Filed 11/2/17 P. v. Chavez CA2/6

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. OSCAR JOSHUA CHAVEZ et al., Defendants and Appellants.	2d Crim. No. B265608 (Super. Ct. No. BA415012) (Los Angeles County)

Oscar Joshua Chavez, Jonathan Chavez, Edwin Omar Castillo Perdomo, and Ronald Segovia were charged with conspiracy to commit extortion (Pen. Code,[1] § 182, subd. (a)(1)) and seven counts of extortion by threat (§§ 519, 520), with allegations that the offenses were committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(4)(C)). A jury found

[1] Undesignated statutory references are to the Penal Code.

Oscar and Jonathan[2] guilty of the charged offenses and found the gang allegations to be true. In a separate jury trial, Perdomo and Segovia were also convicted on all counts with true findings on the gang enhancement allegations.[3] Oscar, Jonathan, and Perdomo were each sentenced to 49 years to life in state prison, and Segovia was sentenced to 42 years to life.

Appellants raise claims of insufficient evidence, juror misconduct, and the evidentiary error. We modify the judgment as to the victim restitution orders imposed against Perdomo and Segovia. Otherwise, we affirm.

STATEMENT OF FACTS

I.

Prosecution

A. *Background and Genesis of the Conspiracy*

In 2012,[4] appellants were members of the Mara Salvatrucha (MS-13) gang. The victim, Angel Jimenez Rivas (Jimenez), was a former member of the gang. MS-13's primary activities include extortion, murder, robbery, drug sales, and assault. Part of the profits the gang obtains through its illegal

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[2] For ease of reference, we refer to brothers Oscar and Jonathan by their first names only.

[3] In another separate trial, a jury convicted codefendant Alexander Santos Ventura of conspiracy to commit extortion and two counts of extortion, with true findings on the attendant gang enhancement allegations. Ventura's appeal is pending in this court. Codefendants Ivan Castro and Thomas Linares entered plea agreements and are not parties to either appeal.

[4] All dates refer to the year 2012 unless otherwise stated.

activities are paid as a "tax" to the Mexican Mafia. In turn, MS-13 extorts a "tax" from street vendors who operate within the gang's territory. Those who refuse to pay risk having their businesses destroyed or being beaten or killed. MS-13 members who fail to "put in work" for the gang must also pay a "tax."

Appellants belonged to MS-13's "Los Bagos" (Bagos) clique. Jimenez joined the gang when he was 13 or 14 years old and belonged to the same clique. In 2010, Jimenez decided to leave the gang and moved out of the neighborhood, Around January 2012, he returned and moved back in with his parents.

About three weeks after Jimenez returned to the neighborhood, Segovia and another man approached him on the street and asked him to identify his gang. To avoid being attacked, Jimenez identified himself as a Bagos member. Segovia asked for Jimenez's phone number and Jimenez provided it to him. Segovia told Jimenez "the boss" would be contacting him. Oscar, the Bagos clique's "shot-caller," called Jimenez and said they would see each other soon and talk about the clique.[5]

B. *Extortions by Threat*

Count 2: About two weeks later, Oscar and Jonathan met with Jimenez at his apartment building and told him he had to "put in work for the clique" or pay the $20 to $40 weekly "tax" imposed on inactive members. Jonathan told Jimenez they would "check" him if he did not pay. Jimenez understood this to mean that he or his parents would be harmed if he failed to comply.

Jimenez gave Oscar $40. Before leaving, Oscar said they would see each other again soon. A week or so later, Oscar and

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[5] Jimenez and Oscar met in 2005. At that time, Oscar was a Bagos member but did not hold a leadership position.

Jonathan returned with Segovia and Perdomo, who was identified as the person "in charge of recruiting people."

Count 3: About a week later, Oscar called Jimenez from a car parked outside Jimenez's apartment building. Jimenez went outside and gave Oscar $40. Before Oscar drove away, he told Jimenez they would be seeing each other again.

Count 4: Around a week later, Oscar and Jonathan came to Jimenez's apartment. Oscar told Jimenez they were in a hurry and needed money for the clique. Jimenez took $40 out of his pocket and Jonathan approached him and took the money.

Count 5: A week or so later, Perdomo and Segovia returned to Jimenez's apartment. Perdomo told Jimenez that Oscar wanted at least $80. Jimenez said he did not have the money. Perdomo replied that they were "fed up" with Jimenez and hit his head with a pistol. Segovia told Jimenez he would "face the consequences" if he did not pay when they returned.

