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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. AURELIO ESTRADA DIAZ, Defendant and Appellant.	A127269 (Contra Costa County Super. Ct. No. 05-051350-7)

INTRODUCTION

A jury convicted defendant Aurelio Estrada Diaz of first degree murder in the stabbing death of his employer and landlord, J. Justo Ramirez Ibarra (Justo Ramirez) and subsequently found him sane at the time of the killing. Defendant was arrested and *Mirandized*,[1] in Spanish, shortly after the stabbing. He admitted to police that he was angry with Mr. Ramirez because he was being mistreated by Ramirez. His defense at trial was that he stabbed Ramirez in response to the voices he heard coming from the television and in his head. On appeal, defendant argues that his statement to police should have been suppressed because the interrogating police officer mistranslated one of the *Miranda* warnings. He also argues that, given the expert testimony presented, no rational jury could have found that he was sane at the time of the crime. Finally, he contends that the record does not contain substantial evidence of his ability to pay attorney fees or booking fees.

[1] *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

We reject defendant's first two arguments because we find substantial evidence to support the court's finding that defendant was adequately advised of his *Miranda* rights and knowingly and intelligently waived them, and the jury's finding that defendant was sane at the time of the crime. We conclude the trial court correctly referred defendant to the Department of Revenue Collection for a determination of his ability to pay attorney fees, but find that the minute order and the abstract of judgment do not accurately reflect that referral. We also find defendant forfeited his appellate challenge to the booking fee. Therefore, we will modify the judgment by directing the trial court to correct the minute order and abstract of judgment and, as modified, affirm.

STATEMENT OF THE CASE

By information, defendant Diaz was charged with murdering Justo Ramirez with a knife on July 12, 2004. (Pen. Code, §§ 187, 12022, subd. (b)(1).)[2] Defendant pleaded not guilty by reason of insanity.

Between March 2007 and December 2008, defendant was incompetent to stand trial. In August of 2009, a jury found defendant guilty of first degree murder, and the weapon allegation true. In a subsequent sanity trial, the jury found defendant sane. The court sentenced defendant to prison for a term of 26 years to life. Among other fines and fees, defendant was ordered to pay $500 in attorney fees and $340 in booking fees. Defendant timely appeals.

STATEMENT OF FACTS

On July 12, 2004, defendant fatally stabbed Justo Ramirez once in the chest. Mr. Ramirez bled to death as a result of a stab wound that went completely through his heart.

Defendant was born in Mexico and had a sixth grade education.

Justo Ramirez owned a restaurant in Concord and an apartment building across the street from it. Defendant started working for Ramirez as a busboy and food preparer at the restaurant in February 2004. Defendant also worked for Ramirez as a general handyman at the apartment complex. According to defendant, Ramirez paid defendant

[2] Unless otherwise indicated, all statutory references are to the Penal Code.

$100 a month for four hours of work a day. He also let defendant live in a vacant shed or apartment at the complex and let him eat at the restaurant.

According to Rina Abrego, Mr. Ramirez's fiancée, who also worked in the restaurant, defendant and Ramirez came into the restaurant together on July 12 sometime in the afternoon. Defendant asked Ramirez for $20 to buy cigarettes. Ramirez refused, saying he had already given defendant money and that cigarettes "did not cost twenty dollars but five." Defendant got upset and said, "[Y]ou're going to see what happens, cabron." Ramirez told defendant to go.

Defendant returned to the restaurant a couple of hours later. He had a strange look on his face, like he was drunk. Abrego asked Ramirez why defendant had that look, and Ramirez replied that defendant was still upset about the $20. Defendant started to do his job, and later ate a burrito.

The restaurant's closing time was 8:45 p.m., and Abrego was counting the money in the register when she turned around and saw defendant near the dishwasher with a knife in his hands; he was touching the edge. She thought nothing of it and went back to counting the money. She then heard moaning, a deep gasp, and the comment, "Oh, you fucked me up." Turning, she saw Ramirez with a knife in him and defendant running out the door. Ramirez stood up, pulled the knife from his chest and fell face forward. Abrego called 911. A man who was walking down the street that night told police he saw defendant "running hard" away from the restaurant.

Police were dispatched to the restaurant in response to a 911 call. Paramedics arrived shortly after the police and pronounced Ramirez dead. Abrego gave police a description of defendant and his clothing. Defendant was detained a couple of miles away from the restaurant at approximately 10:25 p.m. Abrego was brought to the location and identified defendant as Ramirez's killer. Defendant was transported to the jail where he was interviewed by Concord Police Officer Perez, in Spanish, at 1:00 a.m. on July 13, 2004. Officer Warnock was also present during the interview, but did not speak Spanish.

