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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES CRAIG CLEMENTS,

Defendant and Appellant.

G046314

(Super. Ct. No. 09NF1537)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gregg L. Prickett, Judge. Affirmed.

Michael B. McPartland, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Peter Quon, Jr., and Seth M. Friedman, Deputy Attorneys General, for Plaintiff and Respondent.

* * *

A jury found defendant Charles Craig Clements guilty of two counts of kidnapping for purpose of robbery (Pen. Code,¹ § 209, subd. (b)(1); counts one and two), three counts of robbery (§ 211; counts three, four, and five), and found he personally used a firearm during a kidnapping and robbery (§ 12022.53, subd. (b)), was armed with a firearm (§ 12022, subd. (a)(1)), and stole more than \$65,000 (§ 12022.6, subd. (a)(1)). He contends the evidence does not support his kidnapping convictions, and the court erred in denying his motion to sever a charge of soliciting the murder of a witness (653f, subd. (b)), and in ordering him to pay restitution to the husband of one of his victims. We affirm.

I
FACTS

Alison Lopez was an employee of a Bank of the West branch in Anaheim in January 2009. She lived on a quiet cul-de-sac approximately a mile and a half from the bank. About 12:00 noon on January 27, 2009, Lopez, who was seven and a half months pregnant, was in her front yard watering plants. She had taken that day off because she and her husband planned on leaving town later that day, after her ultrasound appointment.

Defendant, who had been dropped off near Lopez's residence by his wife, Tammy Clements, approached Lopez carrying a box. He told Lopez he had a delivery for her and stated he needed her to open the box to confirm the contents were for her before he could release it to her. He asked her for a pair of scissors or a knife to open the box. When Lopez went inside her residence to get a pair of scissors, defendant followed, stopping just inside the front door. Lopez got a pair of scissors and returned to defendant. He took the scissors from her and threw them across the room. He pulled out a small, black metal semiautomatic pistol, pointed it at Lopez, and told her not to panic and do

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

something stupid. He directed her to sit down. Defendant put on gloves and pulled a bandana over his face.

He asked her where she worked and she told him she worked at the Bank of the West. He then said, "That's why they want you," and told her a story about his 10-year-old son having been kidnapped by the Set Free Tribe and that that gang was making him rob the bank. Defendant said the gang was similar to Hells Angels, but smaller, and had been casing the bank for several months. According to defendant, the gang was watching all the employees and their families, including Lopez's family. He described a number of the employees, the automobiles they drove, and the cities in which they lived. Lopez said the information defendant provided about the employees was very accurate and that he knew a lot about them. Defendant told Lopez that if she did not do as she was told, they would all be killed.

Defendant said the gang wanted him to rob the bank the next morning and that Lopez was to get him into the vault. His plan was to hold Lopez and her husband hostage overnight. Lopez, who opened the bank each morning and was usually the first employee to arrive at the bank, said she did not have the keys and could not get him into the bank the next morning. Defendant then said he would have to do it that day instead. Lopez said, "Just tell me what to do," and suggested defendant go inside the bank and use a gun to rob the bank. Defendant said he is not a bank robber and did not want his face to appear on camera. He said Lopez had to be the one to go into the bank and get the money. He also told her that if she did not cooperate, he would kill her.

During their discussion, defendant opened the box he told Lopez he was delivering. Inside were a black trench coat, a black wig, a black laptop case, zip ties, a black duffel bag, and a second gun. Lopez saw the gun, which she described as a large black metal semiautomatic, as defendant screwed a silencer onto it. As he did so, he told Lopez he could now kill her very quietly.

Defendant asked Lopez which of the employees she most trusted with her life. She said it was Cindy Chin, the customer service manager. He told her to call Chin and get her out of the bank by asking her out to lunch. Lopez called the bank, but Chin was already out to lunch.

Defendant and Lopez were inside the residence for about an hour before they got into Lopez's automobile. Defendant put the box and most of its contents into the trunk of Lopez's vehicle. He wore the trench coat and had put the larger of the two guns into the coat. Defendant drove and Lopez sat in the front passenger seat.

Defendant had made a number of telephone calls on his cell phone while at Lopez's residence, reportedly to update the gang on the change of plans. Lopez said one of the calls was to set up the exchange of the money for defendant's son. Driving to the bank, defendant again made a telephone call on his cell phone. This one was purportedly to set up a meeting place after the robbery.

