

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

KRISTIN MICHELLE COATES,
Defendant-Appellant.

Marion County Circuit Court
16CR05079; A162034

Claudia M. Burton, Judge.

Submitted July 27, 2017.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Brett J. Allin, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Michael A. Casper, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Hadlock, Chief Judge, and Schuman, Senior Judge.

ORTEGA, P. J.

Affirmed.

ORTEGA, P. J.

Defendant appeals a judgment of conviction for driving while under the influence of intoxicants (DUII), a Class A misdemeanor, ORS 813.010, arguing that the trial court's assessment of a punitive fine and conviction fee exceeded the statutory maximum of \$6,250 for a Class A misdemeanor under ORS 161.635. The judgment imposed, in addition to 365 days in jail, a "Fine - DUII" of \$6,200 and a "DUII Conviction Fee" of \$255, which totaled \$6,455. Defendant contends that the conviction fee of \$255 is a type of fine that must be included in the trial court's assessment of the maximum amount that can be imposed on a defendant under ORS 161.635. In reviewing the court's sentence for legal error, *State v. Barajas*, 254 Or App 106, 108, 292 P3d 636 (2012), *rev den*, 353 Or 747 (2013), we conclude that the conviction fee does not count toward the maximum allowable amount and, therefore, the trial court did not err. Accordingly, we affirm.

The facts are undisputed. The state charged defendant with DUII and alleged specifically that her blood alcohol content (BAC) while driving was .15 percent or above. Defendant pleaded guilty to DUII but left sentencing open to the trial court. At the sentencing hearing, because it was undisputed that defendant's BAC was .27 percent or above and it was her fourth DUII conviction, the state asked for a "base fine" of \$6,200 and described the fine it was seeking as "a mandatory minimum." The state also remarked that it was put on notice by defendant that it was her view that the state could not impose more than \$6,250 total for any fines, conviction fee, and court-appointed attorney fees. To answer defendant's contention, the state asserted that neither the court-appointed attorney fees nor the conviction fee were fines and therefore not considered when imposing the maximum fine for a Class A misdemeanor. The sentencing court did not impose court-appointed attorney fees but did, in addition to sentencing defendant to 365 days of incarceration in the county jail, impose a fine of \$6,200, noting that, although the maximum fine allowed by ORS 161.635 is \$6,250, it was imposing the fine that the state asked for. The court also imposed a conviction fee of \$255.

To understand the contested amount defendant was ordered to pay, we set out the relevant provisions for imposing fines for a DUII conviction. Under ORS 813.010(6), the trial court must impose a fine for a DUII conviction, and the minimum fine imposed varies depending on the number of the defendant's DUII convictions or her BAC:

“In addition to any other sentence that may be imposed, the court shall impose one or more of the following fines on a person convicted of driving while under the influence of intoxicants as follows:

“(a) For a person's first conviction, a minimum of \$1,000.

“(b) For a person's second conviction, a minimum of \$1,500.

“(c) For a person's third or subsequent conviction, a minimum of \$2,000 if the person is not sentenced to a term of imprisonment.

“(d) For a person who drives a vehicle while the person has 0.15 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood of the person made under ORS 813.100, 813.140 or 813.150, a minimum of \$2,000.”

For subsection (c), a jail sentence is considered “a term of imprisonment.” *State v. Frier*, 264 Or App 541, 548, 333 P3d 1093 (2014). Therefore, the \$2,000 mandatory fine under ORS 813.010(6)(c) does not apply if the defendant is sentenced to jail. In addition to the mandatory minimum amounts imposed under ORS 813.010(6), ORS 161.635(1) provides that the maximum amount the defendant may be ordered to pay for a Class A misdemeanor is \$6,250:

“A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

“(a) \$6,250 for a Class A misdemeanor.”

See *State v. Cloutier*, 351 Or 68, 70, 261 P3d 1234 (2011) (“The maximum fine for a Class A misdemeanor, including misdemeanor DUII, is \$6,250.”). Further ORS 813.020 mandates a conviction fee for a person convicted of DUII:

“When a person is convicted of driving while under the influence of intoxicants in violation of ORS 813.010, a court shall comply with the following in addition to any fine or other penalty imposed upon the person under ORS 813.010:

“(1) The court shall require the person to:

“(a) Pay to the court the fee described under ORS 813.030 in addition to any fine imposed under ORS 813.010[.]”

Finally, ORS 813.030 sets the amount for the conviction fee. That statute provides:

“The fee required by ORS 471.432 and 813.020 (1) shall be in the amount of \$255, except that the court may waive all or part of the fee in cases involving indigent defendants. The court may make provision for payment of the fee on an installment basis. A circuit court shall deposit the fee in the Criminal Fine Account. If the fee is collected in a municipal or justice court, the fee shall be forwarded by the court to the Department of Revenue for deposit in the Criminal Fine Account.”

Defendant argues on appeal, as she did below, that an ORS 813.010 fine and an ORS 813.030 conviction fee must be considered together and cannot exceed the maximum fine amount under ORS 161.635. She contends that, because the fee must be deposited in the “Criminal *Fine* Account” (emphasis added), the legislature intended that the fee be considered a fine for purposes of ORS 161.635. Defendant further asserts that the trial court’s decision to impose a fine of \$6,200 instead of the minimum of \$2,000 under ORS 813.010 shows that the fine arose under ORS 161.635 rather than ORS 813.010, with the consequence that the court was not authorized to assess the \$255 fee under ORS 813.020 at all, because in defendant’s view such a fee may be assessed only if the court imposes a fine under ORS 813.010. Finally, according to defendant, if the legislature intended to allow fees to be included in addition to the statutory maximum of \$6,250 under ORS 161.635, it would have included language to that effect in the statute.

