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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND BRADLEY,

Defendant and Appellant.

D068632

(Super. Ct. No. SCN308946)

APPEAL from a judgment of the Superior Court of San Diego County, Honorable Carlos O. Armour, Judge. Affirmed in part and remanded with directions.

Hartman Law Office and Jared Michael Hartman, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler and Julie L. Garland, Assistant Attorneys General, Scott C. Taylor and Laura A. Baggett, Deputy Attorneys General, for Plaintiff and Respondent.

Raymond Bradley pleaded guilty to count 1 of inflicting a corporal injury resulting in a traumatic condition upon a present or former cohabitant, spouse or significant other

(Pen. Code,<sup>1</sup> § 273.5, subd. (a)) and admitted the truth of an allegation that he inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)). Bradley also admitted the truth of allegations that he had suffered a prior serious felony conviction (§§ 667, subd. (a)(1), 668, 1192.7, subd. (c)), which also constituted a strike (§§ 667, subds. (b)-(i), 668, 1170.12). All remaining counts and allegations were dismissed. Under the plea agreement, Bradley stipulated to a 16-year prison sentence consisting of six years on count 1, five years for the section 12022.7, subdivision (e) allegation, and five years for the serious felony. He received 1198 credits for time served. The trial court issued a 10-year criminal protective order preventing Bradley from having any contact with the victim.

Bradley contends the protective order is overbroad and vague without a requirement that violations be knowing and willful, the court exceeded its statutory authority in imposing certain conditions, and some conditions of the order were not included in the oral pronouncement, requiring that they be stricken. As we explain below, Bradley's challenges fail as to term Nos. 12, 13 and 14 of the protective order, but we remand the matter for the trial court to clarify its intentions regarding the remaining terms and conditions of the protective order, with some guidance relating to the order's specificity and the court's authority to impose certain of the conditions.

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<sup>1</sup> All undesignated statutory references are to the Penal Code.

## FACTUAL AND PROCEDURAL BACKGROUND

Bradley stipulated to the preliminary hearing transcript as constituting the factual basis for his guilty plea, and thus we take the facts from that hearing. In 2012, Bradley pushed his girlfriend into a concrete bench, causing her to fall and suffer injuries to her ribs requiring chest intubation and eight days of hospitalization.

At Bradley's June 2015 sentencing hearing, the People submitted the 10-year protective order and the court expressed its intention to follow the recommended conditions. Bradley was personally served with the order at the hearing. With respect to that order, the following colloquy occurred:

"The court: . . . [¶] . . . [¶] The court will also issue a protective order for a period of ten years effective today on behalf of [the victim]. The defendant [is] to have no personal, electronic, telephonic or written contact with her. He is to have no contact with that person through a third party except an attorney of record. He is not to come within a hundred yards of that person. [¶] Do you understand the terms of that order?"

"[Bradley]: I do.

"The court: And you agree to abide by those terms?"

"[Bradley]: Yes.

"The court: All right. Thank you. The court is executing the protective order."<sup>2</sup>

The protective order is on Judicial Council form CR-160 (rev. July 2014), a two-page, pre-printed form, the use of which is mandatory for a criminal protective order

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<sup>2</sup> The court's oral pronouncement encompassed term Nos. 12, 13, and 14 of the protective order.

involving domestic violence. This form, entitled, "Criminal Protective Order—Domestic Violence," permits the court to check boxes to identify under which statute(s) the order is issued, referring to sections 136.2, 1203.097, 273.5, subdivision (j), and 646.9, subdivision (k). Here, the court checked the box indicating the order was made under section 273.5, subdivision (j).<sup>3</sup> The form incorporates conditions for which the court need not check a box to impose (term Nos. 7-10), and other conditions that the court must check a box to impose (term Nos. 11-18). In addition to term Nos. 12 through 14, which were check-marked and the court recited at the sentencing hearing, the order provides that Bradley:

"7. [M]ust not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected person named above.

"8. [M]ust not own, possess, buy or try to buy, receive or try to receive, or otherwise obtain a firearm or ammunition. The defendant must surrender to local law enforcement, or sell to or store with a licensed gun dealer any firearm owned by the defendant or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 48 hours of receiving this order.

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<sup>3</sup> Section 273.5, subdivision (j) authorizes a court to issue a protective order "[u]pon conviction under subdivision (a)," which provides that any person who "willfully inflicts corporal injury resulting in a traumatic condition upon a [spouse, cohabitant, dating partner, or coparent] is guilty of a felony." (§ 273.5, subds. (a), (b).)

"9. [M]ust not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.

"10. [M]ust take no action to obtain the addresses or locations of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise."

The order further contains checkmarks on the following conditions not orally recited by the court:

"17. The protected person may record any prohibited communications made by the restrained person.

"18. Other orders including stay-away orders from specific locations: home, employment, vehicle."

## DISCUSSION

### I. *Oral Pronouncement of the Criminal Protective Order's Terms*

We begin with Bradley's last argument, namely, that the court failed to make an oral pronouncement of term Nos. 7 through 10, 17 and 18 of the protective order and thus those terms must be stricken. In response, the People argue there is no distinction between the oral pronouncement and written order, and because Bradley was immediately served at the hearing with the protective order containing the terms, he is bound by all of them.

