[J-43A-2020 and J-43B-2020]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

SAYLOR, C.J., BAER, TODD, DONOHUE, DOUGHERTY, WECHT, MUNDY, JJ.

COMMONWEALTH OF PENNSYLVANIA, Appellant v. MICHAEL A. LEHMAN, Appellee	: No. 47 MAP 2019 : : Appeal from the Order of the Superior Court dated January 4, 2019 at No. 1556 MDA 2017 Affirming in Part and Vacating in Part the Judgment of Sentence of the York County Court of Common Pleas, Criminal Division, dated April 4, 2017 at No. CP-67-CR-0002000-1988 and Remanding. : : ARGUED: May 27, 2020
COMMONWEALTH OF PENNSYLVANIA, Appellant v. SCOTT CHARLES DAVIS, Appellee	: No. 49 MAP 2019 : : Appeal from the Order of the Superior Court dated March 29, 2019 (December 26, 2018 opinion withdrawn February 12, 2019) at No. 76 MDA 2018 Affirming in Part and Vacating in Part the Judgment of Sentence of the York County Court of Common Pleas, Criminal Division, dated December 7, 2017 at No. CP-67-MD-1000728-1980 and Remanding. : : ARGUED: May 27, 2020

<u>OPINION</u>

JUSTICE DOUGHERTY **DECIDED: December 22, 2020**

We granted discretionary review in these consolidated appeals to determine whether the costs of resentencing a criminal defendant may be recovered by the district attorney from the defendant, when resentencing became necessary because the original sentence was vacated upon a subsequent judicial determination the sentence was unconstitutional. Both lower tribunals correctly determined such costs may not be charged to the defendant, and we therefore affirm the decisions of the Superior Court.

I. Background

Appellees, Michael A. Lehman and Scott Charles Davis, were each convicted of a first-degree murder committed as juveniles[1] and sentenced to then-mandatory terms of life imprisonment without the possibility of parole. Both appellees later had their sentences vacated by way of federal petitions for writ of *habeas corpus* in light of the United States Supreme Court's decisions in *Miller v. Alabama*, 567 U.S. 460 (2012) (mandatory life imprisonment without parole for juveniles violates constitutional prohibition against cruel and unusual punishment), and *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718 (2016) (*Miller* announced substantive rule of constitutional law and applies retroactively). Resentencing hearings took place in each case in the York County Court of Common Pleas, during which each appellee introduced expert testimony that he was ready for immediate parole. The Commonwealth introduced competing expert testimony. The court ultimately resentenced Lehman to a term of imprisonment of thirty years to life while Davis was resentenced to a term of forty years to life. Both

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[1] Lehman committed first-degree murder in 1988 when he was fourteen years old, *see* Trial Court Opinion, 6/4/18 at 2, and Davis committed first-degree murder in 1980 when he was fifteen years old, *see* Trial Court Opinion, 3/29/18 at 1-2.

appellees were also ordered to pay the costs of their resentencing.[2] On appeal, the Superior Court affirmed appellees' sentences of incarceration but vacated the imposition of costs related to resentencing.[3]

In Lehman's case, the Superior Court issued a published opinion. *Commonwealth v. Lehman*, 201 A.3d 1279 (Pa. Super. 2019). Related to the present appeal, the *Lehman* panel first examined the legal framework governing the imposition of costs on criminal defendants, setting forth both statutory and common law authority, because it was unclear on what basis the resentencing court had relied. *Id.* at 1283-84. As noted *supra* at footnote three, the panel erroneously referred to 16 P.S. §4403 as statutory authority,[4]

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[2] Lehman was ordered to pay costs related to resentencing in the amount of $15,478.38, *see* Trial Court Docket CP-67-CR-0002000-1988 at 35-36, and Davis was ordered to pay costs in the amount of $20,674.73, *see* Trial Court Docket CP-67-MD-1000728-1980 at 25. For the most part, these amounts reflected the cost of expert testimony presented by the Commonwealth.

