]egal questions relating to a lack of notice at a sentencing hearing are waived on appeal in the absence of an objection in the trial court." However *Neal* itself and all of the cases it cited at pages 1124-1125 involved criminal sentencing issues or victim restitution orders.

The entire construct of this line of cases, (as well as analogies to waiver of venue), proceeds on the incorrect assumption that recoupment orders are integral parts of a *criminal* action. Everything those cases say about failures to object or waiver by participation may be accepted as true, provided the issue concerns matters which are integral to crime and punishment, trial and sentence, upon

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9 Very generally, the rationale for ordering *victim* restitution was that it (a) it arose *from* the underlying criminal conduct and *to that extent* was (b) part of a defendant's criminal rehabilitation. But amounts beyond the loss specific to the criminal conduct were unreachable except by separate civil suit.

arraignment. Thus, while it is true that "one cannot complain of insufficient notice where, in fact, he has been notified of a meeting or hearing and attends and participates" (*DeWitt v. Board of Supervisors* (1960) 53 Cal.2d 419, 425), it does not follow that because a defendant is participating in a criminal sentencing hearing, he therefore participates in a civil recoupment hearing which the trial court conducts in silently *coram suis* without giving notice to the defendant that it is doing so.

On the contrary, "[w]hen a statute prescribes a definite procedure and the court acts contrary to the authority thus conferred, it has exceeded its jurisdiction and certiorari will lie to correct such excess." (*Whitley v. Superior Court* (1941) 18 Cal.2d 75, 83.) Thus even if a "the court had jurisdiction to sentence the convicted person, ... it did not have jurisdiction to impose a sentence not permitted by law, [and], it acted in excess of its power in so doing. (*Rodman v. Superior Court* (1939) 13 Cal.2d 262, 270.)

Because respondent mistakes the nature of the proceeding, it mistakes as well the purpose and nature of the procedural requirements at issue, mistakenly arguing that the statutory requirements are directive rather than mandatory. (RAB 19.) On the contrary. Certainly, "the party invoking the procedural requirement," herein appellant, "[was] among the class of persons that the requirement was designed to benefit." (*People v. Gray* (March 13, 2104) ___Cal.4 th ___, slip 10 [S202483].) Likewise, *People v. McGee* (1977) 19 Cal.3d 948, holding that

statutory notice of pre-accusatory restitution options was mandatory because the scheme afforded a protective benefit to potential defendants (*id.*, at pp. 963-965) supports rather than defeats appellant's argument.

The same conceptual error inheres in respondent's argument that a claim of insufficient evidence is waived absent objection below. (RAB 12)[10] In fact, respondent's reliance on *People v. Gibson, supra,* 27 Cal.App.4th 1466 (RAB 15) again demonstrates the fallacy of its argument.

As noted, *Gibson* held that a failure to object to a restitution *fine*, waived the issue on appeal. (*Id.,* 27 Cal.App.4 th, at p. 1468.) The court explained that "[a] challenge to the sufficiency of evidence to support the imposition of a restitution fine to which defendant did not object is not akin to a challenge to the sufficiency of evidence to support a conviction, to which defendant necessarily objected by entering a plea of not guilty and contesting the issue at trial." (*Id.,* at p. 1469; see also *People v. Rodriguez* (1998) 17 Cal.4th 253, 262 [the "most complete" challenge to a strike allegation contested on appeal is defendant's demand for a trial.]

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10 Citing *People v. Butler, supra,* 31 Cal.4th 1119 as an example, respondent argues that the rule allowing insufficient evidence claims absent objection below "comfortably coexists" with the *Welch-Scott* forfeiture because "true" sufficiency claims are preserved by a plea of not guilty. *Butler* did not involve a "finding of crime." (RAB 12.) Insufficiency claims are just as "true" in the civil arena; and what respondent overlooks is that appellant was never asked to enter a plea to the "crime" of owing attorney fees or probation costs.

Respondent draws the wrong analogy which is not that objection is required "at sentencing" but rather that opportunity to make the "most complete" objection possible can only be had upon being given notice of the new proceeding at hand. Once that "procedural protection" is grasped, what *Rodriguez* said in reference to strike allegations applies just as well here, *viz.*: "defendant could not waive his right to challenge the sufficiency of the evidence on which the allegation was found true until it was found true and, then, only by failing to file a timely notice of appeal." (*Ibid.*)

Recoupment hearings aimed at procuring an order and judgment for monies owed are not implicated by a defendant's "not guilty" plea because they do not concern factual issues of guilt and because they are not punishment. It is precisely because such money judgements are *not* akin to restitution fines that (1) notice is required and (2) a claim of insufficient evidence will lie from an adverse finding. By demanding a hearing the defendant does the equivalent of pleading not guilty to the *civil* allegation that he owes money and can afford to pay the debt.

What respondent's position boils down to in this case is that the State can withhold an opportunity to deny the recoupment claim (by not giving notice) and then argue that absent no objection "at trial" the insufficiency of evidence claim. In short, the State seeks to profit (literally) from its own non-compliance with the statute and with due process fundamentals.

C. Summary

In the present case, the record on appeal is devoid of any notice and advisement to appellant concerning his rights under sections 1203.1b and 987.8. Likewise the record is devoid of any court finding regarding the actual costs involved or appellant's ability to pay them or the booking fee. Appellant's waiver of his rights cannot be implied from uninformed silence and a court finding cannot be implied when none was made. The orders to pay were jurisdictionally defective twice over. However because they *were* orders enforceable as judgments appellant was entitled to attack them on appeal for insufficient evidence without objection below.

CONCLUSION

For the foregoing reasons the judgement of the Court of Appeal should be reversed.

Word Count Certification

The undersigned counsel certifies under penalty of perjury that the word count for this brief is: 4498 words

Dated: 8 March 2014

Respectfully Submitted

KIERAN D. C. MANJARREZ
Attorney for Appellant

PROOF OF SERVICE BY MAIL

Title: People v. Aguilar **Case No.:** S213571

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The undersigned declares:

I am a citizen of the United States of America, over the age of eighteen years and counsel for appellant herein. My business address is 1535 Farmers Lane 133, Santa Rosa, CA 95405.

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On 9 March 2014 I served the attached, **APPELLANT'S REPLY BRIEF** on the parties in this action by placing a true copy thereof, in a sealed envelope with first class postage fully prepaid, in the United States Mail, addressed as follows:

[x] Supreme Court California. 350 McAllister Street, San Francisco, CA 94102
[x] + 1 copy for Appellate Counsel + [x] SASE
[x] Court of Appeal Dist I / Div 4
[x] 350 McAllister Street, San Francisco, CA 94102
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[x] Superior Court Contra Costa Cty., POB 911, Martinez CA 94553
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Sworn this 9 March 2014, at Santa Rosa, California.

_____

Kieran D. C. Manjarrez