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CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. RENE BREAZELL, Defendant and Appellant.	F038052 (Super. Ct. No. 7224) **OPINION**

APPEAL from a judgment of the Superior Court of Madera County. Edward P. Moffat II, Judge.

William A. Malloy, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Troy L. Nunley and Maureen A. Daly, Deputy Attorneys General, for Plaintiff and Respondent.

Rene Breazell pled guilty after her motion to suppress was denied. On appeal, Breazell claims that the evidence against her should have been suppressed. Breazell also

*Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of part I of DISCUSSION.

claims that the trial court erroneously assessed a fine pursuant to Penal Code section 672[1] because a fine was imposed pursuant to Health and Safety Code section 11372 as well. Breazell contends that a fine pursuant to section 672 can be imposed only if no other statutory fine is imposed for the criminal conduct.

In the unpublished portion of this opinion, we conclude that the trial court committed no error in denying Breazell's motion to suppress and affirm the judgment. In the published portion of this opinion, we agree that the fine imposed pursuant to section 672 was erroneous, and it constitutes an unauthorized sentence. Accordingly, we order that fine stricken.

FACTUAL AND PROCEDURAL SUMMARY

While riding in an unmarked police van, Special Agent John Gaines received a telephone call from his office informing him that an anonymous informant called and stated that Rene and Tasha were manufacturing cocaine base at Breazell's residence in the presence of children. Gaines and his partner, Investigator Staci Lewis, parked near Breazell's residence for observation. Within a few minutes, Shekala Breazell (Shekala), Breazell's daughter, emerged from the house. A car drove past the house and turned around, stopping in front of Breazell's residence. Shekala spoke with the occupants of the vehicle for a moment and the vehicle left. Shekala then looked towards Gaines and Lewis for a few moments. Gaines concluded that Shekala had identified the van as a police vehicle and that a drug transaction had been aborted.

Gaines drove to Breazell's residence, stopped the van, and got out along with Lewis. Lewis stopped Shekala, and Gaines went to the front door of the residence.

Lewis smelled the odor of burnt marijuana emanating from Shekala and asked her if she had been smoking marijuana. Shekala admitted doing so in the house and admitted

[1] All statutory references are to the Penal Code unless otherwise stated.

she possessed some marijuana. Lewis searched Shekala and found marijuana and what she believed to be cocaine base.

Gaines knocked on the front door and asked Breazell if she had any children in the house. Breazell responded by asking the children to come to the door. Breazell first walked into the kitchen and then into the bathroom. Gaines heard sloshing noises coming from the bathroom. He returned to where Lewis was questioning Shekala. Lewis told Gaines what she had learned and discovered.

Gaines returned to the house and demanded that one of the children open the door. Gaines entered the house and proceeded to the bathroom. Breazell emerged from the bathroom with her arms wet. Lewis observed water on the bathroom floor and toilet seat, and that the toilet was only half full. Gaines deduced that the toilet was backed up as the result of Breazell attempting to dispose of narcotics.

Gaines secured the residence and obtained a search warrant. A search revealed numerous empty bags and one containing cocaine base stuck in the throat of the toilet.

The information charged Breazell with a single count of possession of cocaine base for sale. (Health & Saf. Code, § 11351.5.) Two enhancements were alleged, one for a prior narcotics conviction (*id.*, § 11370.2, subd. (a)), and the other for a prior conviction for sale of a controlled substance (*id.*, § 11352; Pen. Code, § 1203.07, subd. (a)(11)). After her motion to suppress was denied, Breazell pled guilty to the sole count of the information and the first enhancement. She was sentenced to eight years in prison.

DISCUSSION

I. The Search*

Breazell's challenge to the judgment is limited to whether the evidence should have been suppressed. She argues that Gaines's warrantless entry into her house violated the Fourth Amendment prohibition against unreasonable searches and seizures. Breazell

*See footnote, *ante*, page 1.

insists that, without the information obtained from the illegal entry, the search warrant was not supported by probable cause and all evidence must be suppressed.

A. Standard of Review

"'The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual finding, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. [Citations.]' [Citation.]" (*People v. Weaver* (2001) 26 Cal.4th 876, 924.)