[3] The lower tribunals were inconsistent in their reference to statutory authority for imposing costs on appellees. In Lehman's case, the trial court relied in part on 16 P.S. §7708, which pertains to the imposition of costs on criminal defendants in counties of the first class, although Lehman's resentencing took place in York County, a county of the third class. Trial Court Opinion, 6/4/18 at 6-8. The applicable statute for York County proceedings is 16 P.S. §1403 (imposing costs upon criminal defendants in counties other than those of the first or second class). However, Section 1403 is identical in all material respects to Section 7708. On appeal, the Superior Court relied on yet another statute, 16 P.S. §4403, which expressly applies to counties of the second class, apparently due to the panel's mistaken belief the case arose from Montgomery County. *Commonwealth v. Lehman,* 201 A.3d 1279, 1283 n.11 (Pa. Super. 2019). In any event, much like Section 7708, Section 4403 is identical in all material respects to the correct statute, 16 P.S. §1403, which we discuss in detail *infra.*

In Davis's case, which also arose in York County, the trial court and Superior Court correctly referred to Section 1403 for its order imposing costs of resentencing. Trial Court Opinion, 3/29/18 at 11-12.

[4] Section 4403 provides:

> All necessary expenses incurred by the district attorney or his assistants or any officer directed by him in the investigation of crime and the apprehension and prosecution of persons charged with or suspected of the

but Section 4403 is identical in all material respects to 16 P.S. §1403, which actually governs the imposition of costs on criminal defendants in York County:

> All necessary expenses incurred by the district attorney or the district attorney's assistants or any officer directed by the district attorney in the investigation of crime and the apprehension and prosecution of persons charged with or suspected of the commission of crime, upon approval thereof by the district attorney and the court, shall be paid by the county from the general funds of the county. **In any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney in connection with such prosecution shall be considered a part of the costs of the case and be paid by the defendant.**

16 P.S. §1403 (emphasis added).

Regarding the common law authority to impose costs, the panel explained that prior to the enactment of the Judiciary Act of 1976, which created the Judicial Code, and the Judiciary Repealer Act of 1980 (JARA), which repealed the statutes supplanted by the Judicial Code, Section 64 of the Criminal Procedure Act of 1860, *see* 19 P.S. §1223 (repealed by JARA), governed the imposition of costs in criminal cases. *Lehman*, 201 A.3d at 1284. Section 64 of the Criminal Procedure Act provided: "'in all cases of conviction of any crime, all costs shall be paid by the party convicted; but where such party shall have been discharged, according to law, without payment of costs, the costs of prosecution shall be paid by the county[.]'" *Id.*, *quoting* 19 P.S. §1223 (repealed by JARA).

> commission of crime shall be paid by the county from the general funds of the county, upon the approval of the bill of expenses by the district attorney and the court. In any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney in connection with such prosecution shall be considered a part of the costs of the case and be paid by the defendant.

16 P.S. §4403.

The panel observed that, although JARA repealed these statutes, JARA also contained a savings clause that effectively preserved certain statutes as part of our common law. *Id*, *quoting* Act 53 of 1978 §3(b), 1978 P.L. 202, 352 ("[i]f no such general rules are in effect with respect to the repealed statute on the effective date of its repeal, the practice and procedure provided in the repealed statute shall continue in full force and effect, as part of the common law of the Commonwealth, until such general rules are promulgated"). The panel thus determined that, since this Court has yet to prescribe general rules for the imposition of costs in criminal cases pursuant to our authority under 42 Pa.C.S. §1726(a),[5] Section 64 remains part of our common law. *Id*. The panel acknowledged Section 64 permits charging the defendant with "all costs," while the applicable statute authorizes a charge of "necessary expenses." *Id*. at 1285. However, the panel interpreted the word "all" in Section 64 to mean "necessary" only, because a literal interpretation of "all" would lead to absurd results such as forcing a defendant "to pay costs associated with lighting and heating the courtroom in which he or she was tried." *Id*. Accordingly, the panel concluded, "if costs are not 'necessary' they are not authorized under either Section 64 or Section 4403 [sic]." *Id*.

The *Lehman* panel next distinguished the case at hand from situations where defendants were assessed the costs of post-sentencing proceedings, such as PCRA or *habeas* proceedings, even though they occurred after the initial prosecution, because the petitions in those cases were unsuccessful; in effect, the Commonwealth's initial prosecution was upheld. *Id*., *citing Commonwealth v. Morales-Rivera*, 67 A.3d 1290, 1294 (Pa. Cmlwth. 2013) (trial court authorized to order defendant to pay costs associated

[5] Section 1726(a) states, "[t]he governing authority shall prescribe by general rule the standards governing the imposition and taxation of costs, including the items which constitute taxable costs, the litigants who shall bear such costs, and the discretion vested in the courts to modify the amount and responsibility for costs in specific matters." 42 Pa.C.S. §1726(a).