Defendant's Confession

Defendant was *Mirandized* and questioned by Perez.[3] He told Officer Perez: "I gave it to him with a knife in the heart." He got the knife from the restaurant and plunged it into Ramirez's body. Defendant said he had known Ramirez for four, five or six months. He hit the victim with the knife. Ramirez was threatening, threatening and threatening him, until defendant could not endure it anymore. Ramirez threatened defendant with death; in front of other people he would say that he was going to beat defendant for no reason. He also threatened to break defendant on the street. Defendant thought about killing Ramirez for two days, because Ramirez was abusing and threatening him. After the stabbing**,** he ran away, and then walked.

Defendant admitted using drugs, and said he had last used "crystal" three days earlier. He said he had drunk one beer that day. He had asked Ramirez for $20 to buy cigarettes, but Ramirez would only give him $5. He really wanted the money to buy drugs.

Asked about his state of mind, defendant answered: "My mind right now is perfectly fine." He said he was not crazy, he was not hearing voices, he was normal.

Defendant's Testimony

About two months before he killed Ramirez, defendant's television came alive and he was suddenly able to communicate with the people in the television. The people in the television knew his thoughts and feelings. He was also able to communicate with Osama Bin Laden and President Obama and "with anybody in the entire world. It's like a very large worldwide organization that exists." According to defendant, Ramirez could also communicate with the television, and could read other people's thoughts and feelings.

About two weeks before the killing, Ramirez threatened that he was going to have someone kill defendant on the street. On July 12, defendant asked Ramirez for $20. Ramirez refused to give it to him, but offered him $5 instead, which defendant refused.

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[3] A video recording of the interview was played for the jury. The jury was also given a transcript that translated the taped interview into English.

They did not argue about it. Defendant went back to his apartment and drank a large beer.

Defendant returned to the restaurant and did his usual jobs, then ate a burrito while watching television. The people in the television pointed a gun at him and Ramirez, and said that if defendant did not kill Ramirez, they would kill defendant. The people in the television were alive and part of a worldwide organization. After washing his plate, defendant took a knife from the prep station, walked over to Ramirez, and stabbed him. He stabbed Ramirez because the people in the television ordered him to do so, and he feared that if he did not listen to them, they would kill him. He knew he was going to kill Ramirez when he grabbed the knife, and he intended to kill Ramirez.

Defendant did not think that his own life was in immediate danger. He was not angry at Ramirez and did not have a grudge against him. He admitted being humiliated by Ramirez's refusal to give him $20, but that was not why he killed Ramirez. He denied telling anyone that he thought about killing Ramirez for two days, and he asserted that was not true. He admitted that he felt pressured by Ramirez over money issues. Ramirez paid him only $100 a month, less than minimum wage, forced him to send that amount of money back to Mexico, and gave him a broken down apartment to live in. Defendant felt trapped, but had no other options.

Defendant testified that he began using methamphetamine three or four months before the stabbing and used it on the day of the killing. However, toxicology test results showed that neither he nor Ramirez had any measurable amount of controlled substances in their systems when Ramirez was killed.

Defendant admitted he never told police, or Dr. Ricardo Winkel, with whom he met after his arrest, that the television told him to stab Ramirez. He admitted telling Dr. Gretchen White in 2006 Ramirez was pressuring him, making fun of him, and treating him like garbage.

Several people who had contact with defendant in the months before the killing, or the day after the killing, testified defendant did not seem crazy or mentally ill. However,

Abrego told police that three days before the stabbing defendant had a strange look in his eyes, "like he was on drugs," "just totally out of it" or "gone from his mind."

Forensic psychologist Dr. Ricardo Winkel was hired by the defense to evaluate defendant, and he interviewed defendant on August 11 and 14, 2004 at the Martinez Detention Facility. Dr. Winkel reviewed police reports, toxicology reports and the charges before interviewing defendant in Spanish and administering the Spanish versions of several psychological tests. In his opinion, defendant was suffering from a psychotic disorder with paranoid features, and possible neurocognitive impairment due to brain damage or mental retardation. Defendant told Dr. Winkel that he stabbed Ramirez because Ramirez threatened to kill him and his family, and was mistreating, taunting and mocking him. Defendant did not tell Dr. Winkel in 2004 about his ability to communicate with the television, or that the television people told him to kill Ramirez or else Ramirez would kill him. Dr. Winkel opined that defendant had an entrenched belief that Ramirez intended to harm him and kill his family, and that the belief was delusional. Dr. Winkel did not find any indications that defendant was malingering.

Dr. Winkel interviewed defendant again on March 14, 2006 to evaluate his sanity. The same signs of psychosis defendant exhibited in 2004 were present in 2006. This time, defendant seemed to be responding to voices or thoughts although he was less guarded than in 2004. Dr. Winkel reaffirmed his prior diagnosis of a paranoid psychotic disorder.