There is no factual dispute in this case. Therefore, the only issue is whether, on the facts presented to the trial court, the search was unreasonable under the Fourth Amendment. We exercise our independent judgment on this issue.

B. The Initial Entry

The Fourth Amendment guarantees freedom from unreasonable searches and seizures. We are entering familiar waters when we say that each individual has a right to privacy in his or her home that may not be breached unless the police have obtained a warrant issued by a neutral magistrate or exigent circumstances exist. (*People v. Bennett* (1998) 17 Cal.4th 373, 384.) Since Gaines did not obtain a warrant prior to his initial entry into Breazell's home, the People argue the entry was supported by exigent circumstances.

Exigent circumstances exist when there is a compelling need for official action and no time to secure a search warrant. (*People v. Coddington* (2000) 23 Cal.4th 529, 580, overruled on other grounds in *Price v. Superior Court* (2001) 25 Cal.4th 1046, 1069, fn. 13.) One such circumstance occurs when a police officer has probable cause to believe a dwelling contains evidence of a crime and has reason to fear destruction of evidence. (*People v. Seaton* (2001) 26 Cal.4th 598, 632.)

Because a warrantless entry is presumptively unreasonable within the meaning of the Fourth Amendment, the People bear the burden of proving that exigent circumstances justified the entry.[2] (*People v. Coddington*, *supra*, 23 Cal.4th at p. 575.) The People argue the circumstances in this case do so. (*People v. Allen* (2000) 78 Cal.App.4th 445, 450.) These circumstances included (1) the anonymous tip that cocaine base was being manufactured in the house, (2) the observed encounter between Shekala and the vehicle, believed to be an aborted drug transaction, (3) Shekala's extended observance of the police van, (4) Shekala's possession of cocaine base and her comment that it was for someone else, (5) the sloshing noise from the bathroom, believed to be indicative of destruction of evidence, and (6) Breazell's apparent avoidance of Gaines while he was at the front door.[3]

Our analysis is guided by *Illinois v. McArthur* (2001) 531 U.S. 326. In *McArthur*, the defendant's wife asked the police to escort her while she removed her personal belongings from the family home. Wife entered the residence while the police waited outside. When wife exited the house, she informed the police that defendant hid some marijuana under the couch. When the defendant returned, the officers required him to wait on the porch until they could obtain a search warrant. The defendant was allowed to enter the house with a police escort to make telephone calls and address other personal needs. The search conducted pursuant to a search warrant recovered marijuana under the couch. The defendant moved to suppress the marijuana arguing that an illegal seizure occurred when he was precluded from entering his home. (*Id.* at pp. 328-329.)

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[2]Breazell argues reversal is required because the trial court improperly imposed on her the burden of proof on this issue. While it appears the trial court was confused because a warrant was ultimately issued, reversal is not required because of this mistake. The issue is whether the evidence against Breazell should have been suppressed. We independently evaluate this issue, with a correct assignment of the burden of proof.

[3]Gaines testified that while Breazell responded to his knock on the door, she never came to the door, instead directing the children to do so. Instead, Breazell ran her errand from the kitchen to the bathroom.

The United States Supreme Court held that the officers had probable cause to believe (1) the home contained contraband, and (2) if not restrained, the defendant would destroy the evidence. (*Illinois v. McArthur*, *supra*, 531 U.S. at pp. 331-332.) These circumstances constituted exigent circumstances. Because the restraint was limited in duration and tailored to law enforcement needs, the restraint was reasonable. (*Ibid*.)

In reaching this conclusion, the Supreme Court considered four factors. First, there was probable cause to believe the home contained contraband because of the wife's statement. (*Illinois v. McArthur*, *supra*, 531 U.S. at p. 332.)

Second, there was good reason to fear that the defendant would destroy the evidence if not restrained. (*Illinois v. McArthur*, *supra*, 531 U.S. at p. 332.) The Supreme Court reasoned that it was reasonable to believe that the defendant would conclude his wife had informed the police of his marijuana because (1) the police accompanied her to the home, (2) his wife consulted with the police after she left, and (3) one officer left with the defendant's wife while the other stayed at the home. (*Ibid*.)