with PCRA hearing), and *United States ex rel. Brink v. Claudy*, 96 F.Supp. 220, 224 (W.D. Pa. 1951) (district attorney entitled to costs associated with defending federal *habeas corpus* petition). Here, however, Lehman's resentencing was the result of his successful *habeas* challenge to the Commonwealth's original prosecution. *Id.* Based on this distinction, the panel found Lehman's case to be "most analogous to *Commonwealth v. Weaver*, 76 A.3d 562 (Pa. Super. 2013), *aff'd*, 105 A.3d 656 (Pa. 2014) (*per curiam*)." *Id.*

In *Weaver*, the Commonwealth charged the defendant with driving under the influence of morphine; at trial, however, a laboratory employee called to testify by the Commonwealth stated that benzodiazepines rather than morphine were found in the defendant's blood. *Weaver*, 76 A.3d at 564. The trial court declared a mistrial and allowed the Commonwealth to amend the criminal information such that it charged Weaver with driving under the influence of benzodiazepines. *Id.* A different laboratory employee testified at Weaver's second trial, the jury convicted Weaver, and the sentencing court ordered him to pay the costs of the laboratory employees' testimony at both trials. *Id.* Weaver subsequently filed a post-sentence motion arguing he should not be responsible for paying the cost of the laboratory employee's testimony at his second trial. *Id.* at 564-65. The court granted the motion and the Commonwealth appealed. *Id.* In affirming the trial court's decision not to impose costs on Weaver related to his second trial, the Superior Court relied upon language from *Commonwealth v. Coder*, 415 A.2d 406 (Pa. 1980): "[w]here it is determined that the prosecution is primarily responsible for the conditions which necessitate the change of venue, the defendant should be absolved of the costs incident to the change of venue." *Coder*, 415 A.2d at 409 n.4. Relying on *Coder*, the *Weaver* panel held "[a] defendant should not be assessed costs that would not have been incurred had the Commonwealth properly performed its prosecutorial duties. The language of [Section] 1403 provides for only 'necessary' expenses. The

costs in question would not have been needed had the charging instruments been correct." *Weaver*, 76 A.3d at 574.

The *Lehman* panel further recognized the defendant in *Weaver* "'chose' to exercise his constitutional right to due process of law by being informed of the charges against him prior to trial" and then proceeded to a new trial on that basis, and "it is well-settled that a defendant may not be punished for exercising his or her constitutional rights." *Lehman*, 201 A.3d at 1286. The panel reasoned on this basis that holding Lehman responsible for paying the costs related to his resentencing "would punish him for exercising his constitutional right to receive a sentence that comports with the Eighth Amendment[.]" *Id*. The *Lehman* panel acknowledged *Weaver* did not align perfectly with the case at hand, but found "no reason to differentiate between the actions taken by the Commonwealth in prosecuting an action from the actions taken by the Commonwealth in enacting a statute that is later declared to be unconstitutional," and "[t]here was no action taken by the defendant in *Weaver* or [by Lehman] which necessitated the further proceedings for which costs were imposed." *Id*. at 1286-87. The panel recognized that "[i]n both situations, the additional costs would not have arisen but for the actions of the Commonwealth." *Id*. at 1287. The *Lehman* panel thus held "when further proceedings are not necessitated by the actions of the defendant and the defendant obtains relief as a result of those proceedings, the Commonwealth should bear the risk of paying the additional costs." *Id*.

Rather than relying on the Superior Court's published decision in *Lehman*, a subsequent three-judge panel in Davis's case affirmed the trial court's imposition of costs on a different basis. *Commonwealth v. Davis*, 207 A.3d 341 (Pa. Super. 2019). The *Davis* panel found that the term "prosecution," the costs of which Section 1403 authorized charging to the defendant, must "'be read as synonymous with conviction.'" *Davis*, 207 A.3d at 345, *quoting Commonwealth v. Moran*, 675 A.2d 1269, 1272 (Pa. Super. 1996).

