

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

FIDELIO SALAZAR MARIN,

Defendant and Appellant.

G045175

(Super. Ct. No. 08WF2161)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, M. Marc Kelly, Judge. Affirmed as modified.

Steven A. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Gary Brozio and William M. Wood, Deputy Attorneys General, for Plaintiff and Respondent.

Fidelio Salazar Marin appeals from the judgment entered after a jury found him guilty of second degree murder and found true an allegation that he personally used a knife during the commission of the murder, within the meaning of Penal Code section 12022, subdivision (b)(1).¹ Marin contends: (1) there was insufficient evidence the killing was not committed during the heat of passion and, therefore, we should reduce his conviction to voluntary manslaughter; (2) the trial court erroneously permitted the prosecution to present a “cleaned up” English translation of a letter he wrote in Spanish immediately after the killing; and (3) we must strike the \$200 restitution fines imposed under sections 1202.4 and 1202.45 because the court failed to orally pronounce judgment on the matter. We agree the restitution fines must be stricken, but otherwise reject Marin’s contentions and affirm the judgment as modified.

FACTS

Background

Marin and his common law wife, Felix Mendez, lived together for about 18 years. They had four children, the eldest of whom was Juliana Marin, who was 15 years old at the time of the incidents. About one month prior to her death on October 10, 2008, Mendez began having an affair with another man. Marin testified he began suspecting the affair in early September 2008.

On September 14, 2008, Juliana and her mother attended a quinceañera party without Marin. Marin made numerous telephone calls to Juliana and her mother, demanding they return home, which they did around midnight. When they arrived home, Marin was drunk, and complained he had gotten telephone calls reporting Mendez was dancing with someone else at the party. Marin confronted Mendez, and a heated argument ensued. When Mendez tried to call the police, Marin ripped the telephone out of her hands and began choking her. The noise brought Juliana out of her room, and she

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

was able to push Marin off her mother. After Juliana intervened, Mendez called the police. Marin left the apartment before the police arrived, and did not return. Juliana testified this was the first time she had seen her parents involved in a physical altercation.

A few days later, Marin moved to Washington State where he had relatives and was able to find work picking grapes and apples. He sent money to Mendez and frequently spoke with his family on the telephone. Marin and Mendez agreed to separate but to remain friendly for the sake of their children.

Details of the Crime

On October 9, 2008, Marin took a bus back to Orange County. He did not have a government identification card, which was required to purchase a bus ticket, so his sister bought a ticket for him, and he traveled under a false name. Marin's friend picked him up from the bus station and drove him to a motel in Huntington Beach, where he rented a room for two nights. Because the motel also required identification, the friend completed the motel registration, but Marin signed the registration, again using a false name. Marin testified he used false names because he feared the police were still looking for him in relation to the September 14 domestic abuse incident. Marin called Mendez, and she agreed to meet him at the motel the next day to iron out their differences over money.

On October 10, 2008, Juliana received several cell phone calls from Marin while she was at school. During these calls, Marin told Juliana to hurry up, and to bring him food when she brought Mendez to the motel. Juliana left school around noon and went home, where she found her mother with a female friend. Mendez told Juliana she had no money to buy food for Marin, so Juliana called Marin, who told her to come to the motel to get some money. Juliana went to the motel, where Marin gave her \$20 and told her to have Mendez buy him some beer.

Juliana returned home, picked up her mother, and the two stopped to buy tacos and beer for Marin on their way back to the motel. Mendez asked Juliana to pick

her up in 30 minutes, and Marin gave Juliana money to pay his cell phone bill. Juliana drove to a friend's house.

A short time later, Juliana received a telephone call from Marin asking whether she had paid his cell phone bill. Juliana heard her mother in the background saying "come for me now." Subsequently, Juliana received two cell phone calls from Mendez asking to be picked up. About five minutes after the second call, Juliana was ready to leave. She called her mother several times, but her calls went directly to voicemail. Juliana called Marin to ask him where Mendez had gone; Marin told Juliana Mendez left and he did not know where she had gone. Juliana tried unsuccessfully to locate her mother. She again called Marin. Marin maintained that he did not know Mendez's whereabouts, but said she was walking and would be home by 7:00 p.m. Juliana drove along the street where the motel was located but gave up looking, thinking perhaps Mendez had gotten a ride from her boyfriend.