Third, the police acted reasonably by refraining from searching the home until a warrant was obtained, while balancing the need to secure the residence with the defendant's rights. (*Illinois v. McArthur*, *supra*, 531 U.S. at p. 332.) The Supreme Court recognized that prohibiting unaccompanied access was a significantly less restrictive restraint than a warrantless search. (*Ibid*.)

Finally, the Supreme Court found the police acted with diligence to obtain the search warrant (it took two hours to obtain the search warrant). (*Illinois v. McArthur*, *supra*, 531 U.S. at pp. 332-333.)

Prior to *McArthur*, California courts often relied on the factors identified in *United States v. Rubin* (3d Cir. 1973) 474 F.2d 262, 268-269 when destruction of evidence was the exigent circumstance asserted to validate a warrantless search or seizure. These factors are (1) the degree of urgency involved and the amount of time necessary to obtain a warrant, (2) reasonable belief that the contraband is about to be removed, (3) the

possibility of danger to police officers guarding the site of the contraband while a search warrant is sought, (4) the information indicating the possessors of the contraband are aware that the police know of the existence of the contraband, and (5) the ability to destroy the contraband and the knowledge that efforts to dispose of narcotics are typical of persons engaged in narcotics traffic. (*Ibid*.) Both *McArthur* and the cases following *Rubin* recognize that no particular factor is dispositive, but that all of the facts in a particular case must be evaluated. (*Illinois v. McArthur*, *supra*, 531 U.S. at p. 331; *People v. Ortiz* (1995) 32 Cal.App.4th 286, 292-293.)

The differences between the *McArthur* and *Rubin* factors are minor.[4] Evaluation of these factors establishes that exigent circumstances existed in this case. The only factor that can seriously be disputed is whether the police had probable cause to believe that contraband was contained in the home.

Probable cause exists when there is a fair probability that contraband or evidence of a crime will be found during a search. (*People v. Bennett*, *supra*, 17 Cal.4th at p. 387.) The factors cited by the People all pertain to this issue.

Breazell argues that an anonymous tip is inherently unreliable and cannot form the basis for probable cause without sufficient corroboration. (*People v. Kershaw* (1983) 147 Cal.App.3d 750, 757-759.) Breazell asserts that the corroboration in this case was insufficient to create probable cause.

Adequate corroboration must pertain to the defendant's criminal activity. (*People v. Kershaw*, *supra*, 147 Cal.App.3d at p. 759.) "This requirement is met if police investigation has uncovered probative indications of criminal activity along the lines suggested by the informant. [Citations.]" (*Ibid*.) "For corroboration to be incriminating it is not necessary that the activities the police observe point unequivocally toward guilt.

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[4]The only significant difference is the third *Rubin* factor, the possibility of danger to the police guarding the site.

It is sufficient that those activities give rise to a reasonable inference or strong suspicion of guilt. [Citation.]" (*Ibid*.)

In *Kershaw*, the anonymous informant stated that the defendant was selling cocaine and gave the police the defendant's name, nickname, the street on which he lived, the type of car he drove, and his telephone number. The informant also stated the defendant kept the cocaine and a gun at his home and sold kilos of cocaine. The informant claimed he/she learned this information from a relative who regularly purchased cocaine from the defendant. (*People v. Kershaw*, *supra*, 147 Cal.App.3d at p. 753.)

The police corroborated the defendant's name and nickname, his address, telephone number and vehicle. In addition, the officers observed 22 separate visits to the defendant's home over a 16-hour period, most visits at night and short in duration. The police also discovered that the defendant was previously arrested for possession of cocaine for sale and there was an arrest warrant outstanding for the same charge. (*People v. Kershaw*, *supra*, 147 Cal.App.3d at pp. 753, 759-760.)

The appellate court held that the detailed nature of the informant's information and the police corroboration established probable cause for issuance of a search warrant. (*People v. Kershaw*, *supra*, 147 Cal.App.3d at p. 760.)

Breazell relies on *Higgason v. Superior Court* (1985) 170 Cal.App.3d 929. In *Higgason*, the police received three separate anonymous tips that the defendant was selling marijuana from his home and that his teenage son was assisting him in this enterprise. The informants described the defendant, his vehicles, and the location of his apartment. The police verified the defendant's address, the vehicles he owned, and his description. A search warrant was obtained based on this information. (*Id.* at pp. 934-936.) The appellate court held there was not probable cause for issuance of the search warrant because all of the incriminating information came from anonymous sources and

police investigation corroborated only easily obtained facts and conditions. (*Id*. at p. 938.)