Based on this interpretation, and the fact that "Section 1403 makes no mention of sentencing or sentencing costs[,]" the *Davis* panel held "because the purpose of imposing the costs of prosecution against the defendant is to reimburse the Commonwealth for the expenses incurred preparing a case for, and conducting, a trial, 'prosecution' ends with the conviction or acquittal of the defendant." *Id.* at 345-46. As such, the panel determined "the trial court imposed an illegal sentence by ordering Davis to pay the costs relative to his resentencing." *Id.* at 346. Accordingly, although the panel affirmed the new sentence in all other respects, it vacated the imposition of costs because "Davis's resentencing, through no fault of his own, occurred only after his sentence was deemed unconstitutional, and he should not be liable for such costs." *Id.*, *citing Weaver*, 76 A.3d at 574.

The Commonwealth filed a petition for allowance of appeal in both cases and we granted review of the following questions:

> Whether the Pennsylvania Superior Court erred as a matter of law by holding that the costs relating to contested expert testimony in a contested resentencing do not constitute costs of prosecution under 16 P.S. §1403,[ ] and are ineligible for imposition upon a defendant [for] reimbursement as part of a sentence as a matter of law rather than the sentencing court's discretion[?]

Commonwealth v. Lehman, 215 A.3d 967, 968 (Pa. 2019) (*per curiam*).

> Whether costs relating to sentencing, and costs relating to re-sentencing, constitute "costs of prosecution and trial" under 16 P.S. §1403?

Commonwealth v. Davis, 215 A.3d 968 (Pa. 2019) (*per curiam*). As we are presented with questions of law, "our scope of review is plenary and we review the lower courts' legal determinations *de novo*." *Commonwealth v. Muniz*, 164 A.3d 1189, 1195 (Pa. 2017) (internal citation omitted).

II. Arguments of the Parties

The Commonwealth acknowledges "the policy considerations of *Weaver* are appropriate[,]" but contends "[t]he interpretation of *Weaver* by the Superior Court in both *Lehman* and *Davis* is incorrect[.]" Brief of Commonwealth at 17-18.[6] The Commonwealth notes the trial court in *Weaver* rejected the duplicate costs incurred during a retrial that were caused by the Commonwealth's error, while resentencing in the present cases was not necessitated by the Commonwealth's mistake but by a change in jurisprudence. *Id.* at 18. The Commonwealth further argues "this represents the first contested sentencing hearing for the instant [appellees]" and "[t]his is not a situation where the [Commonwealth] engaged in any form of malfeasance or waste, [but] is simply the first time [appellees] were not subject to mandatory life without parole." *Id.* at 18-19. The Commonwealth contends expert testimony, which is a common expense subject to reimbursement as costs of prosecution, *id.* at 17, *citing Commonwealth v. Garzone*, 34 A.3d 67, 80 n.11 (Pa. 2012), was necessary because appellees introduced testimony from their own experts who opined appellees were ready for immediate parole. *Id.* at 19.

Regarding interpretation of the statutory terms describing allowable costs, the Commonwealth contends the words "in connection with such prosecution" in Section 1403 make it "impossible . . . to divorce a sentencing proceeding from being part of the prosecution[.]" *Id.* at 20. This is so even in resentencing, argues the Commonwealth, because "when a sentence is vacated, the prosecution is rendered incomplete" and "the Commonwealth has an obligation to re-assume the prosecution until such time that the case can become final once more." *Id.* at 21. To support this contention, the Commonwealth points to *Commonwealth v. Davy*, 317 A.2d 48 (Pa. 1974), where this Court held extradition costs for a probation violation hearing were costs that may be assessed upon the defendant under Section 1403. *Id.* at 21. The Commonwealth

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[6] The Commonwealth filed identical briefs in these consolidated cases.

submits "if the costs of a probation violation hearing, and its re-sentencing may constitute costs of prosecution under the prior precedent of this [C]ourt [in *Davy*], then the costs of a re-sentencing hearing where the defendant has called his own expert to testify and the Commonwealth must call its own expert to rebut the defense expert [are] clearly eligible to be considered costs of prosecution." *Id.* at 24.