Sanity Trial

The defense called two doctors. Dr. Daniel Alterman, a clinical psychologist, conducted numerous tests on defendant and interviewed him in Spanish on April 16, May 2, and July 6, 2009. Dr. Alterman does not do insanity evaluations pursuant to section 1026. He was retained to evaluate defendant and "rule out or rule in" mental retardation or neurocognitive impairment due to brain damage. He concluded that defendant was not mentally retarded and did not suffer from brain damage or dysfunction. However, defendant seemed to be in a delusional state in that he held deeply entrenched beliefs that were irrational. For example, his belief that President Obama and other important and

powerful people were talking to him was delusional. However, Dr. Alterman found no evidence of hallucinations. He found it clinically relevant that, according to defendant's father, defendant developed an obsession with religion after he finished the Army, because his delusions had a religious element to them. Dr. Alterman did not think defendant was malingering.

Dr. Winkel did an insanity evaluation of defendant. Dr. Winkel tested defendant in Spanish and concluded that defendant suffered from paranoid schizophrenia in 2007. Applying the ALI standard of insanity, rather than California's M'Naghten standard, Dr. Winkel concluded that defendant was not aware of the nature and quality of his act when he killed Ramirez, because he was acting under a delusion that his family was targeted for murder and he was in a dissociative state—a trance or daze—during the stabbing.

Forensic psychologist Gretchen White, who was appointed by the court in 2006 to evaluate defendant's sanity, testified for the prosecution. She interviewed defendant on August 15, 2006 at the Martinez Jail through an interpreter. Within minutes of meeting Dr. White, defendant told her about the voices in his head that pressured him to do things, and about his communications with the television at the start of the interview. In Dr. White's experience, it is unusual for people with persecutory delusions to talk about them spontaneously. When Dr. White asked defendant why he killed Ramirez, defendant said that nobody liked him, and Ramirez's wife wanted defendant to die. He began having psychological problems and using methamphetamines about two months before the killing. He claimed that messages from the television pressured him, and that everyone in the apartment, including Ramirez, knew what he was thinking. Ramirez told him that he would be killed on the street. The two men had not been getting along, and Ramirez was "pressuring me, making fun of me, treating me like garbage." Defendant told Dr. White that he was angry with Ramirez before the stabbing, but his "intention was not to do what I did. If the people from the T.V. had not told me to do this, I would have just left and gone to work."

Dr. White gave defendant several tests to determine whether he was malingering. In the end, she "really wasn't sure . . . whether [defendant] was malingering or not." She

was also unable to make a determination whether defendant was insane at the time of the stabbing, two years earlier. She did believe defendant could generally tell right from wrong. She did not know if she disagreed with the evaluations done by Drs. Winkel and Alterman, and stated that whether one agreed with their evaluations depended on whether one believed defendant's delusions were genuine or fabricated. She thought it was possible to mimic insanity, but not very well or over long periods of time.

DISCUSSION

I. The Miranda Warning Given To Defendant Was Sufficient To Apprise Him That He Was Entitled To Appointed Counsel At No Cost To Himself.

Defendant argues that his statement to the police should have been suppressed because Concord Police Officer Phillip Perez mistranslated the *Miranda* advisements into Spanish in such a way that they failed to convey to defendant that he had a right to have an attorney present prior to and during any questioning, and that if he could not afford to hire an attorney, one would be appointed for him at no cost to himself. Specifically, defendant challenges Officer Perez's use of the words "te apunta" for the English verb "to appoint."

Prior to questioning defendant, Officer Perez advised defendant of his rights, as follows:[4]

[OFC]: "[A]ntes de hablar contigo te tengo que explicar tus derechos porque tienes derechos, okay[?] ([B]efore speaking with you I have to explain your rights, because you have rights, Okay[?])

[DEF]: Umm hhhmmm[.]

[OFC]: "Y esos derechos son, que tienes el derecho de permanecer callado, entiendes ese derecho? (And those rights are, you have the right to remain silent, do you understand that right?)

[DEF]: Ummhhh[.]

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[4] Vallejo Police Officer Jose Villalobos translated the videotape of defendant's statement to Officer Perez, and a transcript in both Spanish and English was prepared by him and introduced into evidence at the suppression hearing.

[OFC]: Okay, no tienes que dicirme ninguna cosa si no quieres, pero si usted renuncia ese derecho podemos usar cualquier cosa que usted nos dice contra usted en una corte de leyes. En[tien]des eso? (Okay, you don't have to tell me anything you don't want to, but if you waive that right, we can use whatever thing you tell us against you in a court of law[.] Do you understand this?)

[DEF]: "Si . . . Umhh[.] (Yes[.])

[OFC]: "Tienes el derecho de hablar con un abogado durante las preguntas, (You have the right to speak with an attorney during questioning,)

[DEF]: "Ummhhh[.]

[OFC]: "Oh de tener un abogado presente durante las preguntas, si quieres uno. Si no tienes dinero para pagar ha un abogado, la corte *te apunta* uno gratis, si quieres uno. (Or to have an[] attorney present during questioning, if you would like one. If you have no money to pay for an attorney, the court *will appoint* one free, if you want one.)