Upon returning to her friend's house, Juliana called Marin to ask him for money so she could go shopping. Marin told her that he had left the motel and was expecting a ride, but he would give her money if she met him. When Juliana found Marin, he gave her about \$400 and asked her to drive him to Santa Ana, where he planned to get an identification card to take a bus to Chicago. Juliana testified that when she dropped Marin off in Santa Ana, he seemed "jumpy" and was chain-smoking. Marin told her to go back to the motel because he left some jewelry and money in the room. He said she did not need a room key because the window was open. He directed her to pick up her siblings and told her Mendez would be waiting at the motel for them. According to Juliana, Marin was not emotional but was speaking quickly in a nervous way.

Juliana called her brother, who told her Mendez was still not home. She drove back to the motel and entered through the window. Upon opening the drapes, Juliana saw her mother's feet extending out of the bathroom. She ran towards the bathroom and found her mother's bloody body covered with stab wounds. On her way

out of the motel room, Juliana found a letter written in Spanish, in her father's handwriting. (Relevant testimony and procedural issues related to the letter will be described anon.) Juliana called out for help, and the motel clerk ultimately telephoned the police.

The Orange County Coroner's Chief Forensic Pathologist testified Mendez had been strangled, but the cause of death was multiple stab wounds. The pathologist found 36 stab wounds, about half of which were superficial. Three of the stab wounds were independently life threatening: two stab wounds to Mendez's abdomen that pierced her liver, and a "large gaping stab wound" that severed her trachea and left carotid artery. Mendez also had multiple defensive wounds to her hands and arms, and broken fingernails, all of which indicated a struggle.

Police found food, an empty beer can, cigarette butts, empty condom wrappers, a receipt from a bus, a bus fare ticket, and a copy of the motel registration card in Marin's room. The police asked Juliana to make a series of calls to Marin from her cellular telephone. During the first call, Juliana asked her father why he killed her mother. Marin responded "'no one's going to make a fool out of me'" or "'make me look all dumb.'" Marin hung up, and when Juliana made a second call, he told her to go home with her brothers and to wait for him there. During the last call, Juliana asked Marin what would happen to her and her brothers; Marin began to cry and said he was going to kill himself.

With the assistance of the cellular service carrier, police were able to locate Marin. Police arrested Marin on a local transit bus in Santa Ana. Police found a four-inch folding knife in Marin's pocket. Mendez's DNA was recovered from blood found on the blade of the knife and Marin's DNA was recovered from the handle. Marin had scratches on his chest, a cut on his left thumb, and an injury to his index finger.

Marin's Trial Testimony

Marin testified that when Mendez arrived at the motel, they were friendly and reached an agreement about their money issues. Marin told Mendez he had a job and a place to live in Washington, and he wanted to move the family there. They had sex twice, and Marin testified he was feeling happy about Mendez and the family. Shortly after the second time they had sex, Mendez received a cell phone call from her boyfriend. Marin stated Mendez would not let him answer the call. Marin took Mendez's cell phone and returned the call from it, telling the male caller to stop coming around his wife, or he would "fuck [him] over." (However, police testified the cell phone records showed there was never a return call made from Mendez's cell phone to her boyfriend.)

Marin testified that after receiving the cell phone call, he and Mendez began arguing. She demeaned his masculinity and called him names. They began pushing each other, and Marin choked Mendez to "shut her up." Marin retrieved his grape-cutting knife from his backpack. When Mendez told him he did not "have the balls" to use it, he stabbed her repeatedly until he realized she was dead. He then wrote the letter to Juliana, leaving it on the dresser. He said that while he did not know what he was going to do next, he thought about going to Mexico or back to Washington.

Marin testified about his subsequent meeting with Juliana and confirmed most of what she said. However, he denied telling Juliana to go back to the motel. Marin claimed he told Juliana to go pick up her little sister and he would call her when he got back to the motel. He also testified that when he was arrested, he was on a bus to Huntington Beach and was going to turn himself in.