Defendant pulled into the parking lot by the bank and parked on the side of the bank. He told Lopez to come up with a story to get Chin out of the bank. Lopez used her cell phone to call Chin and asked Chin to come outside to look at Lopez's new car. Before Chin left the bank, Lopez had moved over into the driver's seat and defendant stood a short distance away on the passenger side of the car. When Chin got into the front passenger seat, defendant approached, blocking Chin's egress, told Chin not to look at him, and explained what was happening.

Defendant gave Lopez a black duffel bag and told her to go into the bank and get the money. He said she should not take any money from the tellers and to take the money from the vault because he knew how much was in the vault. He also told her not to take any dye packs or GPS (global positioning system) devices. He told her everybody's lives would be in danger if she did not do exactly what she was told. Lopez went into the bank while Chin remained in the front passenger seat of the car.

Inside the bank, Lopez informed the bank manager of the situation. The manager and Lopez then went into the vault and started putting money in the bag, leaving the \$1 and \$5 bills. Lopez zipped up the bag and returned to her car where defendant was already seated in the driver's seat. He told Lopez to get into the back seat. Once she did, he drove away from the bank and asked for directions to a bowling alley where he was supposed to meet up with the gang.

Defendant told Lopez and Chin he did not want to go to the bowling alley with them. He said he wanted to go alone. He said he was going to leave and go to the bowling alley to make the exchange for his son. He instructed Lopez and Chin to drive back to the bank, park where they had parked before, and wait 10 minutes before calling the police. When he stopped the car, he told Lopez to get out. He opened the trunk and took all the items he had previously placed inside and took the duffle bag from Lopez. When he told Lopez to drive away, she got back into the driver's seat and drove back to the bank as instructed, where she and Chin waited eight minutes before going into the bank and having someone call 911.

Around 2:00 p.m. that afternoon, a forensic specialist went to Lopez's residence where he collected a pair of sunglasses that did not belong to Lopez, her husband, or their roommate. When Lopez and defendant were at her car at some point that day, he made a statement to her about having forgotten his sunglasses at her house. The forensic specialist processed the sunglasses for DNA. The parties stipulated the DNA on the sunglasses matched defendant's.

Police executed a search warrant for defendant's residence in Anaheim on May 28, 2009. Defendant's wife answered the door. Defendant was on the bed in the master bedroom. The search produced a Sig Sauer .22-caliber handgun that looked like the gun with the silencer defendant used on the date of the robbery, a Kel-Tec semiautomatic rifle, an Astra A-75 .40-caliber semiautomatic handgun that looked like

the gun defendant pointed at Lopez, a Smith & Wesson .22-caliber silver handgun, a business card for A-1 Storage in Fullerton, a wallet containing defendant's California driver's license, \$5,000 in a black box, \$945 on top of a small dresser, and a black baseball cap like the one worn by defendant on the day of the robbery.

The next day, police went to A-1 Storage in Fullerton with defendant's stepson. He gave the police the key to a storage unit. Inside, police found a multicolored bag containing \$1,049. They found a second bag containing four manila envelopes. The envelopes contained a total of \$35,100 in \$100 bills.

The jury was unable to reach a verdict on the charge of solicitation of murder, but convicted defendant on all the remaining counts and found each of the enhancements true. The court sentenced defendant to life in prison on count one (§ 209, subd. (b)(1)) with a consecutive 10-year term for defendant's use of a firearm in the commission of the kidnapping (§ 12022.53, subd. (b)), and a consecutive one-year term on the great taking enhancement (§ 12022.6, subd. (a)(1)). Because the kidnapping for robbery charge in count two involved a separate victim, the court imposed a consecutive life sentence with a consecutive one-year term for defendant's having been armed during that offense (§ 12022, subd. (a)(1)). The court also imposed a consecutive term of five years on count five (§ 211) and a consecutive one-year term for being armed in the course of the robbery, for an aggregate sentence of two consecutive life terms, plus a determinate term of 18 years. The sentence on the remaining convictions were stayed pursuant to section 654.

The jury split six to six on whether defendant had solicited Lopez's murder (§ 653f, subd. (b); count eight). The court dismissed that charge pursuant to section 1385, in the interests of justice. Additional facts relating to that charge are set forth where relevant in the following discussion.