Later that day, Jimenez sold his computer for $150. The next day, Perdomo and Segovia returned to Jimenez's apartment and he gave them the $150.

Count 6: About two weeks later, Segovia returned to Jimenez's apartment to collect more money. Jimenez gave Segovia $20, which was all he had. Segovia told Jimenez the money would be used to buy medication for codefendant Castro, a Bagos clique member confined to a wheelchair due to injuries he suffered while putting in work for the clique.

Count 7: Shortly after Segovia left, Castro called Jimenez and demanded that he give the clique at least $80. Castro said Oscar had ordered him to call Jimenez and pick up the money. Jimenez replied that he did not have the money. Castro

demanded that he pay or face the consequences. Perdomo also called Jimenez and demanded payment.

Jimenez finally decided to call the police. After he was interviewed, he agreed to work as an informant for the Los Angeles Police Department (LAPD) and the Federal Bureau of Investigation (FBI).

On May 3, Jimenez had a plan to meet Castro at an intersection in Los Angeles. Earlier that day, Jimenez met with members of the LAPD-FBI Gang Task Force (the task force). LAPD Officer Mauricio Salazar and FBI Special Agent Tyler Call equipped Jimenez with a body camera and recording device and gave him $100 in cash for the extortion payment. While Jimenez was at the intersection waiting for Castro to arrive, he saw codefendants Ventura and Linares, who were both members of MS-13's "Tiny Winos" clique. Jimenez gave Ventura the $100. As Jimenez was leaving, Castro arrived. Castro and Perdomo later confirmed with Jimenez that the payment had been made.

Count 8: In mid-May, Segovia and Castro called Jimenez and demanded more money. Castro said Oscar needed $100 for the clique. Jimenez replied that he did not have that much money, and Castro told him to resolve it with Oscar.

LAPD Officer Samuel Arnold, a member of the task force, provided Jimenez a cell phone with a recording device. On May 25, Jimenez called Castro and provided several excuses for his inability to pay the $100. Castro rejected the excuses and said he would have Oscar call Jimenez. The next day, Perdomo left Jimenez a voicemail demanding money. Jimenez returned the call the following day and the demand was reiterated.

On May 30, Castro left Jimenez a voicemail demanding money. The next day, Segovia told Jimenez that Oscar wanted

the money and that he would be beaten up if he did not pay. Segovia refused to give Oscar's phone number to Jimenez and said he could find Oscar at his residence. Later that day, Jimenez told Castro he only had $80. Castro replied, "I was told to go and get it because they were going to need it, dude. . . . And he said that if you didn't give me the hundred dollars . . . today, they were going to fuck you over."

The FBI gave Jimenez $100 and Officer Salazar drove him to Oscar's residence. Jonathan was there, but Oscar was not. Jonathan called Oscar and told him Jimenez was there. Jimenez gave the $100 to Jonathan, who said he would pass it on to Oscar. In a recorded conversation, Jonathan told Jimenez Oscar was angry at him for refusing to put in work for the clique. Jonathan told Jimenez, "[Oscar] wants to beat your ass, dog. I want to fucking sock you right now, dog." Jonathan also told Jimenez he would get "un viente" (a severe beating) if he did not paint graffiti in a rival gang's territory within a week. Jimenez promised to comply. Later that day, Castro told Jimenez that the money Jimenez gave Jonathan had been used to pay Castro's rent.

C. *Subsequent Events*

On June 20, two MS-13 members were murdered. The next day, Linares demanded money from Jimenez to pay for funeral expenses. On June 27, rival gang members shot at Segovia's car. On or about July 4, Castro ordered Jimenez to kill a member of the 18th Street gang and arranged to meet with Jimenez to show him a photograph of the target. Jimenez relayed this to Officer Salazar and Castro was arrested that same night.

The next day, Oscar, Perdomo, and Castro each called Jimenez and accused him of being a "rat." Jimenez was relocated after it was discovered that a "green light" (a message permitting

MS-13's clique members to kill a fellow gang member) had been issued against him. In total, Jimenez received approximately $7,200 for his work as an informant.

D. ***Gang Expert Testimony***

Officers Arnold and Salazar opined that at the time of the offenses (1) appellants were MS-13 members and belonged to the Bagos clique; (2) Oscar was the Bagos clique's shot-caller; and (3) Jonathan held a leadership position within the clique. In response to hypotheticals tracking the prosecution's evidence, the officers also opined that the offenses were committed at the direction of and for the benefit of a criminal street gang.