Jury Instructions and Verdict

The information charged Marin with murder (§ 187, subd. (a)), and alleged he used a dangerous and deadly weapon (a knife), in the commission of the murder (§ 12022, subd. (b)(1)). The court instructed the jury on first and second degree murder, and the lesser included offense of voluntary manslaughter heat of passion. The jury

found Marin guilty of second degree murder and found it true he used a dangerous or deadly weapon in the commission of that murder. The court imposed a sentence of 16 years to life: 15 years to life for the murder conviction and a consecutive one-year weapons enhancement.

DISCUSSION

Sufficiency of Evidence

Marin contends there is insufficient evidence to support his murder conviction. He argues the prosecution failed to prove malice aforethought because it failed to prove the absence of provocation and heat of passion beyond a reasonable doubt. Moreover, he argues we should find provocation and heat of passion existed as a matter of law and reduce the offense to voluntary manslaughter. We reject his contentions.

“In addressing a challenge to the sufficiency of the evidence supporting a conviction, the reviewing court must examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] The appellate court presumes in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citations.] The same standard applies when the conviction rests primarily on circumstantial evidence. [Citation.] Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.] “If the circumstances reasonably justify the trier of fact’s findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]” [Citation.]” (*People v. Kraft* (2000) 23 Cal.4th 978, 1053.)

In the instant case, Marin was charged with murder, and the court instructed the jury on both murder and the lesser offense of voluntary manslaughter. “Murder is the unlawful killing of a human being . . . with malice aforethought.” (§ 187, subd. (a).) Malice may be express or implied. It is express where “there is manifested a deliberate intention” to kill; it is implied where “no considerable provocation appears, or when the circumstances attending the killing show an abandoned and malignant heart.” (§ 188.) In contrast, voluntary manslaughter is defined as “the unlawful killing of a human being without malice . . . upon sudden quarrel or heat of passion.” (§ 192, subd. (a).) “A murder . . . may be reduced to voluntary manslaughter if the victim engaged in provocative conduct that would cause an ordinary person with an average disposition to act rashly or without due deliberation and reflection.’ [Citation.]” (*People v. Enraca* (2012) 53 Cal.4th 735, 759; see also *People v. Danielly* (1949) 33 Cal.2d 362, 385 [“The decisive factor in determining which crime has been committed is the defendant’s state of mind”].)

Marin correctly asserts that when murder and voluntary manslaughter are under joint consideration, the burden is on the prosecution to prove, beyond a reasonable doubt, the absence of a sudden quarrel or heat of passion, in order to establish the malice element of murder. (*People v. Rios* (2000) 23 Cal.4th 450, 454.) However, “[e]ven if defendant’s testimony provided some evidence of provocation for the jury to consider, it remains the jury’s exclusive province to decide whether the particular facts and circumstances are sufficient to create a reasonable doubt as to whether the defendant acted under a heat of passion. [Citations.]” (*People v. Bloyd* (1987) 43 Cal.3d 333, 350.) “The jury was not required to accept defendant’s version of the killing. [Citations.]’ [Citation.]” (*People v. Harris* (1971) 20 Cal.App.3d 534, 537.) Here, the court properly instructed the jury on both murder and voluntary manslaughter and upon review, we “credit jurors with intelligence and common sense’ [citation] and presume they generally

understand and follow instructions [citation].” (*People v. McKinnon* (2011) 52 Cal.4th 610, 670.)

The question before us then is whether, when examining the whole record in the light most favorable to the judgment, a reasonable jury could have found Marin possessed the malice necessary to support a second degree murder conviction. Upon review, we find there was substantial evidence of malice, sufficient to support the jury’s verdict.