II DISCUSSION

A. Sufficiency of the Evidence

Defendant first contends his convictions for kidnapping for purpose of robbery are not supported by the evidence. “Our role in considering an insufficiency of the evidence claim is quite limited. We do not reassess the credibility of witnesses [citation], and we review the record in the light most favorable to the judgment [citation], drawing all inferences from the evidence which supports the jury’s verdict. [Citation.]” (*People v. Olguin* (1999) 31 Cal.App.4th 1355, 1382.) The standard of review is the same where the prosecution relies primarily on circumstantial evidence. (*People v. Miller* (1990) 50 Cal.3d 954, 992.) Before a verdict may be set aside for insufficiency of the evidence, “a party must demonstrate “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]’ [Citation.]” (*In re Alexander L.* (2007) 149 Cal.App.4th 605, 610.)

Section 209, subdivision (b)(1), provides: “Any person who kidnaps or carries away any individual to commit robbery . . . shall be punished by imprisonment in the state prison for life with the possibility of parole.” This provision only applies “if the movement of the victim is beyond that merely incidental to the commission of, and increases the risk of harm to the victim over and above that necessarily present in, the intended underlying offense.” (§ 209, subd. (b)(2).) As noted above, Lopez was the named as the victim in count one and Chin was the victim in count two.

Defendant argues his movement of the victims did not *substantially* increase their risk of harm over and above that necessarily present in a robbery. He asserts his removal of Lopez from the privacy of her home to public view, and her movement from the bank parking lot to the location where he dropped Lopez off blocks from the bank, did not substantially increase the risk of harm to her over that necessarily

present in a robbery. According to defendant, his driving Lopez the mile and a half from her residence to the bank in broad daylight, and while he was doing everything not to draw attention to them and the fact that he did not speed or point a firearm at her during the movement, demonstrates there is no evidence to support the conviction naming Lopez as a victim. He argues that while they were in Lopez's residence, they were out of public view, implying that the risk of other offenses being committed was actually reduced by taking her from a point of seclusion out into public.

As it relates to the convictions concerning both Lopez and Chin, defendant argues the short drive from the bank after the robbery to a residential street when he left Lopez and Chin did not substantially increase their risk of harm as they were moved from a place in public view to a place in public view. He claims that movement did not increase the risk either would attempt to escape because he told Chin and Lopez that after they stopped and he left them, they should return to the bank and wait 10 minutes before calling the police.

Defendant's assumption that the movement of a victim must substantially increase the risk of harm to the victim over that necessarily present in a robbery in order to elevate a kidnapping from a violation of section 207 is misplaced. "[S]ection 209, subdivision (b)(2) does not require proof that the movement *substantially* increased the risk of harm to the victim." (*People v. Robertson* (2012) 208 Cal.App.4th 965, 982.) Moreover, even if a substantial increase in the risk of harm were required, the increased risk of harm is not limited to an increased risk of *physical* harm. "[W]hen it separately criminalized the act of kidnapping to commit robbery, the Legislature intended to target coerced movement resulting in an increased risk either of grave physical injury or of mental terror." (*People v. Nguyen* (2000) 22 Cal.4th 872, 885.) "Viewed in this light, substantial movement of a victim, by force or fear, which poses a substantial increase in the risk of psychological trauma to the victim beyond that to be expected from a

stationary robbery, seems an entirely legitimate basis for finding a separate offense.” (*Id.* at p. 886.)

Lopez was seven and a half months pregnant when defendant confronted her inside her residence, pointed a pistol at her, and threatened to kill her. Before forcing her to accompany him to the bank where she worked, he obtained a pistol with a silencer from the box he brought to Lopez’s residence. Having done so, he told Lopez he could now kill her quietly. During the time he had her confined inside her residence, he told her his story about the robbery being arranged by a gang that had been watching her, her family, and that the gang would kill her and her family if she did not do as she was told. He then drove Lopez the one and a half miles to the bank from her residence. During that drive, defendant placed a call on his cell phone.²

We cannot conclude the evidence does not support the jury’s verdict. The mental anguish to which Lopez was subjected during her encounter with defendant, which included multiple threats of death and being told her family could be executed by the gang, defendant driving her to the bank while he made a cell phone call and away from the bank in his getaway, which included his statement to Lopez and Chin upon seeing a white van on the street as they drove away from the bank, that the gang drove white vans and was monitoring the situation, substantially increased the risk that Lopez would suffer psychological trauma beyond that to be expected from a stationary robbery. (*People v. Nguyen, supra*, 22 Cal.4th at p. 886.) This jury could find this to be the case, even if (1) Lopez did not intend to attempt an escape in her condition and (2) defendant attempted to drive in a manner so as to not attract attention.