The state counters that the statutory scheme makes clear that the DUI conviction fee does not count toward the statutory maximum fine. According to the state, defendant

may be assessed a fine of at least \$2,000 under ORS 813.010, and shall, unless the defendant is indigent, be assessed a conviction fee of \$255 “in addition to any fine” as stated in ORS 813.020. The state maintains that the fact that the trial court assessed a fine of \$6,200 does not mean that its authority to do so necessarily arose under ORS 161.635; rather, the court acted within its allowable discretion to impose a fine that was more than the minimum of \$2,000 under ORS 813.010 but less than the maximum of \$6,250 as allowed by both statutes. Further, the state contends that, although ORS 813.030 requires the \$255 fee to be deposited into the Criminal Fine Account, the legislature did not intend the fee to be considered a fine because, under ORS 137.300(1), that account is where “all amounts collected in state courts as monetary obligations in criminal actions shall be deposited by the courts.” Accordingly, the account is not just for fines. We agree with the state.

In interpreting a statute, we examine the text of the statute in context, considering any relevant legislative history, and, if necessary, applying maxims of statutory construction. *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). Generally, “the text of the statutory provision itself is the starting point for interpretation and is the best evidence of the legislature’s intent.” *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). Unless a word or phrase has a specialized meaning, we typically give “words of common usage” their “plain, natural, and ordinary meaning.” *Id.* at 611. The ordinary meaning of a word is presumed to be what is reflected in a dictionary. See *Jenkins v. Board of Parole*, 356 Or 186, 194, 335 P3d 828 (2014). However, “[i]n construing statutes, we do not simply consult dictionaries and interpret words in a vacuum.” *Cloutier*, 351 Or at 96. When the dispute “centers on the meaning of a particular word or words, a dictionary definition—although providing some evidence of meaning—should not be relied on to resolve a dispute about plain meaning without critically examining how the definition fits into the context of the statute itself.” *State v. Gonzalez-Valenzuela*, 358 Or 451, 461, 365 P3d 116 (2015).

We begin by examining the relevant definitions. A fine is defined as “a sum formerly paid as compensation or

for exemption from punishment but [is] now imposed as punishment for a crime.” *Webster’s Third New Int’l Dictionary* 852 (unabridged ed 2002). A fee is defined as “a charge fixed by law *** for certain privileges or services.” *Id.* at 833. Giving the words their ordinary meaning, a fine is used as a way to punish a person for the crime committed whereas a fee is a type of compensation that a person has to pay for a service received. A fine and a fee therefore serve two distinct purposes.

Next, we examine the text of the statutes in context. ORS 161.635 sets a *maximum* fine that may be imposed on a defendant convicted of a Class A misdemeanor. *See Cloutier*, 351 Or at 70 (“The maximum fine for a Class A misdemeanor, including misdemeanor DUII, is \$6,250.”). Nothing in ORS 161.635 says that the maximum fine must take into account all fees that the court assesses. In contrast, ORS 813.010 sets the *minimum* fines that a court must impose on a person who is convicted of DUII, a Class A misdemeanor. Further, ORS 813.020 requires the court to impose a DUII conviction fee, if the person is convicted, and ORS 813.030 states that the fee is \$255. More importantly however, ORS 813.020 allows the court to impose both a fine and a fee for someone who is convicted of DUII. As the state correctly points out, the reference in ORS 813.020(1)(a) to a fee being imposed “in addition to any fine” indicates that a fee and a fine are separate things. The text of ORS 813.020(1)(a) also shows that the legislature intended that a fee and a fine are separate things not just in ORS 813.020, but in other statutes where the court is to impose a fine and a fee on a person who is convicted of a Class A misdemeanor. *See State v. Newell*, 238 Or App 385, 392, 242 P3d 709 (2010) (stating that when “the legislature uses different terms in statutes, we generally will assume that the legislature intends different meanings for those terms” (internal quotations omitted)).

As a preliminary matter, the \$6,200 fine was imposed under the authority of ORS 813.010 but within the limitation of ORS 161.635. It is clear from the colloquy at the sentencing hearing, that the court imposed the fine urged by the state, which was described as a “mandatory minimum” fine on the basis of defendant’s prior convictions

and her BAC of .27 percent or above.¹ Moreover, in the judgment, the fine was labeled as “Fine - DUII.” With that said, ORS 161.635 does not define “fine” and ORS 813.020 does not define “fee” but ORS 813.020 does give the trial court authority to impose a fee “in addition to any fine *** imposed upon [a] person” who has been convicted of DUII. The fine in this case met statutory limitations; it was more than the minimum of ORS 813.010 but less than the maximum of \$6,250 under ORS 161.635. Further, the fee was also properly assessed, as ORS 813.030 allows such a fee apart from whether the fines imposed meet the statutory maximum under ORS 161.635. Accordingly, the trial court here did not err.

Affirmed.

¹ Defendant was sentenced to 365 days of jail. Because ORS 813.010(6)(c) does not require imposition of a minimum \$2,000 fine if a defendant is sentenced to a term of imprisonment, the court was not required to impose a minimum fine under subsection (c) based on the fact that defendant’s conviction was at least her third DUII conviction. However, the alternative basis for a minimum fine advanced by the state was that defendant’s BAC was .27 percent or above, which satisfies ORS 813.010(6)(d) (providing that a fine of at least \$2,000 must be imposed for a BAC of .15 percent or more). Further, we also reject defendant’s assertion that, if a sentencing court imposes a fine greater than the minimum amount set out in ORS 813.010(6), its authority for imposing that fine is provided under ORS 161.635. ORS 813.010(6) requires that a sentencing court impose a *minimum* fine amount, that is, that the court must impose a fine at an amount no less than the amount specified. Thus, the court can impose a greater amount, but the greater amount is subject to the maximum amount set out in ORS 161.635.