II.

Defense Evidence at Oscar and Jonathan's Trial

A. ***Oscar's Testimony***

Oscar testified that he joined MS-13 as "a kid" but no longer considered himself a member of the gang. In his mid-20's, he "grew up" and "got [his] life together." He still socialized with members of the gang but was not "out there in the streets." He denied being the Bagos shot-caller or telling Jimenez that he was.

Oscar admitted that he and Jonathan had gone to "hang out" at Jimenez's apartment. Around January 2012, Oscar told Jimenez that Castro needed an apartment. Jimenez said that one in his building was available for a down payment of $500. Oscar gave Jimenez the down payment money because "[Castro] got put in a wheelchair" and he "felt bad" for him.

Jimenez later told Oscar that he had the keys to Castro's new apartment. On March 9, Oscar tried to send Jimenez a text message asking for the keys but the message did not go through. Two days later, Jimenez told Oscar he had used the $500 to buy medication for his father. Jimenez assured Oscar he would pay

the money back to Castro. Oscar claimed that he stopped talking to Jimenez after the incident. When confronted on cross-examination with a June 1 text message in which he directed Segovia to "tell [Jimenez] to come by for a beating," Oscar claimed he was "just joking around with him."

B. *Gang Expert Testimony*

Defense gang expert Martin Flores opined that the Bagos clique had no shot-caller in 2012. In response to a hypothetical based on facts of the case, Flores opined that the extortion offenses were committed for the benefit of a gang.

DISCUSSION

I.

Sufficiency of the Evidence

Appellants raise various claims of insufficient evidence. In evaluating these claims, "we review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence–that is, evidence that is reasonable, credible and of solid value–from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]" (*People v. Snow* (2003) 30 Cal.4th 43, 66.) "In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.]" (*People v. Young* (2005) 34 Cal.4th 1149, 1181.)

A. *Jonathan - Specific Intent (All Counts)*

Jonathan contends the evidence is insufficient to prove he had the specific intent to commit any of the crimes of which he was convicted. We disagree.

Conspiracy to commit extortion consists of an agreement by two or more people with the specific intent to commit extortion followed by the commission of an overt act toward achieving that objective. (§ 182; *People v. Martin* (1983) 150 Cal.App.3d 148, 163.) Extortion is the obtaining of property from another with consent induced by force or fear. (§ 518.) Fear may be induced by a threat to injure the victim or a third person. (§ 519.)

"'Evidence is sufficient to prove a conspiracy to commit a crime "if it supports an inference that the parties positively or tacitly came to a mutual understanding to commit a crime. [Citation.] The existence of a conspiracy may be inferred from the conduct, relationship, interests, and activities of the alleged conspirators before and during the alleged conspiracy."' [Citations.]" (*People v. Maciel* (2013) 57 Cal.4th 482, 515-516.) The elements of agreement and intent may be established by circumstantial evidence. (*People v. Homick* (2012) 55 Cal.4th 816, 870; *People v. Bogan* (2007) 152 Cal.App.4th 1070, 1074.)

Jonathan's claim of insufficient evidence ignores the overwhelming evidence of his guilt, and instead frames the evidence in the light most favorable to his position. He essentially urges us to reweigh the evidence and draw inferences that the jury plainly rejected, which we cannot do. (See *People v. Klvana* (1992) 11 Cal.App.4th 1679, 1703 (*Klvana*) ["[I]t is inappropriate to ask an appellate court to reweigh the evidence and draw inferences which were rejected by the jury"].)

Jonathan selectively refers only to his initial conversation with Jimenez and their interactions on May 31. He also overlooks that in both of these encounters he threatened to physically harm Jimenez if he did not comply with the gang's demands. He also disregards the expert testimony that he acted

"in concert with" Oscar and that the other gang members took orders from Jonathan as if they came from Oscar. Jonathan's failure to acknowledge this and other direct and circumstantial evidence of his guilt is fatal to his claim of insufficient evidence. (*People v. Sanghera* (2006) 139 Cal.App.4th 1567, 1573.)