² “A person shall not drive a motor vehicle while using a wireless telephone unless that telephone is specifically designed and configured to allow hands-free listening and talking, and is used in that manner while driving.” (Veh. Code, § 23123, subd. (a).) This section was enacted because of the “growing public concern regarding the safety implications of the widespread practice of using hand-held wireless telephones while operating motor vehicles.” (Stats. 2006, ch. 290, § 2(d), p. 1954.)

For similar reasons we find the conviction for kidnapping for purposes of robbery in count two was supported by the evidence. Chin was informed of defendant's story about the gang surveilling the bank employees and was driven in Lopez's vehicle while defendant made good his escape from the robbery. The risk faced by Chin (and Lopez) during the escape was substantially increased over a stationary robbery. For all they and defendant knew, the police had been called by other employees when Lopez left the bank. Had the police been called and responded, defendant had two hostages, and any pursuit would have endangered his hostages. After all, the police were not likely to act as if there were two innocent people in the car. Indeed, when the call was eventually made to the police, Lopez was informed by the police that she was a suspect in the robbery. Moreover, although defendant left Chin and Lopez in a residential neighborhood near the bank, that fact alone does not mean they were all in plain view of others such that defendant did not have the opportunity to commit further crimes against them. This is especially true given the fact defendant was armed with a firearm with a silencer. Accordingly, we find the evidence supports the jury's verdict on counts one and two.

B. Defendant's Motion to Sever

As noted above, defendant had been charged in count eight of the information with soliciting the murder of Lopez. (§ 653f, subd. (b).) Prior to trial, defendant orally moved the trial court for an order severing the trial of that charge from the remaining counts. During the discussion on the issue of Donald Boeker's proposed testimony, it appeared he would testify defendant asked him to murder Lopez. Defendant argued below, as he does here, that Boeker's evidence was not relevant to the only issue in the trial — whether the risk to the kidnap victims was substantially increased by their movement. According to defense counsel, Boeker alleged he was attacked twice after he

had been asked to kill Lopez and each time the attacker attributed the attack to Boeker's cooperation with the prosecution. After discussing the issue, the court stated its tentative decision was to deny the motion to sever and to exclude evidence of one of the attacks. We have not been directed to anywhere in the record where the court issued a final ruling on the issue of severance. Although the issue could be found to have been forfeited by the defense's failure to obtain a final ruling on the issue (see *People v. Sullivan* (2007) 151 Cal.App.4th 524, 556 [defendant obligated to obtain a ruling]), we address the issue for the sake of economy and to preclude a claim of ineffective assistance of counsel.

Section 954 provides, in pertinent part: "An accusatory pleading may charge two or more different offenses connected together in their commission, or different statements of the same offense or two or more different offenses of the same class of crimes or offenses" This section authorizes the joinder of offenses in the same class of crimes. (*People v. Miller, supra*, 50 Cal.3d at p. 987.) Article I, section 30, subdivision (a) of the California Constitution prohibits courts from construing the Constitution to "prohibit the joining of criminal cases as prescribed by the Legislature." (*People v. Soper* (2009) 45 Cal.4th 759, 771.) Section 954's purpose is to avoid the "increased expenditure of funds and judicial resources which may result if the charges were to be tried in two or more separate trials." [Citation.] (*Id.* at p. 772.) The law prefers properly joined charges be tried together. (*People v. Manriquez* (2005) 37 Cal.4th 547, 574.)

"If the evidence underlying each of the joined charges would have been cross-admissible under Evidence Code section 1101, had they been prosecuted in separate trials, 'that factor alone is normally sufficient to dispel any suggestion of prejudice and to justify a trial court's refusal to sever properly joined charges.' [Citations.]" (*People v. Myles* (2012) 53 Cal.4th 1181, 1200-1201, fn. omitted.) Notwithstanding the Legislature's preference for joint trials, severance is appropriate "if

joinder results in prejudice so great as to deny the defendant a fair trial. [Citation.]” (*People v. Hill* (1995) 34 Cal.App.4th 727, 734.)

“‘We review a trial court’s denial of a severance motion for abuse of discretion based upon the facts as they appeared when the court ruled on the motion.’ [Citations.] ‘If we conclude the trial court abused its discretion, reversal is required only if it is reasonably probable the defendant would have obtained a more favorable result at a separate trial.’ [Citations.]” (*People v. Souza* (2012) 54 Cal.4th 90, 109.) Even if the trial court’s ruling was proper when made, reversal will still be required if, “‘in the end, the joinder . . . resulted in gross unfairness depriving the defendant of due process of law. [Citations.]’ [Citations.]” (*People v. Soper, supra*, 45 Cal.4th at p. 783.)