Finally, in arguing that the standard for charging costs to a defendant should be whether the Commonwealth is able to prove that the expenses were necessary rather than "a blanket prohibition on the imposition of costs" in certain cases, the Commonwealth quotes extensively from the Superior Court's decision in *Commonwealth v. Hower*, 406 A.2d 754 (Pa. Super. 1979). *Id.* at 25. In quoting *Hower*, the Commonwealth acknowledges that requiring a defendant to pay the costs of prosecution may impose a burden, but contends such a burden is not constitutionally prohibited. The Commonwealth insists "'it cannot be maintained that by providing that a convicted defendant may be required to pay the costs of prosecution, the legislature intended to punish defendants who chose to go to trial rather than plead guilty.'" Brief of Commonwealth at 27, *quoting Hower*, 406 A.2d at 758. The Commonwealth concludes that barring the imposition of costs relating to a resentencing "is contrary to existing Pennsylvania Supreme Court and Superior Court precedent and a plain reading of [Section 1403]." *Id.*

In response, appellees[7] argue there is no statutory authority to impose costs associated with any sentencing or resentencing. Brief of Appellees at 6. Appellees claim Section 1403 "makes defendants liable for costs associated with investigating the crime, apprehending the defendant, prosecuting the defendant, and trying the case[,]" "[b]ut nothing in the statute requires that a convicted defendant pay for the costs associated

[7] Lehman and Davis filed a joint brief in these consolidated cases.

with sentencing." *Id.* at 7-8 (emphasis omitted). In support of their argument, appellees contend "prosecution is synonymous with **conviction**, and the prosecution 'ends with the conviction or acquittal of the defendant.'" *Id.* at 8 (emphasis in original), *quoting Moran*, 675 A.2d at 1272 n.11. Appellees additionally assert "[t]he General Assembly has separately enacted statutes that provide for certain costs after conviction . . . [such as] those associated with the collection of fines, costs, or restitution[,] . . . [but] Pennsylvania has no statute addressing costs of sentencing." *Id.* at 8-9 (emphasis omitted). Appellees posit the General Assembly "was not thinking about the costs associated with sentencing" because "there are generally no costs associated with sentencing" except in "these [new] juvenile lifer resentencing cases" and death penalty cases where the ability of the defendant to pay such costs is negligible. *Id.* at 9-10 (emphasis omitted). Appellees further contend the Commonwealth's reliance on *Davy* is misplaced as *Davy* did not involve Section 1403, but instead turned on statutes which have since been repealed along with the Uniform Extradition Act, which "**explicitly authorized** the county to pay costs associated with extradition." *Id.* at 12-13 (emphasis in original).

By contrast, appellees argue, Section 1403 "does not explicitly address costs associated with sentencing (or re-sentencing)." *Id.* at 13. Appellees' ultimate contention in this regard is Section 1403 "must be strictly construed in [their favor] because it is penal in nature [which] . . . leads only to the conclusion that a defendant is liable for costs up to and through conviction — not any additional costs that may arise at a separate sentencing phase." *Id.*, *citing Garzone*, 34 A.3d at 75 (version of Section 1403 applicable to counties of the first class, 16 P.S. §7708, is penal and subject to strict construction; narrower construction favoring defendants must prevail where statute "does not expressly identify" certain costs).

Appellees alternatively argue "[e]ven if there were statutory authority to shift the costs of sentencing onto defendants generally, compelling [them] to pay for the costs associated with a **resentencing** that occurs only because the defendant has been given an illegal sentence is itself unconstitutional." *Id.* at 14 (emphasis in original). Although appellees recognize the Commonwealth is not at fault for the change in constitutional law that necessitated their resentencing, they contend the Superior Court correctly held defendants should not be liable for the costs of resentencing that is required through no fault of their own. *Id.* at 14-15. Appellees assert every defendant has a fundamental right to a legal sentence under the Eighth Amendment and imposing the costs of resentencing would punish defendants for exercising their fundamental rights, which this Court has held unconstitutional. *Id.* at 15-16, *citing Commonwealth v. Bethea*, 379 A.2d 102, 104 (Pa. 1977). According to appellees, any restrictions on a fundamental right are subject to strict scrutiny, the government must prove a compelling state interest, and "[t]he United States Supreme Court has left no ambiguity that saving money does not constitute a compelling government interest[.]" *Id.* at 16-17, *citing Memorial Hospital v. Maricopa County*, 415 U.S. 250, 263 (1974) ("conservation of the taxpayers' purse is simply not a sufficient state interest"). Appellees further contend "it is certainly not a stretch to conclude that assessing thousands of dollars in costs against [them] would in fact constitute a form of punishment." *Id.* at 17; *see also id.* at 18, *citing Garzone*, 34 A.3d at 75 (costs are penal in nature). In any event, appellees note, the *Bethea* Court "did not strictly require that a defendant be punished — it was enough for him to be 'penalized' or have his constitutional rights 'burden[ed]' for there to be a constitutional violation." *Id.* at 17-18, *quoting Bethea*, 379 A.2d at 104-05.