[DEF]: "Uhhmmm[.]

[OFC]: "Entienden cada? (Understand each?)

[DEF]: "Si Entiendo, (Yes I understand,)

[OFC]: "De estos derechos que acabo de esplicar. (Of these rights that I have just explained[.])

[DEF]: "Uuhmmm, Si[.]" (Umm hmm, Yes[.]) (Italics added.)

Officer Perez, a life-long Spanish speaker, testified at the suppression hearing that he had used the Spanish verb "apuntar" over the years as slang for the English verb, "to appoint," in order to inform suspects that they had the right to counsel, and that the court would appoint one free of charge. In his experience, sometimes people did not understand the formal Spanish words "nombrar" or "delegar" to mean "appoint" in English and, therefore, he used the slang word. Officer Perez firmly believed that defendant "knew what I was saying . . . and understood every word that I used."

Officer Jose Villalobos, also a life–long Spanish speaker, and a veteran police officer, testified that "la corte te apunta" is slang or informal Spanish for "the court will appoint one free," to anyone who is not really educated in proper Spanish. Literally

translated into university or proper Spanish, "apunta" can mean jot one down, to point, as in point a weapon, aim, or put up a stake, as in make a bet or put up as collateral.

Inspector Jerry Sanchez, who is also a veteran law enforcement officer and life-long Spanish speaker and translator, also understood and had used the slang phrase "te apunta" to mean "appoint." He learned that meaning earlier in his career from the people he came across who were buying and selling drugs, "[a]lso in different cases that their education [was] maybe six[th] or seventh grade, and you would have to learn the Spanish. It changes. It changes with the times so you have to learn the street vernacular." He had also heard other officers use the word "apuntar" to mean "appoint." More recently, he had begun to use the verbs "nombrar" and "delegar" to mean appoint.

According to defense expert Haydee Claus, a certified Spanish court interpreter, both Perez and Villalobos spoke Spanish poorly. In her opinion, there is no slang meaning for the verb "apuntar." It does not mean "to appoint." It means "to jot down" or "to point one at you" and "[t]he term used by the officer is an incorrect word, but it's not a slang word." In her opinion, a monolingual Spanish speaker—as opposed to a bilingual Spanish speaker—would not have understood "apuntar" to mean "appoint." The proper way to say "appoint" in Spanish is to use the verb "nombrar." She agreed, however, that "context is everything in translation."

At the suppression hearing, the trial court accepted the officers as fluent Spanish speakers and rejected Ms. Claus's testimony that "te apunta" is not slang for "to appoint," expressly finding that the three officers' testimony on this point was more persuasive. The court also found that the police were dealing with someone who was "not very well educated" and that "the best language to use is that which communicates the defendant's rights, and that was what was done here." The court stated it was "satisfied that . . . this was what was meant [and] this was what the defendant understood, and when he didn't understand something, he questioned the officer. He didn't question him at all about this. And given the context of the . . . interview, it is clear that he did understand, and [it] is clear that he did waive his rights, and it's also clear that . . . this is another way to say appoint. [A]nd I make credibility findings with regard to the officers that their testimony

is . . . credible and it's accurate, and the motion to suppress the confession is, therefore, denied." As we explain below, the court's factual findings are amply supported by substantial evidence, and we independently conclude that *Miranda* was not violated.

" 'In considering a claim that a statement or confession is inadmissible because it was obtained in violation of defendant's rights under *Miranda v. Arizona, supra*, 384 U.S. 436, we accept the trial court's resolution of disputed facts and inferences, and its evaluation of credibility, if supported by substantial evidence. [Citation.] Although we independently determine whether, from the undisputed facts and those properly found by the trial court, the challenged statements were illegally obtained [citation], we " 'give great weight to the considered conclusions' of a lower court that has previously reviewed the same evidence." . . .' " (*People v. Whitson* (1998) 17 Cal.4th 229, 248.)

Relying on Ms. Claus's expert testimony, defendant argues that "[t]he Spanglish advisement used here did not effectively advise Mr. Diaz that the court would appoint a lawyer for him if he could not afford one." However, the question presented here is whether the entire record before the trial court established that defendant's waiver of his *Miranda* rights was knowing and intelligent, given Officer Perez's use of the slang—or wrong—Spanish word for "appoint." "To establish a valid waiver of *Miranda* rights, the prosecution must show by a preponderance of the evidence that the waiver was knowing, intelligent, and voluntary. [Citations.] [¶] Determining the validity of a *Miranda* rights waiver requires 'an evaluation of the defendant's state of mind' [citation] and 'inquiry into all the circumstances surrounding the interrogation' [citation].' . . ." (*People v. Nelson* (2012) 53 Cal.4th 367, 374–375.) "Although language barriers may inhibit a suspect's ability to knowingly and intelligently waive his *Miranda* rights, when a defendant is advised of his rights in his native tongue and claims to understand such rights, a valid waiver may be effectuated." (*U.S. v. Hernandez* (10th Cir. 1990) 913 F.2d 1506, 1510.) "[The] translation of a suspect's *Miranda* rights need not be perfect if the defendant understands that he or she need not speak to the police, that any statement made may be used against him or her, that he or she has a right to an attorney, and that an attorney will be appointed if he or she cannot afford one." (*U.S. v. Perez-Lopez* (9th Cir.