B. *Jonathan - Counts 3, 4, and 6*

Jonathan asserts that his convictions on counts 3, 4, and 6 must be reversed because "the acts shown in counts [2] through [4] constitute a single offense of extortion by threat and the acts shown in counts [5] and [6] constitute a second, single offense of extortion by threat." (Capitalizations omitted.) He claims only "two distinct threats were made," i.e., the threats that preceded the monetary payments upon which counts 2 and 5 are based.

The evidence is sufficient to prove that each of Jimenez's seven payments were made pursuant to a distinct threat. In claiming otherwise, Jonathan focuses exclusively on the *express* threats underlying counts 2 and 5, the latter of which was accompanied by an actual assault. But a threat underlying a conviction for extortion by threat need not be express. Rather, "[t]he threat may be implied from all of the circumstances." (*People v. Bollaert* (2016) 248 Cal.App.4th 699, 725.) Here, it was made clear to Jimenez that each demand for payment was just that—a demand—and that he would be beaten or killed if he refused to comply. He was warned he would face "consequences" if he did not have the money the next time it was demanded.

People v. Wilson (2015) 234 Cal.App.4th 193, which Jonathan cites in support of his claim, is inapposite. The defendant in that case made several threatening statements to the victim and his children over the course of a single confrontation that lasted about 20 minutes. In concluding the

defendant could be convicted on only one count of making a criminal threat (§ 422), the court reasoned "[i]t is not appropriate to convict a defendant of multiple counts under section 422 based on multiple threatening communications uttered to a single victim during a brief, uninterrupted encounter." (*Id.* at p. 201.)

Both the facts and the law at issue in *Wilson* are distinguishable from the instant case. The threats against Jimenez were not confined to a single, brief period. Moreover, a conviction for making a criminal threat requires proof that the threat causes the victim "reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety." (§ 422, subd. (a).) As the People correctly note, "[t]he proper unit of prosecution for extortion [by threat under section 519] is not the number of express threats, but rather the number of times property is obtained by consent where the consent was induced by fear." That happened seven separate times here, so the evidence is sufficient to support all seven extortion counts.

C. *Oscar and Jonathan - Claim of Right (All Counts)*

Oscar and Jonathan claim the evidence is insufficient to support their convictions because the evidence "established" that Oscar had loaned $500 to Jimenez on Castro's behalf and that Oscar merely "contacted Jimenez regarding the $500[] loan for Castro, not to extort money." They assert that "[b]ecause [Oscar] obtained money under a claim of right, he did not have the intent required for the crime of extortion." As support for this assertion, they cite cases recognizing that claim of right is a valid defense to robbery and larceny. (See, e.g., *People v. Tufunga* (1999) 21 Cal.4th 935, 938, 949-950.)

Oscar's and Jonathan's characterization of the asserted facts as "established" disregards the standard of review. The jury

was free to reject the defense evidence in favor of the prosecution's, and it plainly did so here. In any event, it *is* established that claim of right is not a valid defense to the crime of extortion. (*People v. Tufunga*, *supra*, 21 Cal.4th at pp. 955-956; see also *People v. Lancaster* (2007) 41 Cal.4th 50, 88.) The jury was so instructed here pursuant to CALCRIM No. 1830. Oscar and Jonathan's claim that the evidence effectively compelled the jury to accept such a defense thus fails.

D. *Perdomo and Segovia - Counts 2 through 4*

Perdomo and Segovia contend their convictions on counts 2, 3, and 4 must be reversed because the evidence is insufficient to prove they joined the conspiracy to commit extortion before those crimes were committed. They claim "[n]o evidence was presented that [they] knew anything of the[] acts of extortion which became the subjects of counts 2, 3 and 4, and which preceded [their] appearance at Jimenez'[s] door" immediately prior to the extortion upon which count 5 is based.

The evidence is sufficient to sustain the challenged convictions. Segovia set the object of the conspiracy in motion when he confronted Jimenez on the street, asked him to identify his gang affiliation, demanded his phone number (which he then gave to Oscar), and told him the person "in charge" of the Bagos would be contacting him. Not long thereafter, Oscar and Jonathan extorted a "tax" of $40 from Jimenez. About a week later, Perdomo went to Jimenez's apartment with Oscar, Jonathan, and Segovia and was introduced to Jimenez as the person "in charge of recruiting people." Detective Arnold explained that this contact and introduction were intended to send a message to Jimenez that appellants were all "in this" together. The jury also heard that MS-13 and Bagos had a

common practice of extorting money from its own members, that Oscar was the clique's shot-caller, and that Jonathan, Perdomo, and Segovia were all high-ranking members of the clique.