Guidance for determining when sufficient corroboration of an anonymous tip exists also is found in the seminal case of *Illinois v. Gates* (1983) 462 U.S. 213. The police in *Gates* received an anonymous letter stating that the defendants, a husband and wife, sold drugs. The letter described where the defendants lived and stated the drugs were picked up in Florida. Typically, the wife would drive to Florida where their car would be loaded with drugs. The husband would then fly to Florida and drive the vehicle home. The wife would return to Illinois by plane. The letter also stated that the wife was heading to Florida on a specific date, with the husband flying to Florida a few days later. (*Id*. at p. 225.)

The police verified the husband's name and address, and that he had a reservation to fly to Florida two days after the date specified in the letter. Police also verified that the husband flew to Florida and checked into a hotel room registered to the wife. Finally, police verified that the husband and an unidentified woman left Florida heading towards Illinois in a vehicle registered to the defendants and bearing Illinois license plates. A search warrant was obtained for the vehicle and the defendants' house. When the defendants arrived in Illinois at the expected time, the vehicle was searched and marijuana was discovered in the trunk. Weapons and other contraband were discovered in the house. (*Illinois v. Gates*, *supra*, 462 U.S. at pp. 226-227.)

The Supreme Court recognized that rigid rules could not be established to evaluate probable cause, but that the issue was dependent on the "assessment of probabilities in particular factual contexts." (*Illinois v. Gates*, *supra*, 462 U.S. at p. 232.) As such, the evaluation of whether probable cause exists in a specific case is a commonsense, practical question, which must be answered after considering all of the circumstances of that case. (*Id*. at pp. 230, 238.) "Probable cause deals 'with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and

prudent men, not legal technicians, act,' *Brinegar v. United States* [(1949) 338 U.S. 160, 175]." (*Id*. at p. 241.)

The Supreme Court concluded there was probable cause for issuance of the search warrant. (*Illinois v. Gates*, *supra*, 462 U.S. at p. 246.) The relevant facts identified by the Supreme Court included the reasonable inference that the defendants' travel plans were consistent with a prearranged drug run, the anonymous letter that included not only easily obtained facts but also accurate predictions of future behavior which enhanced the credibility of the informant, and the corroboration of the facts in the anonymous letter. (*Id*. at pp. 243-245.)

The instant case lies somewhere in the middle of these cases. Unlike the anonymous tip in *Gates*, the tip in this case did not provide details or accurate predictions of future behavior. Unlike the officers in *Higgason*, who did not corroborate any significant fact provided by the informant, the officers in this case set up a surveillance of Breazell's home and observed incriminating conduct. Not only did Shekala meet with a vehicle in a manner consistent with a drug transaction, immediately after the vehicle left without purchasing any drugs, she looked at the police van in a manner suggesting that the reason the transaction was not completed was because she knew she was being observed by the police. Shekala admitted smoking marijuana in the house and possessed cocaine base in an amount commonly sold on the street and packaged in a manner suggesting it was for sale. Shekala also admitted the cocaine base was not for herself, but for someone else.

Breazell's actions also provided corroboration of the anonymous tip. When Gaines knocked on the front door of her home, Breazell did not come to the door and find out why an uniformed officer came to her house, but instead spoke to him from a distance. Moreover, once she instructed her children to talk with the officer at the door, she did not accompany them but instead traveled to the kitchen and then the bathroom, a common place to dispose of narcotics to avoid discovery.

We find this case most analogous to *Kershaw*. The informant in *Kershaw* provided more details than in this case, but Gaines observed activity that was more incriminating than that observed in *Kershaw* (numerous visits over a three-day period). While there could be innocent explanations for Breazell's actions and Shekala's encounter with the vehicle, the possibility of an innocent explanation does not deprive an officer of the capacity to entertain a reasonable suspicion of criminal conduct. (*In re Tony C*. (1978) 21 Cal.3d 888, 894.) A commonsense evaluation of the facts, including the information from the anonymous informant, leads to the conclusion that there was probable cause to believe that Breazell's home contained contraband.