2003) 348 F.3d 839, 848–849, italics omitted.) No specific wording need be used to give the *Miranda* warnings, so long as the warning reasonably conveys to the suspect his or her *Miranda* rights. (*California v. Prysock* (1981) 453 U.S. 355, 359; *Duckworth v. Eagan* (1989) 492 U.S. 195, 202.)

Applying these principles to the record before us, we conclude that the trial court did not err in determining that the totality of the circumstances established by a preponderance that defendant's waiver was valid. First, the trial court made factual findings based on its evaluation of the respective witnesses' credibility that the verb "apuntar" does mean "to appoint" in informal Spanish, and we are not at liberty to disregard that finding. Moreover, the record before the court reflected that defendant repeatedly said he understood, and that he waived his rights. It also established that when defendant did not understand what the officer was trying to explain to him, defendant would ask for clarification.

The transcript of the interview shows that defendant admitted being in Michigan and California for 10 to 12 months, and he also admitted being detained for minor offenses (drinking or urinating) in the United States. It also shows that, despite the brevity of defendant's admitted residency in the United States, he had learned to use some "Spanglish" slang. For example, he told Officer Perez "fui al *restrauran,*" and "yo estaba alli de de [sic] *dish washier*," and "[y]a no estabamos bien con . . . los *threatos* y amenazas."[5] Later in the interview, defendant used the English words "yeah" and "allright" in response to two of the officer's questions. These instances of slang usage undermined the implicit assumption made by the defense expert that defendant was strictly a monolingual Spanish speaker who would not understand slang usage. In short, when viewed in the context of the entire interrogation, even if Officer Perez's translation of the *Miranda* warnings into Spanish was imperfect, it adequately conveyed to

[5] According to Merriam-Webster's online Spanish-to-English dictionary, "*restrauran*" is not a Spanish word for restaurant, and "threatos" is not a Spanish word for "threat." <http://www.merriam-webster.com/help/support/span_30.htm> [as of Aug. 1, 2012].

defendant that if he wanted an attorney to assist him during the interrogation, and he could not afford to hire one, the court would appoint an attorney to assist him free of charge.

Defendant argues that *People v. Diaz* (1983) 140 Cal.App.3d 813 is directly on point in his favor, but in our view, *Diaz* is distinguishable and does not compel reversal. In that case, the *Miranda* warning given the defendant failed to convey that the court would "get" defendant ("conseguir") an attorney *at no cost to himself.* Here, the idea of "free" legal services provided by the court was explicitly stated: "Tienes el derecho de hablar con un abogado durante las preguntas, (You have the right to speak with an attorney during questioning) . . . Oh de tener un abogado presente durante las preguntas, si quieres uno. *Si no tienes dinero para pagar ha un abogado*, la corte *te apunta* uno *gratis*, *si quieres uno*." (Or to have an attorney present during questioning, if you would like one. If you have *no money to pay for an attorney*, the *court* will appoint one *free, if you want one*.) (Italics added.) Thus, even if "te apunta" imperfectly conveyed the idea of the court getting an attorney for the defendant, in the context of the right to have an attorney during questioning, the inability of defendant to pay for one, and the idea that the court would do something to get him a free attorney if he wanted one, sufficiently conveyed the concept of appointment. No error appears.

II. Substantial Evidence Supports The Jury's Sanity Verdict

Citing *People v. Duckett* (1984) 162 Cal.App.3d 1115 (*Duckett*), defendant contends that the jury's finding of sanity should be reversed because "the evidence that the defendant was insane was of such weight and character that the factfinder could not reject it." (See *Id.* at p. 1115.) In *Duckett*, a divided court held that the evidence of Duckett's insanity "[was] of such weight and character that a jury could not reasonably reject it" since all three testifying doctors opined that, as a result of his schizophrenia, defendant Duckett "could neither substantially appreciate the criminality of his conduct nor conform his conduct to the requirements of the law," and there were "no circumstances present that would have permitted the jury to reject the expert opinion." (*Id.* at pp. 1119, 1123.) As we explain below, we do not view the expert opinions

proffered here as unanimous, and there were circumstances present which permitted the jury to infer that defendant was sane at the time of the stabbing.