The jury reasonably inferred from this evidence that (1) appellants specifically intended (i.e., conspired) to extort money from clique members, like Jimenez, who refused to put in work; and (2) two parties to the conspiracy (Oscar and Jonathan) committed an overt act in furtherance thereof. The jury did not have to find that Perdomo and Segovia had actual knowledge of the crimes their co-conspirators committed in furtherance of the conspiracy in order to find them guilty of those crimes. ""'"In contemplation of law the act of one [conspirator] is the act of all. Each is responsible for everything done by his confederates, which follows incidentally in the execution of the common design as one of its probable and natural consequences . . . ."'" [Citations.] Thus, '[i]t is not necessary that a party to a conspiracy shall be present and personally participate with his co-conspirators in all or in any of the overt acts.' [Citation.]" (*People v. Morante* (1999) 20 Cal.4th 403, 417.)

The jury was instructed pursuant to CALCRIM No. 419 that "a defendant is not responsible for any acts that were done before he joined the conspiracy" and that "[y]ou may consider evidence of acts or statements made before the defendant joined the conspiracy only to show the nature and goals of the conspiracy. You may not consider any such evidence to prove that the defendant is guilty of any crimes committed before he joined the conspiracy." We presume the jury understood and followed this instruction. (*People v. Lindberg* (2008) 45 Cal.4th 1, 25-26.) In convicting Perdomo and Segovia on all counts, the jury necessarily found they were already part of the conspiracy to

commit extortion when the first extortion was committed. The evidence is sufficient to support this finding.

E. ***Appellants - Counts 7 and 8***

Appellants contend the evidence is insufficient to support their convictions of extortion by threat on counts 7 and 8 because Jimenez was working as a police informant when he made the payments upon which those counts are based. We disagree.

In deciding each count of extortion, the jury had to determine whether the monetary payment underlying each count was made "[a]s a result of" appellants' threats. The jury was instructed that "[t]he threat must be the controlling reason that [Jimenez] consented. If [Jimenez] consented because of some other controlling reason, [appellants are] not guilty of extortion." This correctly states the law. (*People v. Bollaert* (2010) 248 Cal.App.4th 699, 725; see also *People v. Goodman* (1958) 159 Cal.App.2d 54, 61 ["[an extortionist's] wrongful use of force or fear must be the operating or controlling cause compelling the victim's consent to surrender the thing to the extortionist"].)

The evidence, viewed in the light most favorable to the judgment, supports appellants' convictions of extortion by threat on counts 7 and 8. Although Jimenez was working as a paid informant when he made the last two payments and was given the money to make those payments, the jury reasonably inferred from the evidence that the *controlling reason* for consenting to make the payments was the fear instilled in him by the threats appellants made against him and his family. In arguing to the contrary, appellants again urge us to draw inferences that favor their position rather than the prosecution's. And, again, we note we cannot do so. (*Klvana*, *supra*, 11 Cal.App.4th at p. 1703.)

Oscar also contends his convictions on counts 7 and 8 cannot stand because the payments upon which those counts are based were given to him by law enforcement. He claims he cannot be convicted of extortion unless Jimenez gave "his" property, i.e., property "belonging to the victim." He offers no authority for this assertion, and there is none.

II.

Oscar and Jonathan's Additional Contentions

A. *Juror Misconduct*

Jonathan contends his convictions must be reversed due to juror misconduct. Oscar does not brief the issue but joins in it to the extent it benefits him. (Cal. Rules of Court, rule 8.200(a)(5).)

Although Oscar moved for a mistrial on the ground of juror misconduct, Jonathan did not. Accordingly, Jonathan's claim is forfeited. (*People v. Lewis* (2009) 46 Cal.4th 1255, 1308.) In any event, the court did not err in denying the motion.

Juror misconduct is grounds for a mistrial. (*People v. Jenkins* (2000) 22 Cal.4th 900, 983-986.) We review the denial of a mistrial motion on that ground for abuse of discretion. (*Id.* at p. 985.) In conducting our review, "[w]e first determine whether there was any juror misconduct. Only if we answer that question affirmatively do we consider whether the conduct was prejudicial. [Citation.]" (*People v. Collins* (2010) 49 Cal.4th 175, 242.)