The autopsy results confirmed Mendez was manually strangled prior to her death. After strangling Mendez, Marin used his four-inch grape-cutting knife to stab her 36 times. The cause of death was multiple stab wounds, three of which were independently life threatening: two pierced her liver and a third severed her trachea and left carotid artery. We agree with the Attorney General that these facts alone support a finding of malice. (See *People v. Bolden* (2002) 29 Cal.4th 515, 561 [“In plunging the knife so deeply into such a vital area . . . defendant could have had no other intent than to kill”].) Because a reasonable jury could have concluded Marin intended to kill Mendez, it was justified in finding malice sufficient to return a conviction for second degree murder.

Marin does not dispute the finding he acted with the intent to kill, but instead argues that the murder conviction should be reduced to voluntary manslaughter because the killing occurred in the heat of passion. Marin’s contention is supported almost exclusively by the testimony he gave as to his state of mind at the time of the killing. “Although we must ensure the evidence is reasonable, credible, and of solid value, nonetheless it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends. [Citation.] Thus, if the verdict is supported by substantial evidence, we must accord due deference to the trier of fact and not substitute our evaluation of a witness’s

credibility for that of the fact finder. [Citations.]’ [Citation.]” (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.)

We find reasonable jurors could reject Marin’s version of the killing. Marin traveled under a false name to come from Washington to California, bringing the murder weapon with him, and used a second false name to check into the motel. He testified he used Mendez’s cell phone to return Mendez’s boyfriend’s call, but the telephone records show there was never a return call made from Mendez’s cell phone. His testimony contradicted that of Juliana’s with regard to his instructions after she dropped him off in Santa Ana, and her subsequent actions were consistent with her version of his instructions, but not with his. The verdict was supported by substantial evidence and the jury was reasonable in its rejection of the defense’s heat of passion argument.

Marin relies on *People v. Berry* (1976) 18 Cal.3d 509, 515 (*Berry*) and *People v. Borchers* (1958) 50 Cal.2d 321, 328-329 (*Borchers*), to argue taunts by an unfaithful wife or a lover’s infidelity constitute provocation sufficient to arouse a defendant’s heat of passion such that the murder should, as a matter of law, be reduced to voluntary manslaughter. However, both cases are distinguishable on procedural grounds. In *Berry*, the failure of the trial court to instruct the jury on voluntary manslaughter resulted in prejudicial error. (*Berry, supra*, 18 Cal.3d at p. 518.) There is no such error here. The court properly instructed the jury on both murder and voluntary manslaughter, and, as previously discussed, the jury necessarily rejected voluntary manslaughter by finding Marin guilty of second degree murder.

In *Borchers*, the trial court exercised its authority under section 1181, reducing a second degree murder conviction to voluntary manslaughter. (*Borchers, supra*, 50 Cal.2d at p. 328.) The Supreme Court affirmed the trial court’s ruling, finding that “[f]rom the evidence viewed as a whole the trial judge could well have concluded that defendant was roused to a heat of ‘passion’” (*Ibid.*) Here, the trial court had

the authority to reduce Marin's murder conviction to voluntary manslaughter, but instead entered judgment on the jury's verdict. "When reviewing the sufficiency of evidence . . . the relevant inquiry is "whether . . . any rational trier of fact could have found the essential elements of the allegation beyond a reasonable doubt.'" [Citations.] We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] . . . A reviewing court neither reweighs evidence nor reevaluates a witness's credibility. [Citation.]" (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) Having examined the record, we do not feel constrained to hold the evidence is legally inadequate to support a verdict of second degree murder.

Erroneous Admission of Evidence

Marin contends the trial court erred by admitting an English translation of the letter to Juliana found in his motel room. We reject his contention.

We begin with some background. The letter Juliana found in the motel room was written by Marin in Spanish, and the prosecution had it translated by a court certified interpreter into English. The English translation read as follows:

"Juliana Marin is my daughter. [Address and telephone number omitted.] Fidelio Marin and my wife is Felix Mendez. Look, my daughter, I did what I did because of what your mother did to me. It hurt me a lot. I want you to take care of your brothers and take care of each other and be good with your Aunt Lettie because she will be better - - she will take better care of you than your mother did. Because your mother would leave you alone all the time. Forgive me for what I did. I couldn't stand it anymore. And tell your mother's friends to go fuck themselves. If they come near you, chase them out of the house and ask them if they are happy now. And if your mother's friends come to see you, chase them out of the house. And I didn't find that son of a bitch because I was also going to kill him. My four children, forgive me. [Children's names omitted.] Dad who loved you very much."