The information provided the court when the parties discussed possible severance, consisted of defense counsel’s statement that Boeker alleged that while he was a jail inmate, defendant solicited him to kill Lopez, and that counsel was seeking to exclude evidence of two subsequent assaults on Boeker by individuals who referenced his proposed testimony. When asked by the court what defendant’s position would be if the court excluded evidence of the second assault, counsel stated such a ruling would “‘certainly weaken[]” the motion to sever.³

At trial, Boeker testified he was in custody at the Orange County jail in April 2010, for burglary, possession of stolen property, petty theft, and a parole warrant. He was eventually convicted of three felonies: burglary and two counts of receiving stolen property. He had a prior felony conviction as well as misdemeanor convictions. Boeker met defendant while they were both in jail and housed in the same cell block.

³ Because Boeker testified in a wheelchair, the prosecutor was permitted to establish the Boeker was confined to a wheelchair due to a beating he suffered in August 2011, at his residence. No reference was made to any connection between the beating and his proposed testimony.

Defendant told Boeker he was in custody for bank robbery and kidnapping, and that kidnapping was the more serious charge.

On April 17, 2010, defendant and Boeker were in the dayroom at the same time. Defendant told him about the robbery. Boeker said defendant told him the name of the woman he kidnapped, but he does not remember it.

At first, defendant wanted money wrappers planted in her backyard, her house, and her car, so it would appear she was in on the robbery, and not a victim of a kidnapping. After the items were planted, he wanted Boeker to make an anonymous call to the police about the location of the wrappers. Boeker said he listened to defendant, but told defendant he (Boeker) still had a prison term to serve before being released. Defendant promised to “take care of” Boeker once Boeker got out of custody.

Later, defendant asked Boeker what kind of crimes he committed. Boeker made up a story, saying he killed “a couple of people” during a robbery. As defendant and Boeker’s relationship progressed, Boeker said defendant became obsessed with having “this lady” killed. Defendant asked Boeker to take her out into the desert and said, “I want her dead.” Boeker said that would cost and defendant said he had money left over from the robbery. He said he had approximately \$40,000 hidden away. Defendant offered Boeker \$10,000 and Boeker said it could probably be arranged. Eventually, defendant wanted Boeker to kill the woman’s husband and her baby as well. He said after it was done, Boeker should send a friend into the jail to let him know it was done and then defendant would make arrangements to pay Boeker. Defendant said he wanted her dead so she could not testify against him and then there would be no kidnapping charge.

Defendant told Boeker about the other female bank employee (Chin) who was in the car with him. He said he did not understand why she sat in the car, but he did not ask Boeker to kill her.

At one point Boeker asked how he was supposed to get into the house. The next day, defendant gave him a hand-drawn map of the woman's house. Defendant also gave Boeker another piece of paper containing the names of Lopez, her husband, and describing their cars. Boeker gave the map to a deputy sheriff the next day.

Although section 954 sets forth the statutory criteria for joining offenses, it also provides the trial court, "in its discretion," may order charges tried separately "in the interests of justice and for good cause shown." (§ 954.) When the charges meet the requirements for joinder, the defendant bears the burden of establishing good cause to sever the trials. (*People v. Bradford* (1997) 15 Cal.4th 1229, 1315.) "Refusal to sever may be an abuse of discretion where: (1) evidence on the crimes to be jointly tried would not be cross-admissible in separate trials; (2) certain of the charges are unusually likely to inflame the jury against the defendant; (3) a 'weak' case has been joined with a 'strong' case, or with another 'weak' case, so that the 'spillover' effect of aggregate evidence on several charges might well alter the outcome of some or all of the charges; and (4) any one of the charges carries the death penalty or joinder of them turns the matter into a capital case. [Citations.]" (*People v. Sandoval* (1992) 4 Cal.4th 155, 172-173.) We note at the outset that the fourth factor does not apply in this case and limit our analysis to the remaining factors.

Evidence of defendant's effort to have Boeker kill Lopez was cross-admissible on the trial of the robbery and kidnapping charge. "Solicitation of murder is a criminal offense. (§ 653f, subd. (b).) Evidence of uncharged offenses is admissible under Evidence Code section 1101, subdivision (b), if relevant to prove some fact (such as identity, motive, or knowledge) other than the defendant's disposition to commit such offenses." (*People v. Wilson* (1992) 3 Cal.4th 926, 940.) That defendant solicited the murder of a crucial prosecution witness "was highly probative of defendant's consciousness of guilt, which in turn was probative of his identity as the perpetrator of

the charged offenses.” (*Ibid.*) Defendant argues that as his identity was not going to be an issue in the trial, evidence of the solicitation was not cross-admissible.