The remaining factors identified in *McArthur* also are present in this case. Gaines had a reason to fear that Breazell was attempting to destroy the contraband. Gaines testified that a common method for destroying evidence of illegal contraband was flushing it down the toilet. Breazell's avoidance of Gaines, her trip to the kitchen and then to the bathroom, and the sloshing noise heard by Gaines were all indications that Breazell was attempting to destroy contraband.

Gaines also made reasonable efforts to reconcile police needs with Breazell's personal privacy. The home was not searched before a warrant was obtained. Breazell was allowed to remain in the home while the warrant was obtained, although an officer remained with her and restricted her activity. This restriction is no greater than the restriction approved in *McArthur*.

Finally, there is no evidence or argument that the length of the restriction was unreasonable. Gaines testified that an officer was quickly dispatched to obtain a telephonic search warrant. The process apparently was completed within a reasonable amount of time.

The officers in this case acted within the constraints established by *McArthur*. Accordingly, Breazell's Fourth Amendment rights were not violated by Gaines's initial entry into the house. Since we find that exigent circumstances justified Gaines's initial

entry into Breazell's house, we also reject Breazell's argument that the warrant must be quashed because it was based, in part, on Gaines's observations during the warrantless entry.

II. Section 672 Fine

A. Permissibility of a Section 672 Fine When a Fine is Imposed Pursuant to the Health and Safety Code

The trial court imposed a fine pursuant to Health and Safety Code section 11372,[5] which authorizes a fine up to $20,000 for persons convicted of the offense committed by Breazell. In addition, the trial court assessed a fine pursuant to section 672.[6] Breazell contends the section 672 fine should not have been imposed because it applies only when no other statutory fine is assessed.

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[5]Health and Safety Code section 11372 states: "(a) In addition to the term of imprisonment provided by law for persons convicted of violating Section 11350, 11351, 11351.5, 11352, 11353, 11355, 11359, 11360, or 11361, the trial court may impose a fine not exceeding twenty thousand dollars ($20,000) for each such offense. In no event shall such fine be levied in lieu of or in substitution for the term of imprisonment provided by law for any of such offenses.

"(b) Any person receiving an additional term pursuant to paragraph (1) of subdivision (a) of Section 11370.4, may, in addition, be fined an amount not exceeding one million dollars ($1,000,000) for each such offense.

"(c) Any person receiving an additional term pursuant to paragraph (2) of subdivision (a) of Section 11370.4, may, in addition, be fined an amount not to exceed four million dollars ($4,000,000) for each such offense.

"(d) Any person receiving an additional term pursuant to paragraph (3) of subdivision (a) of Section 11370.4, may, in addition, be fined by amount not to exceed eight million dollars ($8,000,000) for each such offense.

"(e) The court shall make a finding, prior to the imposition of the fines authorized by subdivision (b) to (e), inclusive, that there is a reasonable expectation that the fine, or a substantial portion thereof, could be collected within a reasonable period of time, taking into consideration the defendant's income, earning capacity, and financial resources."

[6]Section 672 states: "Upon a conviction for any crime punishable by imprisonment in any jail or prison, in relation to which no fine is herein prescribed, the court may impose a fine on the offender not exceeding one thousand dollars ($1,000) in cases of misdemeanors or ten thousand dollars ($10,000) in cases of felonies, in addition to the imprisonment prescribed."

The operative language of section 672 is the second phrase of the first sentence, "in relation to which no fine is herein prescribed." The People agree that a fine pursuant to section 672 can be imposed for any crime punishable by imprisonment, regardless of whether the act is made criminal by the Penal Code, Health and Safety Code, or any other statute. However, the People contend the quoted limiting language applies only if the other fine is prescribed by the Penal Code. Therefore, according to the People, the limiting language of section 672 does not apply to this case because the other fine in the case was imposed pursuant to the Health and Safety Code.

The appellate court in *People v. Clark* (1992) 7 Cal.App.4th 1041 agreed with the People's first assertion. The defendant in *Clark* was convicted of possession of a controlled substance in violation of Health and Safety Code section 11377, subdivision (a). The appellate court held that a section 672 fine could be imposed against the defendant although his violation was not a Penal Code violation. (*Clark*, at p. 1045.) We agree.