During pretrial hearings, defense counsel refused to stipulate to the accuracy of the translation, because she believed the interpreter had taken “some liberties in cleaning [the letter] up.” However, defense counsel subsequently agreed cross-examination of the interpreter would suffice in pointing out claimed inaccuracies in the translation. The trial court noted defense counsel’s objection went to weight and not admissibility of the letter, and defense counsel agreed she was not objecting to the relevancy of the letter. During jury selection, defense counsel indicated she would prefer the matter to be handled as a hearing outside the presence of the jury because “if the People want to at some point . . . admit the interpretation into evidence, once she’s testified to it, it’s in front of the jury obviously and that is my concern.” The court deferred the matter, and defense counsel did not raise any further objection prior to or during the interpreter’s testimony.

The interpreter testified the handwriting in the letter was not very clear, suggesting the author had very little schooling. Marin later testified he stopped going to school around the age of eight. The interpreter further testified the syntax, spelling, and grammar were wrong, and it would have been difficult even for a Spanish speaker to make sense of the letter’s meaning. On cross-examination, the interpreter testified there were times when she made a choice between the interpretation of slang or words. She stated translations are not normally made word by word, but the translation is meant to reflect the intent or meaning of the words.

After the interpreter testified, defense counsel agreed to allow the original Spanish letter into evidence, but objected under Evidence Code section 352 to the admission of a copy of the English translation of the letter, i.e., the letter’s prejudicial effect outweighed its probative value. The court overruled the objection, finding it was a matter of weight, and not admissibility, and because the interpreter had already read her translation of the letter into the record, the prejudicial effect did not outweigh the probative value. The court further reminded defense counsel she was free to emphasize

to the jury in argument that the written translation was not an exact translation of the original Spanish letter.

The Attorney General contends Marin failed to properly object to admission of the English translation of the letter, waiving the issue on appeal. We agree.

“A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless: (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion; and (b) The court which passes upon the effect of the error or errors is of the opinion that the admitted evidence should have been excluded on the ground stated and that the error or errors complained of resulted in a miscarriage of justice.” (Evid. Code, § 353.)

Marin argues he adequately objected prior to trial in an Evidence Code section 402 hearing, and again when the prosecution introduced a written copy of the translation into evidence. We disagree. While defense counsel refused to stipulate to the accuracy of the interpreter’s translation, she agreed the matter could be handled on cross-examination. Later, even though defense counsel suggested the interpreter’s testimony might be better handled as a hearing outside the presence of the jury, she failed to renew the objection when the interpreter took the stand. Furthermore, defense counsel did not object when the prosecution asked the interpreter to read the English translation into the record. When defense counsel later objected to the admission of a copy of the translated letter into evidence, the court properly overruled the objection, finding the prejudicial value did not outweigh the probative value because the translation had already been read into the record. (Evid. Code, § 352.) Defense counsel had multiple opportunities during trial to object to the admission of the interpreter’s translation of the letter, and failed to do so, thus waiving the issue on appeal.

Marin next asserts defense counsel was not required to make any further objection because doing so during trial would have been futile. There is nothing in the record to suggest that properly raising an objection to the interpreter's testimony would have been futile. When defense counsel indicated she would prefer the matter to be handled outside the presence of the jury, the court deferred, suggesting she was free to renew her objection when the prosecution called the interpreter to testify.

Finally, Marin contends even if the objection was waived, the trial court's error in admitting the English translation of the letter affected the validity of the final judgment, and should thus be preserved on appeal. We disagree. Even if Marin had adequately objected, we would find no reversible error.

First, the parties agreed the letter was relevant to the case, and on review, we find that an English translation was proper and not unduly prejudicial. "When the written characters in a writing offered in evidence are incapable of being deciphered or understood directly, a translator who can decipher the characters or understand the language shall be sworn to decipher or translate the writing." (Evid. Code, § 753, subd. (a).) Because the letter was written in Spanish, and, according to the interpreter, was difficult to decipher even in Spanish, it was proper for a court-appointed interpreter to translate the writing.