However, whether defendant’s identity was at issue is not dispositive of whether the evidence was cross-admissible. In *People v. Hill, supra*, 34 Cal.App.4th 727, the defendant argued evidence of his soliciting the murder of a witness was not relevant because the identity of the shooter in the robbery matter was not in issue. The court held the evidence was nonetheless admissible as evidence of defendant’s consciousness of guilt and that such evidence is admissible “not only when the identity of the perpetrator is at issue but also when the accused disputes the criminal implications of his conduct. [Citation.]” (*Id.* at p. 737.) Moreover, the prosecution was still required to prove defendant’s identity and his effort to have Lopez killed so she could not testify tended to prove defendant’s identity, as well as the criminal implications of his conduct. If the prosecution is not required to accept a defense offer to stipulate to a fact (*People v. Saucido* (2008) 44 Cal.4th 93, 147), it was not required in this case to rely solely on the DNA evidence to prove defendant’s identity, especially given the fact neither Lopez nor Chin positively identified defendant as the person who kidnapped them.

Neither was evidence of the solicitation unusually likely to inflame the jury against the defendant. Whether such evidence was admitted or not, the jury was going to hear that defendant threatened to kill Lopez a pregnant woman during the incident. He not only threatened her upon gaining entry into her residence, he threatened her once he opened the box, removed the other handgun and screwed a silencer into its barrel, telling Lopez he could now kill her very quietly.

Lastly, the joinder did not result in convictions on the kidnapping charges due to a spillover effect. The solicitation charge was apparently not a strong case, as evidenced by the jury’s inability to reach a verdict on that count. Indeed, the jury split six for guilty and six for not guilty on that charge. There is no reason to suspect that

although the jury could not agree on whether defendant had solicited Boeker to kill Lopez, the same jury convicted defendant of the two counts of kidnap for robbery because it heard the evidence of the alleged solicitation. Defendant did not contest the robbery charges or the fact that he kidnapped Chin and Lopez. His only issue was whether the movement of the women increased their risk of harm. We cannot conclude defendant was unduly prejudiced by the joint trial in this matter. Accordingly, we reject defendant's contention that the court erred in denying his motion to sever the trial of the solicitation of murder charge from the remaining charges.

C. Restitution

The trial court ordered defendant to pay restitution to Lopez's husband in the amount of \$6,783.76 for 19 days of lost wages due to his having taken time off from work to care for Lopez as a result of the crime against her. The defense's objection to the award was that Mr. Lopez is not a person to whom restitution may be ordered. On appeal defendant argues that "although [Lopez's] husband could be considered a victim, there was no evidence that the reference in the probation report to matters pertaining to [Lopez] referred to the limited time [Lopez's] husband may have spent as a witness or in assisting the police and/or prosecution" and that there was no evidence the time he missed work was to assist the prosecution or police. Because he did not object to the award on this ground in the trial court, he has forfeited the issue here. (*People v. Beaver* (2010) 186 Cal.App.4th 107, 129.) His argument is meritless in any event.

"It is the intent of the Legislature that a victim of crime who incurs an economic loss as a result of the commission of a crime shall receive restitution directly from a defendant convicted of that crime." (§ 1202.4, subd. (a)(1).) The term "victim" includes a spouse who resided with the actual victim of the crime at the time of the crime and who sustained economic loss as a result of the crime. (§ 1202.4, subd. (k)(3)(A).)

Lopez's husband sought restitution for lost wages for 19 days "to care for matters pertaining to [his wife] as a direct result of the crime . . . inflicted upon her." Lopez's husband earned \$357.04 a day. Lopez told the probation officer who prepared defendant's sentencing report that after the crime, her husband "had to arrange for 'babysitters' for me as I was terrified to be home (or anywhere) alone." It is not unreasonable to infer that her husband missed work to stay with Lopez when she was alone and frightened. A letter from Mr. Lopez's employer supports the inference. Part of the time he took off included from the date his wife was kidnapped until February 6, 2009. As Lopez's husband met the statutory definition of a victim, he was entitled to recover the lost wages he suffered as a result of the psychological injury inflicted on Lopez by defendant. (§ 1202.4, subd. (f)(3)(E).)

III

DISPOSITION

The judgment is affirmed.

MOORE, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

BEDSWORTH, J.