Appellees further argue the imposition of costs incurred to correct an illegal sentence violates due process because it was not readily foreseeable at the time they

committed the offenses that they would have to pay such costs. *Id*. at 20. Appellees posit the *Coder* Court established this "readily foreseeable" standard by allowing the court to charge the defendant with the costs associated with a change of venue, where the change was "necessitated by the defendant's actions" and the consequences of "added costs were 'readily foreseeable' to the defendant when he committed the offense." *Id*. at 22, *quoting Coder*, 415 A.2d at 409. In making this argument, appellees look to principles of tort law in which "[i]ndividuals are not held responsible for events which are not reasonably anticipated or [ ] which are particularly unlikely." *Id*. at 23, *citing Gibbs v. Ernst*, 647 A.2d 882, 892 (Pa. 1994). Accordingly, appellees claim "neither [of them] could have anticipated that they would receive an illegal sentence that would necessitate a resentencing to ensure that they are not unlawfully incarcerated." *Id*., *citing Commonwealth v. William Davis*, 760 A.2d 406, 412 (Pa. Super. 2000) (change in law after decades of contradictory practice not reasonably foreseeable).

Appellees additionally contend that "reasonable foreseeability is a fundamental question of Due Process and what constitutes adequate notice to a defendant" and in this case, that question "dovetails with the judicial retroactivity doctrine[ ] because the *Montgomery* decision had the effect of applying [Section] 1403 in a way that would not have otherwise occurred[.]" *Id*. at 24, *citing Buck v. Beard*, 879 A.2d 157, 160 (Pa. 2005) (inmates must be on notice of future deprivation of funds). As Section 1403 does not give "notice to defendants that they will be responsible for the costs of resentencing their illegal sentence[,]" appellees claim imposing those costs violates their constitutional right to due process. *Id*. at 24-25. The ultimate contention of appellees is that to "be responsible for the costs associated with their resentencing, they would have had to be on notice that: 1) they would be resentenced at a later date; 2) there would be costs associated with this

resentencing; and 3) they would have to pay those costs." *Id*. at 26. As these conditions did not exist, appellees argue the Superior Court should be affirmed. *Id*.[8]

III. Discussion

The Commonwealth presented a single issue in each of these appeals, but we are potentially confronted with two questions. First, whether trial courts may impose the costs of sentencing in the first instance upon criminal defendants generally, and, if so, whether the costs of resentencing may be imposed upon these appellees whose original sentences were vacated pursuant to *Miller* and *Montgomery*.

First, we recognize the resentencing court in Lehman's case did not make clear whether it imposed costs pursuant to Section 1403, *see supra* at n.3, or some other statutory or common law authority. However, the Commonwealth, as appellant here, has invoked only Section 1403 as a legal basis for the imposition of costs of resentencing. As we have stated, Section 1403 authorizes the Commonwealth to recover, upon approval by the court, "all necessary expenses incurred" in investigating, apprehending and prosecuting a criminal defendant from the county's general funds. 16 P.S. §1403. Section 1403 also allows, "[i]n any case where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney in connection with such prosecution shall be considered a part of the costs of the case[.]" *Id.* We consider whether the costs incurred by the district attorney in **resentencing** appellees,

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[8] The Juvenile Law Center and American Civil Liberties Union filed a joint *amicus curiae* brief on behalf of appellees in which they detail why appellees do not have the financial resources to pay for the costs of resentencing. Such reasons include the fact they were sentenced to life without parole before acquiring any employment history or financial resources and prison offers limited opportunities to gain the education, job skills, or wages necessary to pay the resentencing costs. *Amici* further argue that being unable to pay their debts will undermine appellees' ability to reintegrate back into their communities upon release.

which was made necessary by subsequent case law holding their prior sentence unconstitutional, were properly imposed pursuant to this provision.