When juror misconduct is alleged, "'the focus is on whether there is any *overt* event or circumstance . . . which suggests a *likelihood* that one or more members of the jury were influenced by improper bias.' [Citation.] A juror who 'consciously receives outside information . . . or shares improper information with other jurors' commits misconduct. [Citation.] Jury misconduct 'raises a rebuttable "presumption" of prejudice.' [Citation.]"

(*People v. Tafoya* (2007) 42 Cal.4th 147, 192.) "[T]he determination whether jury misconduct was prejudicial presents a mixed question of law and fact 'subject to an appellate court's independent determination.' [Citation.] We accept the trial court's factual findings and credibility determinations if supported by substantial evidence. [Citation.]" (*Ibid.*)

The morning after the first day of closing arguments, Juror No. 1 sent the court a note stating: "Leaving the courthouse yesterday, (I intentionally waited to leave the courthouse to allow time for the trial audience to leave) when I exited the elevator on the 'Temple' side and noticed that the one young lady that has been bringing the shirts for the defendants walked out in front of me. When I reached the top of the stairs there was a dark SUV with the front windows rolled up but the back seat windows were down and 2 male Hispanics in the back seat started waving vigorously in my direction. They did make eye contact with me and continued to wave in my direction."

The court questioned Juror No. 1 outside the presence of the other jurors. The juror said "[i]t might have been my paranoia but . . . when I ran it by other [jurors] they said, no, you should say something." She represented that she had not made any connection between the incident and the case and that the incident would not prevent her from being fair to either side.

Juror No. 1 was excused to the jury room and was admonished not to talk to the other jurors about what had happened. Counsel and the court agreed that the court should individually question each juror. Ten jurors and the alternate jurors all verified that Juror No. 1 had spoken to them about the incident that morning. Juror No. 11 was not present when Juror No. 1 spoke about the incident, but had "heard [it] this morning."

When asked if any other juror had mentioned anything about the incident in his/her presence, Juror No. 1 replied, "No, not at all." All of the jurors stated that nothing about the incident would make it difficult for them to be fair to both sides.

Juror No. 2 also said the jury was "collectively" concerned about safety issues, yet she had drawn no inference between what Juror No.1 had said and the instant case. After Juror No. 4 made a similar observation, the court explained "there is nothing that indicated [the incident] was connected to this case. That's the first thing you should understand." Juror No. 4 stated that she had not "blow[n] it out of proportion" and that nothing about the incident would affect her ability to be fair to both sides.

Outside the jury's presence, Oscar's attorney claimed that Juror Nos. 1 and 4 had spoken about the incident prior to that morning. The court found nothing to support this claim and added that even if such a communication took place, Juror No. 4 said it would not affect her ability to be fair to both sides. Jonathan's counsel wondered whether the incident might have "taint[ed Juror No. 2's] perception," yet conceded that the juror had assured the court "she is not influenced." The court noted it is common for jurors in gang cases to be concerned for their safety and characterized the incident as a "non-issue."

The next day, Oscar's counsel moved for a mistrial alleging that the jurors had committed misconduct by discussing the case. The court denied the motion.

The court did not err. Oscar's juror misconduct claim "fail[s] at the threshold under California law. '[W]hen the alleged misconduct involves an unauthorized communication with or by a juror, the presumption [of prejudice] does not arise unless there is a showing that the content of the communication was about the

matter pending before the jury, i.e., the guilt or innocence of the defendant. [Citations.]' [Citations.]" (*In re Hamilton* (1999) 20 Cal.4th 273, 305-306.) Here, the content of the challenged communications had nothing to do with the case or the determination of appellants' guilt or innocence. As the court noted, "[t]hey weren't talking about the case."

Jonathan speculates that Juror No. 1's recounting of the incident "created, in the jury room, an environment of fear for the jurors [*sic*] personal safety both during and after the trial from male Hispanics in a dark SUV." But all of the jurors assured the court that nothing about the incident would have any effect on their ability to decide the case fairly and impartially. The court found those assurances credible, and we must accept those findings. (*People v. Majors* (1998)18 Cal.4th 385, 424-425.) The People also note that jurors' concerns about their safety and the safety of their families do not constitute evidence of bias against the defendants. (*People v. Navarette* (2003) 30 Cal.4th 458, 500.)