Under section 25, the defendant has the burden of proving by a preponderance that he was insane at the time of the killing. (§ 25, subd. (b).)[6] "If the mental illness is manifested in delusions which render the individual incapable either of knowing the nature and character of his act, or of understanding that it is wrong, he is legally insane under the California formulation of the *M'Naghten* test." (*People v. Skinner* (1985) 39 Cal.3d 765, 782 (*Skinner*).) "[A] defendant who is incapable of understanding that his act is morally wrong is not criminally liable merely because he knows the act is unlawful. [Citations.]" (*Id.* at p. 783.) However, "the test of sanity under the *M'Naghten* formulation is a legal test that does not encompass all of the mental conditions which the medical and psychiatric community recognize as mental disorders." (*Id.* at p. 783, fn. 15.)

Because the defendant has the burden of proof in the sanity phase, "if neither party presents credible evidence on that issue the jury must find him sane. Thus the question on appeal is not so much the substantiality of the evidence favoring the jury's finding as whether the evidence contrary to that finding is of such weight and character that the jury could not reasonably reject it." (*People v. Drew* (1978) 22 Cal.3d 333, 351, disapproved on other grounds in *Skinner, supra*, 39 Cal.3d 765.)

In this case, it is true that the experts agreed that defendant was mentally ill. However, they did not unanimously agree that defendant was "insane" within the meaning of California's *M'Naghten* test. Only the defense expert, Dr. Winkel, opined

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[6] Section 25 provides: "In any criminal proceeding . . . in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." (§ 25, subd. (b).) "Despite the use of the conjunctive 'and' instead of *McNaghten's* disjunctive 'or,' [the California Supreme Court] has interpreted the statute as recognizing two distinct and independent bases on which a verdict of not guilty by reason of insanity might be returned. [Citations.]" (*People v. Lawley* (2002) 27 Cal.4th 102, 170.)

that defendant was not aware of the nature and quality of his act when he killed Ramirez, because he was acting under a delusion that his family was targeted for murder and he was in a dissociative state—a trance or daze—during the stabbing. Dr. Alterman did not do sanity evaluations, and Dr. White could not decide. And, she cautioned that whether one agreed with the evaluations by Drs. Winkel and Alterman depended on whether one believed defendant's delusions were genuine or fabricated.

Here, there was ample evidence presented from which the jury could have inferred that even if defendant was paranoid and delusional that Ramirez had plans to have someone kill him, he, nevertheless, did not act out of delusional motives. Rather, he felt angry about Ramirez' treatment of him, premeditated the killing for two days, and then acted deliberately, knowing what he was doing when he stabbed Ramirez in the heart. "[I]f there is substantial evidence from which the jury could infer that the defendant was legally sane at the time of the offense such a finding must be sustained in the face of any conflicting evidence, expert or otherwise, for the question of weighing that evidence and resolving that conflict 'is a question of fact for the jury's determination' [citation]." (*People v. Wolff* (1964) 61 Cal.2d 795, 804.) In our view, the jury in this case could reasonably reject the opinion of the defense expert that defendant was insane.

III. No Remand Is Required For The Court To Determine Whether Defendant Has The Present Ability To Pay Attorney's Fees Or Booking Fees.

Defendant contends that the record lacks sufficient evidence to prove that he had the ability to pay five hundred dollars ($500) in attorney fees and three hundred forty dollars ($340) in booking fees. He also argues, with respect to the booking fees, that the amount imposed does not reflect the actual administrative amount expended on his booking. Defendant acknowledges that he did not object to the imposition of these fees in the trial court, but argues that no objection below is required in order to preserve a claim of insufficient evidence for appeal. (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1397; *People v. Viray* (2005) 134 Cal.App.4th 1186, 1217 (*Viray*); *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1536−1537.) The Attorney General contends that defendant's argument is forfeited by his failure to object to attorney fees and booking

fees below. (*People v. Valtakis* (2003) 105 Cal.App.4th 1066, 1072 (*Valtakis*) [probation fees imposed pursuant to § 1203.1b].) As we explain below, attorney fees and booking fees cannot be lumped together for purposes of resolving the issues raised by each fee in this case.

Attorney Fees

Section 987.8, subdivision (b), provides, in relevant part: "In any case in which a defendant is provided legal assistance, either through the public defender or private counsel appointed by the court, upon conclusion of the criminal proceedings in the trial court . . . the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost thereof. The court may, in its discretion, hold one such additional hearing within six months of the conclusion of the criminal proceedings. The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided."

Section 987.8, subdivision (d) provides: "If the defendant, after having been ordered to appear before a county officer, has been given proper notice and fails to appear before a county officer within 20 working days, the county officer shall recommend to the court that the full cost of the legal assistance shall be ordered to be paid by the defendant. The notice to the defendant shall contain all of the following: (1) A statement of the cost of the legal assistance provided to the defendant as determined by the court. (2) The defendant's procedural rights under this section. (3) The time limit within which the defendant's response is required. (4) A warning that if the defendant fails to appear before the designated officer, the officer will recommend that the court order the defendant to pay the full cost of the legal assistance provided to him or her."