To support their second proposition, the People contend the word "herein" must be interpreted to refer only to the Penal Code, because to interpret the section otherwise would render the phrase surplusage.

> "Our fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. [Citation.] We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citation.] If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations.] If, however, the statutory terms are ambiguous, then we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such circumstances, we '"select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." [Citation.]' [Citations.]" (*Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.)

Section 672 was enacted in 1872, and has been amended only twice. At the time of its enactment, the Penal Code contained all of the codified criminal law of California. As originally enacted, a fine of $200 was authorized for any crime punishable by imprisonment. In 1949, the section was amended to provide a maximum fine of $500 for misdemeanors and $5,000 for felonies. In 1983, the maximum fines were increased to $1,000 for misdemeanors and $10,000 for felonies. (Stats. 1949, ch. 670, § 1; Stats. 1983, ch. 1092, § 320, eff. Sept. 27, 1983, operative Jan. 1, 1984.)

The Health and Safety Code was not enacted until 1939.

This scant legislative activity and the history of the codification of criminal law demonstrate that the simplified interpretation offered by the People should be rejected. The language used in section 672 demonstrates that it was meant to provide a fine for offenses for which another statute did not impose a fine. In other words, this is a catchall provision allowing a fine to be imposed for every crime, even if the statute criminalizing the conduct did not specifically authorize a fine. The limiting provision was meant to ensure that a fine pursuant to section 672 would not be imposed if another statute authorized a fine for the offense.

Since a fine pursuant to section 672 may be imposed for offenses not defined in the Penal Code, it would be absurd to allow this provision, intended to impose a fine only when no other statute does so, to result in multiple fines simply because the offense and the associated fine are not defined in the Penal Code. The language of the statute and its history establish that the Legislature did not intend such a result. Accordingly, the trial court erred in imposing a fine pursuant to section 672 when a fine also was imposed pursuant to Health and Safety Code section 11372.

Our interpretation does not render the word "herein" surplusage. Instead, our interpretation gives effect to the intent of the Legislature. The limiting phrase of section 672 is applied to ensure that a fine is not imposed pursuant to this section unless no other fine is imposed for the criminal activity.

B. Waiver

The People argue that Breazell waived any objection to the fine by her inaction in the trial court. Breazell acknowledges her failure to object, but asserts that assessment of the fine resulted in the imposition of an unauthorized sentence for which an objection was unnecessary.

An unauthorized sentence is a narrow exception to the requirement that the parties raise their claims in the trial court to preserve the issue for appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 354.) Generally, a sentence is unauthorized where it could not have been imposed under any circumstance in the particular case. (*Ibid*.) Common situations where unauthorized sentences occur include violation of mandatory provisions governing the length of confinement. (*Ibid*.) Appellate courts are willing to intervene in such situations because the error is correctable without factual disputes. (*Ibid*.)

People v. Welch (1993) 5 Cal.4th 228, 235-236 provides a comprehensive list of situations in which the unauthorized sentence concept has been employed. None of the cases cited in *Welch* is similar to this case. *Welch* held that a failure to object to an unreasonable condition or probation resulted in a waiver of the issue. (*Id*. at p. 237.) *Scott* held that a failure to object results in a waiver of any defects in the trial court's statement of reasons for imposing a sentence. (*People v. Scott*, *supra*, 9 Cal.4th at p. 348.) The Supreme Court held in *Scott* that waiver applies to sentences imposed in a procedurally or factually flawed manner, although otherwise permitted by law. (*Id.* at p. 354.)

Although this issue does not involve the length of Breazell's confinement, the error is clear and correctable without factual dispute. Moreover, the fine pursuant to section 672 could not have been imposed in the circumstances of this case. Therefore, we conclude that the imposition of a fine pursuant to section 672 was unauthorized and order it stricken.

DISPOSITION

The judgment is affirmed. The $270 fine imposed pursuant to section 672 is ordered stricken. The trial court is directed to prepare a new abstract of judgment to reflect this change.

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CORNELL, J.

WE CONCUR:

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ARDAIZ, P.J.

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VARTABEDIAN, J.