B. *Evidence of Jimenez's Prior Arrest*

During the prosecution's case-in-chief, Oscar sought to impeach Jimenez's testimony that he had moved back in with his parents in or around January 2012. In a sidebar conference during Jimenez's cross-examination, Oscar's attorney made an offer of proof that in August 2011 Jimenez was arrested at his parents' house for domestic violence and that the police report stated he was living there. In an Evidence Code section 402 hearing, Jimenez testified that he told the arresting officer he was only visiting his parents but the officer did not understand because Jimenez's English was poor. Oscar's attorney also proffered evidence that Jimenez told the FBI and Detective Arnold he moved back to his parents' house in June or July 2011.

The court permitted Oscar's counsel to question Jimenez regarding his statements to the FBI and Detective Arnold. The court precluded counsel from questioning Jimenez about the arrest pursuant to Evidence Code sections 351 and 352 because "the relevance is almost zero," the impeachment was on a collateral matter, and pursuing the issue would lead to a "mini trial about whether [Jimenez] understood English to articulate it in English or whether the officer knew enough Spanish to understand what he was saying."

Oscar contends the court violated his Sixth Amendment confrontation rights by precluding him from cross-examining Jimenez regarding his prior arrest. Jonathan did not brief the issue, but joins in Oscar's claim to the extent it may benefit him.

The confrontation clause claim is forfeited. Jonathan did not seek to impeach Jimenez with the evidence of Jimenez's arrest, nor did he object when the court excluded that evidence. Although Oscar sought to admit the evidence, he failed to assert any constitutional right to do so or raise any constitutional challenge to the denial of his request. Accordingly, neither Oscar nor Jonathan can raise a Sixth Amendment claim on appeal. (*People v. Redd* (2010) 48 Cal.4th 691, 730, fn. 19.)[6]

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[6] In his reply brief, Oscar asserts that "[d]efense counsel vigorously sought to introduce the impeachment evidence" and that "[t]hese objections [*sic*] preserve appellant [*sic*] review." He offers cases recognizing that Sixth Amendment claims are not forfeited if they are based on a new rule of law announced after the defendant was tried and convicted. (E.g., *People v. Rangel* (2016) 62 Cal.4th 1192, 1215.) No such rule is at issue here. Oscar also contends for the first time that counsel's failure to preserve the claim amounts to ineffective assistance. This claim

In any event, the court did not err. Among other things, "[a] trial court's limitation on cross-examination pertaining to the credibility of a witness does not violate the confrontation clause unless a reasonable jury might have received a significantly different impression of the witness's credibility had the excluded cross-examination been permitted. [Citations.]" (*People v. Quartermain* (1997) 16 Cal.4th 600, 623-624.) Here, the excluded evidence was cumulative. Oscar and Jonathan were both allowed to impeach Jimenez with another prior inconsistent statement regarding when he moved back to his parents' house. The court also correctly found that the proffered evidence went to a collateral issue and had little if any tendency to prove that for which it was offered. Moreover, it is clear that Jimenez's prior arrest was not admissible to impeach his credibility. (*People v. Medina* (1995) 11 Cal.4th 694, 769.) Given the strong evidence of Oscar's and Jonathan's guilt, it is also clear that any error in excluding the proffered evidence was harmless beyond a reasonable doubt. (See *People v. Trujeque* (2015) 61 Cal.4th 227, 275 [confrontation clause violations compel reversal unless the error was harmless beyond a reasonable doubt].)

DISPOSITION

The judgments against Perdomo and Segovia are modified to reflect they were each ordered to pay $490 in victim restitution, with $290 payable to Jimenez and $200 payable to

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is forfeited. (*People v. Peevy* (1998) 17 Cal.4th 1184, 1206.) ["Normally, a contention may not be raised for the first time in a reply brief"].) In any event, the foregoing discussion demonstrates the claim would fail on both prongs. (*People v. Scott* (1997) 15 Cal.4th 1188, 1211-1212 [an ineffective assistance of counsel claim requires a showing of error and prejudice].)

the FBI. The superior court clerk is ordered to modify the abstracts of judgment and minute orders accordingly and send a copy of the modified abstracts to the Department of Corrections and Rehabilitation. As so modified, the judgments are affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Curtis B. Rappe, Judge
Superior Court County of Los Angeles

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant Oscar J. Chavez.

Cynthia L. Barnes, under appointment by the Court of Appeal, for Defendant and Appellant Jonathan Chavez.

John Doyle, under appointment by the Court of Appeal, for Defendant and Appellant Edwin Omar Castillo Perdomo.

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