Defendant was represented by appointed counsel through trial. The probation report did not make any recommendation with respect to the payment of any fees or fines, other than the restitution fine and the parole revocation fine, which the probation report recommended be set at $200.

At the sentencing hearing, defense counsel asked that the restitution and parole revocation fines be set at $200 each, but the court imposed fines of $5,200 each. The court also "ordered [defendant] to pay" a $30 court security fee, a $30 court administrative fee, and a $176 probation report fee, as well as $500 in attorney fees and $340 in booking fees. Defense counsel also requested that the court not impose the probation report fee, and renewed the request for the minimum restitution fee, stating: "My client is probably not going to have earning capacity." The court denied both requests.

Defendant is correct that the record does not reflect defendant's *current* ability to pay attorney fees as of the date of sentencing.[7] However, on the same day the court ostensibly ordered defendant to pay $500 in attorney fees, the court also issued an order on an apparently preprinted form assessing the amount of posttrial attorney fees at $500 (the minimum amount stated on the form for "trial") and ordering defendant to report to the county Office of Revenue Collection within 20 working days, or, if in custody, within 20 working days after release from jail, to be interviewed with respect to his ability to pay all or a part of the services of the attorney appointed by the court to handle his case. It further stated that if the Office of Revenue Collection found he was able to pay a certain amount, and he did not agree, he had a right to a hearing in the court that sentenced him to determine what amount, if any, he should pay. In addition, if he did not go to the Office of Revenue Collection, he waived his right to a hearing, and the court would enter judgment against him, ordering him to pay. The order was signed by the judge and dated December 11, 2009. Below the judge's signature appears the printed statement: "I acknowledge receipt of the above order and understand that if I do not report as ordered, the court *will enter* a judgment against me for the total costs of legal services of my attorney." (Italics added.) Defendant signed and dated this acknowledgement December 11, 2009, and indicated under the space for "address" that

[7] The probation report stated that defendant had maintained some level of employment during his adulthood. However, he had been in custody for the past five and one-half years.

he had "none" and that his date of birth was November 12, 1965. The clerk's minute order for December 11, 2009 reflects that "[t]he defendant shall pay attorney's fees in the amount of $500.00 and is to report to the Office of Revenue Collection within 20 working days after release from custody." The abstract of judgment states: "Defendant to pay the following: $500.00 in attorney fees (PC987.8) . . . ."

The procedure adopted by the court follows the statutory dictates of section 987.8, subdivisions (b) and (d). We note that those subdivisions do not require that the court give notice and hold a hearing regarding a defendant's ability to pay before assessing a dollar amount for the services of appointed counsel. Instead, the statute allows the court to have the designated county agency first determine whether the defendant is able to pay the assessed amount, with the proviso that the defendant shall have the right to challenge the county agency's determination before the court if he or she disagrees with it. The court's order, including defendant's signed acknowledgment, reflects compliance with section 987.8.

However, the abstract of judgment does not reflect the contingent nature of the court's actual order, taking the entire record into account, including the reporter's transcript, clerk's minutes and standard preprinted order. Here, in order to be consistent with the trial court's actual and intended order, the minutes and the abstract of judgment should properly state that appellant was referred to the Office of Revenue Collection for a determination of his ability to pay attorney fees, and that the court assessed those fees at $500. Accordingly, we amend the judgment in this one respect, and order corresponding corrections to the minutes and the abstract of judgment. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185−187.)

Booking Fees

The abstract of judgment identifies the statutory basis for the $340 assessment of fees as a "CJA Fee," and its statutory authorization as Government Code section 29550, subdivision (a). The court referred to this fee as a "booking fee" in its oral pronouncement of judgment. The minute order for December 11, 2009 omits any mention of a $340 fee.

Government Code section 29550 provides in relevant part: "(a)(1) [A] county may impose a fee upon a city, special district, school district, community college district, college, or university for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, special district, school district, community college district, college, or university, where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs . . . incurred in booking or otherwise processing arrested persons. . . . [¶] . . . [¶] (b) The exemption of a local agency from the payment of a fee pursuant to this subdivision *does not exempt the person arrested* from the payment of fees for booking or other processing. (Italics added.) [¶] . . . [¶] (c) Any county whose officer or agent arrests a person is entitled to recover *from the arrested person* a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons. (d) When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency: (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. (2) The court shall, *as a condition of probation,* order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs." (Gov. Code § 29550, italics added.)

Unlike section 987.8, Government Code section 29550 does not make an express finding of ability to pay a prerequisite for imposition of the booking fee on an arrestee who is subsequently sentenced to state prison, as opposed to an arrestee who is ultimately

granted probation. (Gov. Code § 29550, subd. (d)(2).) Also, unlike section 987.8, Government Code section 29550 does not set forth elaborate procedures for determining a particular defendant's ability to pay, does not provide for notice, or for advice that the defendant has a right to a separate hearing on his ability to pay the fee. Nor does the imposition of a booking fee raise the specter of a conflict of interest between the attorney and his client. (*Viray, supra*, 134 Cal.App.4th at p. 1216.) In short, none of the reasons that militate in favor of *not* finding forfeiture in the attorney fee context obtain here.