Marin does not object to the meaning of the letter being introduced, but contends "the jury got a version that removed appellant's language, misspellings, poor grammar, slang, and other parts that were highly relevant to his claim of acting under extreme passion." However, the interpreter testified to the changes she made to the letter during the translation, and defense counsel was free to cross-examine the interpreter as to the accuracy of the translated meaning. Moreover, defense counsel was free to present an alternate translation or to call another interpreter, and, as the court pointed out, to remind the jury the English version was not an exact translation of the original Spanish letter.

Second, once the interpreter had testified to her translation, there was no error in admitting the physical document because the English translation had already been read into the record. “The issue of the relevance of evidence is left to the sound discretion of the trial court, and the exercise of that discretion will not be reversed absent a showing of abuse. [Citations.] That discretion is only abused where there is a clear showing the trial court exceeded the bounds of reason, all of the circumstances being considered. [Citations.]” (*People v. DeJesus* (1995) 38 Cal.App.4th 1, 32.) There is nothing in the record to suggest the trial court abused its discretion in admitting the physical document, and we find the admission of the physical letter was proper and not unduly prejudicial.

Restitution and Parole Revocation Fines

Marin contends we should strike from the abstract of judgment references to a \$200 restitution fine imposed under section 1202.4, subdivision (b), and a \$200 parole revocation fine imposed under section 1202.45. At sentencing, the trial court did not orally impose the restitution fine or parole revocation fine—its only comment on the matter was to advise Marin “appropriate fines and fees will be taken out of your prison pay.” The prosecutor did not object to the trial court’s omission, but the clerk’s minutes and the abstract of judgment show both fines were imposed.

“The clerk cannot supplement the judgment the court actually pronounced by adding a provision to the minute order and the abstract of judgment. [Citation.] . . . [T]he clerk’s minutes must accurately reflect what occurred at the [sentencing] hearing.” (*People v. Zackery* (2007) 147 Cal.App.4th 380, 387-388 (*Zackery*)). “When there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls. [Citations.]” (*People v. Walz* (2008) 160 Cal.App.4th 1364, 1367, fn. 3.)

“Under subdivision (b) of . . . section 1202.4, a trial court *must* impose ‘a separate and additional restitution fine’ as part of the judgment of conviction entered

against a criminal defendant, ‘unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.’ If the ‘sentence includes a period of parole,’ then the court *must* also impose a parole revocation fine ‘in the same amount as that imposed pursuant to subdivision (b) of [s]ection 1202.4.’ [Citation.]” (*People v. Smith* (2001) 24 Cal.4th 849, 851, fns. omitted.)

To impose these fines, the trial court must include them in its oral pronouncement of sentence in the presence of the defendant. (*Zackery, supra*, 147 Cal.App.4th at pp. 386-387.) The trial court’s passing observation to Marin that “appropriate fines and fees” would be taken out of his prison pay, did not constitute oral pronouncement of imposition of the restitution and parole revocation fines. If the trial court does not include the fines in its oral pronouncement of sentence, the court clerk may not include the fines in the court’s minutes or the abstract of judgment. (*People v. Mesa* (1975) 14 Cal.3d 466, 471; *Zackery, supra*, 147 Cal.App.4th at pp. 387-388.) If the clerk does so, the fines must be stricken from the minutes and the abstract of judgment. (*Id.* at pp. 387-389.) Moreover, we are bound by our Supreme Court’s holding in *People v. Tillman* (2000) 22 Cal.4th 300, 303, that the People’s failure to object to the court’s omission of the restitution fines precludes correction on appeal. Accordingly, we conclude the references to these fines in the minutes and abstract are clerical errors at variance with the judgment that must be corrected.

DISPOSITION

The trial court is ordered to modify the abstract to omit any reference to the restitution (§ 1202.4, subd. (b)) or parole revocation (§ 1202.45) fines. The trial court is further directed to send a certified copy of the modified abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

RYLAARSDAM, J.

ARONSON, J.