A. Sentencing Generally

Our analysis is guided by the Statutory Construction Act, 1 Pa.C.S. §§1501-1991, which "directs courts to ascertain and effectuate the intent of the General Assembly." *A.S. v. Pa. State Police*, 143 A.3d 896, 903 (Pa. 2016), *citing* 1 Pa.C.S. §1921(a). The plain language of a statute generally provides the best indication of legislative intent. *Id*. In this regard, "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. §1921(b). Appellees focus their argument upon the definition of the word "prosecution" and their contention that "prosecution is synonymous with conviction, and the prosecution 'ends with the conviction or acquittal of the defendant.'" Brief of Appellees at 8 (emphasis omitted), *quoting Moran*, 675 A.2d at 1272 n.11. Appellees take the position that the statute does not allow the imposition of costs of sentencing, let alone resentencing, upon them, because sentencing takes place after the "prosecution" is complete, that is, upon conviction. *Id*.

However, appellees' reading ignores the fact that Section 1403 also authorizes charging defendants with the "expenses of the district attorney **in connection with such prosecution**." 16 P.S. §1403 (emphasis added). This language is unambiguous, *see State Farm Fire and Cas. Co. v. MacDonald*, 850 A.2d 707, 711 (Pa. Super. 2004), and is broader in scope than if the statute used only the word "prosecution." *See Commonwealth. v. Ryan*, 400 A.2d 1264, 1267 (Pa. 1979) (finding "in connection with a criminal proceeding" broader in scope than "criminal proceeding"). The plain meaning of the term "connection" includes a "contextual relation or association." *Connection*, Merriam-Webster Online Dictionary (2020), https://www.merriam-

webster.com/dictionary/connection (last visited Dec. 16, 2020). Considered in this light, the process of sentencing a defendant who was convicted after a successful prosecution is clearly "related to or associated with" the broader context of that prosecution. We easily conclude Section 1403 authorizes trial courts to impose costs associated with sentencing upon criminal defendants generally, because those expenses were incurred "in connection with such prosecution."

B. Resentencing of Juvenile Lifers Pursuant to *Miller* and *Montgomery*

We now consider whether Section 1403 also authorizes resentencing courts to impose the costs of resentencing upon defendants such as the appellees here, where resentencing was necessitated because the sentence imposed after conviction was later determined to be unconstitutional. The Statutory Construction Act once again guides this inquiry. Although we are required to adhere to the plain words of the statute when they "are clear and free from all ambiguity," *see* 1 Pa.C.S. §1921(b), we may use our rules of statutory construction to ascertain the intent of the General Assembly "[w]hen the words of a statute are not explicit[.]" 1 Pa.C.S. §1921(c). A statutory term "is ambiguous when there are at least two reasonable interpretations of the text." *A.S.*, 143 A.3d at 905-06.

Section 1403 directs that "[a]ll necessary expenses incurred by the district attorney . . . in the investigation of crime and the apprehension and prosecution of persons charged . . . shall be paid by the county from the general funds of the county" once they are approved "by the district attorney and the court[.]" 16 P.S. §1403. As we have observed, however, the statute also allows the court to impose "the costs of prosecution and trial," including "the expenses of the district attorney **in connection with** such prosecution," upon convicted criminal defendants. *Id.* (emphasis added). Reading these clauses together, we find the "necessary expenses" chargeable by the district attorney to the

county and the "costs of prosecution" including costs incurred "in connection with such prosecution" are synonymous for purposes of determining what costs are chargeable to criminal defendants pursuant to Section 1403. *See* 1 Pa.C.S. §1932 (statutes or parts of statutes relating to same things must be construed together). We reach this conclusion by recognizing the "necessary expenses" to be paid by the county — the cost of "the investigation of crime and the apprehension and prosecution of persons charged" — must be connected to some prosecution. Additionally, Section 1403 authorizes the court to impose upon a convicted criminal defendant all "necessary expenses" of a district attorney so long as those "necessary expenses" were incurred "in connection with" that defendant's prosecution. 16 P.S. §1403.

The term "necessary" is defined as "absolutely needed" or "of an inevitable nature[.]" *Necessary*, Merriam-Webster Online Dictionary (2020), https://www.merriamwebster.com/dictionary/necessary (last visited Dec. 16, 2020). These competing definitions dovetail with the arguments of the parties: the Commonwealth argues the imposition of resentencing costs were authorized under Section 1403 because the expert testimony was necessary or "absolutely needed" to finalize its prosecution of appellees and appellees contend the imposition of resentencing costs was not authorized under Section 1403 because they were not "reasonably foreseeable" or, in other words, they were not "of an inevitable nature." We find both of these interpretations of the term "necessary" to be reasonable.