"The forfeiture rule for sentencing error is a judicially created doctrine invoked as a matter of policy to ensure the fair and orderly administration of justice." (*People v. Butler* (2003) 31 Cal.4th 1119, 1130, (conc. opn. of Baxter, J.).) "In general, the forfeiture rule applies in the context of sentencing as in other areas of criminal law. As a general rule neither party may initiate on appeal a claim that the trial court failed to make or articulate a ' " 'discretionary sentencing choice[ ].' " ' [Citations.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 880−881, fn. omitted.)

We do not mean to suggest that the defendant's ability to pay is not a relevant consideration in the court's decision to impose a booking fee. However, the policy considerations that inform the forfeiture rule in criminal cases are applicable to the situation before us. In *Valtakis*, the court concluded "that failure to object in the trial court to statutory error in the imposition of a probation fee under section 1203.1b waives the matter for purposes of appeal." (*Valtakis, supra,* 105 Cal.App.4th at p. 1072.) While the probation officer in *Valtakis* recommended imposition of a $250 probation fee in the probation report, neither the officer nor the trial court made a finding of ability to pay or gave notice to the defendant of the right to a separate hearing by the court, as required by section 1203.1b. Nor did the trial court hold a separate hearing or make its own determinations. (*Valtakis, supra,* at pp. 1070−1071.) Nevertheless, the *Valtakis* court concluded that imposition of a probation fee without a hearing or evidence of ability to pay did not result in an unauthorized sentence, "for a probation fee *could* have been lawfully imposed had an ability to pay appeared, a clearly fact-bound determination. 'In essence, claims deemed waived on appeal involve sentences which, though otherwise

permitted by law, were imposed in a procedurally or factually flawed manner' [citation], which is exactly the claim here: the probation fees, otherwise permitted, were procedurally flawed (for absence of notice, a hearing or a finding) and *factually flawed (for absence of evidence that the defendant had the ability to pay).* The unauthorized-sentence exception does not apply. [Citation.]" (*Id.* at p. 1072, italics added; see also *People v. Gibson* (1994) 27 Cal.App.4th 1466, 1468−1469 (*Gibson*).) The *Valtakis* court further observed that to "allow a defendant and his counsel to stand silently by" as the court imposes a probation fee, (*Valtakis, supra,* at p. 1076), and then contest it for the first time on an appeal contravenes the objective of section 1203.1b and other recoupment statutes that " '[r]eflect a strong legislative policy in favor of shifting the costs stemming from criminal acts back to the convicted defendant' " and " ' " 'replenishing a county treasury from the pockets of those who have directly benefited from county expenditures.' " ' " (*Valtakis, supra,* at p. 1073.)

We are aware that our Supreme Court has granted review to resolve the question presented here, under a related statute: whether the failure to object below to a booking fee imposed under Government Code section 29550.2 forfeits a substantial evidence challenge to that fee on appeal. (*People v. McCollough* (2011) 193 Cal.App.4th 864, review granted June 29, 2011, S192513.) Nevertheless, we agree with the *Valtakis* court's reasoning and follow it here. Defendant had an opportunity to object at the sentencing hearing to the amount of the booking fee or his ability to pay it, and did so with respect to other fines and fees, yet failed to do so with respect to this one. The asserted errors in the imposition of the booking fee could have been readily corrected or avoided and more appropriately reviewed on appeal had defendant interposed a timely objection in the trial court. Thus, in the interest of ensuring the fair and orderly administration of justice, we conclude that defendant forfeited his challenge to the imposition of the booking fee. (*Valtakis, supra,* 105 Cal.App.4th at p. 1076; *Gibson, supra,* 27 Cal.App.4th at p. 1469.)

CONCLUSION

The trial court properly denied defendant's motion to suppress the confession. Substantial evidence supports the jury's sanity verdict. The trial court did not err in referring defendant to the Office of Revenue Collection for a determination of his ability to pay attorney fees, but the minute order and abstract of judgment must be corrected to reflect that referral. Defendant forfeited his appellate challenge to the booking fee by failing to object to its imposition below.

DISPOSITION

The abstract of judgment is modified to replace the sentence "Defendant to pay . . . $500.00 in attorney fees (PC987.8)" with the sentence "Defendant is referred to the Office of Revenue Collections for a determination of his ability to pay attorney fees (PC 987.8) in the amount of $500." The trial court is directed to prepare corrected minutes and a corrected abstract of judgment, and to forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

_____
Marchiano, P.J.

We concur:

_____
Dondero, J.

_____
Banke, J.