However, this ambiguity is easily resolved by reference to our rules of statutory construction, and more specifically, when we consider whether Section 1403 is penal in nature. Section 1928(b)(1) of the Statutory Construction Act explicitly states penal provisions "shall be strictly construed[.]" 1 Pa.C.S. §1928(b)(1). In addition to being strictly construed, "such language should be interpreted in the light most favorable to the

accused[.]" *Commonwealth v. Huggins*, 836 A.2d 862, 868 n.5 (Pa. 2003), *quoting Commonwealth v. Booth*, 766 A.2d 843, 846 (Pa. 2001). Furthermore, we have previously held Section 7708 — a statute that is strikingly similar in text to Section 1403[9] and serves the same function as Section 1403 with respect to counties of the first class — "is penal in nature and therefore subject to strict construction in favor of [criminal defendants]." *Garzone*, 34 A.3d at 75. Given our determination in *Garzone*, we have little difficulty concluding Section 1403 is also a penal statute. Therefore, as directed by the Statutory Construction Act, we must strictly construe Section 1403 in the light most favorable to appellees. *See* 1 Pa.C.S. §1928(b)(1) (penal statutes "shall be strictly construed"); *Huggins*, 836 A.2d at 868 n.5 (penal statutes "interpreted in the light most favorable to the accused"). As interpreting the term "necessary" as meaning "of an inevitable nature" is more favorable to appellees, we are compelled to use such interpretation.

We now come to the crux of the present appeal. Appellees were subject to resentencing only because their mandatory sentences of life without parole were vacated upon the subsequent judicial determination that the statute pursuant to which they received their sentences was unconstitutional, *i.e.*, in the aftermath of *Miller* and

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[9] Section 7708 provides:

> All necessary expenses incurred by the district attorneys of any county of this Commonwealth or his assistants, or any officer directed by him, in the investigation of crime and the apprehension and prosecution of persons charged with or suspected of the commission of crime, shall be paid by the respective counties, out of moneys in the county treasury, upon the approval of the bill of expense by the district attorney and the court of their respective counties. And in cases where a defendant is convicted and sentenced to pay the costs of prosecution and trial, the expenses of the district attorney, in connection with such prosecution, shall be considered a part of the costs of the cases and be paid by the defendant.

16 P.S. §7708

Montgomery. From the perspective of the courts imposing sentence on appellees in 1982 and 1990 respectively, as well as appellees themselves, their sentences were the expected consequence once the prosecutions resulted in convictions; the charging of costs "in connection with such" successful prosecution to appellees was thus proper.

We have previously recognized that chargeable costs include those that were effectively "caused" by the defendant's own conduct. In *Coder*, we determined the sentencing court did not violate a convicted defendant's constitutional rights by charging him for the costs of a change of venue necessitated by news media coverage of the crime in the original venue. 415 A.2d at 409. The *Coder* Court stated:

> Obviously, when a person commits a crime which stirs wide community interest, either because the crime is heinous or its perpetrator is a person invested with a public trust, publicity will follow inevitably. The ensuing publicity should be readily foreseeable by the perpetrator of the crime, so that it is neither arbitrary, capricious nor unreasonable to hold him responsible for the dysfunction his conduct caused the criminal justice system. If he is innocent of the charges, he will bear none of these costs.

Id. Likewise, in *Davy*, where we held a criminal defendant was liable for extradition costs associated with a probation violation hearing and resentencing, 317 A.2d at 49, resentencing was required because Davy violated his conditions of probation. More to the point, the costs associated with Davy's resentencing proceedings were as "connected with" the original prosecution (and Davy's own actions) as were the costs of the original sentencing following conviction.

In this case, the original sentencing hearings for appellees were indeed necessitated by their actions of committing first-degree murder that resulted in their convictions, and those expenses would have been properly chargeable to them under Section 1403. In direct contrast, however, their resentencing hearings were not necessitated by appellees' own actions, but by a change in the law: the resentencing

was necessary only because the original proceedings took place pursuant to unconstitutional legislation. *Davy* and *Coder* thus do not control the present appeals.

IV. Conclusion

Based on the foregoing, we conclude the resentencing proceedings made necessary by the decisions in *Miller* and *Montgomery*, and the costs associated with those proceedings, were not "connected" with the original prosecution and sentencing of appellees for purposes of charging them with those costs under Section 1403. Accordingly, we affirm the orders of the Superior Court.

Chief Justice Saylor and Justices Baer, Todd, Donohue, Wecht and Mundy join.