"In a criminal case, it is the oral pronouncement of sentence that constitutes the judgment." (*People v. Scott* (2012) 203 Cal.App.4th 1303, 1324, italics omitted; see, e.g.,

*People v. Mitchell* (2001) 26 Cal.4th 181, 185 [abstract of judgment does not control if different from the trial court's judgment and may not add to or modify the judgment].) As a general rule, "[w]here there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls." (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385; *People v. Contreras* (2015) 237 Cal.App.4th 868, 880, citing *People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2.) Conflicting records should be harmonized if possible (*People v. Harrison* (2005) 35 Cal.4th 208, 226), but if they cannot be reconciled, whether one portion of the record should prevail as against contrary statements in another portion of the record depends on the circumstances of each particular case. (*Ibid.*; *Contreras*, at p. 880.) "[D]iscrepancies between an abstract and the actual judgment as orally pronounced are subject to correction at any time, and should be corrected by a reviewing court when detected on appeal." (*Scott*, at p. 1324.)

Here, the court did not orally pronounce all of the selected terms in form CR-160. The court recited term Nos. 12, 13, and 14. However, the remaining terms were not made in the oral pronouncement, even though the form criminal protective order includes them because they are either built into the order or the box relating to that term is checked. It is theoretically possible that the court purposely added conditions when it issued the order. In the case of probation terms, courts can change or add conditions, which as this court has explained "need not be spelled out in great detail in court as long as the defendant knows what they are; to require recital in court is unnecessary in view of the fact the probation conditions are spelled out in detail on the probation order and the

probationer has a probation officer who can explain to him the contents of the order." (*People v. Thrash* (1978) 80 Cal.App.3d 898, 900-901; see also *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1364.)<sup>4</sup> But stay-away conditions of probation are distinct from protective orders, as a violation of a probation condition results in revocation of parole (*People v. Petty* (2013) 213 Cal.App.4th 1410, 1424, fn. 13), whereas a violation of a protective order is punishable as a misdemeanor, a felony or as contempt. (See § 166, subd. (c)(1); form CR-160, p. 2, Warnings and Notices.)

Though the record indicates Bradley was personally served with a copy of the protective order in this case, we cannot say whether the trial court intended to modify its oral pronouncement by some of the additional terms, or the additional terms were not a clerical error. There is no indication the challenged conditions were part of a group of standard conditions that the court intended to "spell[] out in detail" later. (*People v. Thrash, supra*, 80 Cal.App.3d at p. 901.) Because we cannot conclusively say what the trial court intended to impose, we remand the matter for the court to clarify its intent to impose the conditions not included in its oral pronouncement.

## II. *Overbreadth and Vagueness Challenge*

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<sup>4</sup> In *Thrash*, this court upheld an order revoking the defendant's probation based on a violation of a probation condition that had not been included in the trial court's original pronouncement of judgment. (*People v. Thrash, supra*, 80 Cal.App.3d at pp. 900-902.) The trial court suspended imposition of the defendant's sentence "on condition he serve one year in custody and 'on other conditions set forth in the probation report.'" (*Id.* at p. 900.) Although the probation report did not contain the challenged probation condition, the condition was listed on an amended probation order that the defendant had received. (*Ibid.*) This court affirmed the order revoking probation because the defendant knew about the condition, despite the fact that it was not orally imposed or listed in the report. (*Id.* at pp. 901-902.)

We discuss Bradley's remaining contentions because they apply to the terms orally pronounced, as well as the additional terms. If, on remand, the court concludes that the inclusion of the additional conditions was not the result of clerical error, we provide the following discussion as guidance.

Overbreadth and vagueness are related but distinct concepts. "[T]he underpinning of a vagueness challenge is the due process concept of 'fair warning,' " which encompasses the " 'concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders.' " (*In re Sheena K.* (2007) 40 Cal.4th 875, 890; see also *People v. Forrest* (2015) 237 Cal.App.4th 1074, 1080.) In determining the adequacy of the notice given, "we are guided by the principles that 'abstract legal commands must be applied in a specific *context*,' and that, although not admitting of 'mathematical certainty,' the language used must have ' "reasonable specificity." ' " (*Sheena K.*, at p. 890.) Thus, "[a] probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness." (*Ibid.*) On the other hand, " '[t]he essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant's constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.' " (*Forrest*, at p. 890, quoting *In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) We review de novo claims that a condition is vague or overbroad. (*Sheena K.*, at p. 888.)

Bradley contends the protective order is unconstitutionally overbroad and vague because the court did not require violations to be knowing and willful.<sup>5</sup> In part, he argues that the term ordering him to have no contact with the protected party "on its face, would be punishable even if appellant should not be the one initiating the contact." The People respond that such a scienter requirement is implied in the order, since proof of a violation requires evidence that the violation be knowing and willful under section 166, subdivision (c)(1). They further point out that to the extent the protective order prohibits Bradley from contacting the victim personally, electronically or in writing, or coming within 100 yards of her, the order sufficiently advises Bradley what he is prohibited from doing. They ask us to follow *People v. Patel* (2011) 196 Cal.App.4th 956. In *Patel*, the Court of Appeal expressed its frustration with having to continuously revisit the express scienter requirement in probation orders. (*Id.* at pp. 960-961.) The *Patel* court instead decided it would no longer entertain the issue given the substantial body of case law that established a "probationer cannot be punished for presence, possession, association, or other actions absent proof of scienter." (*Id.* at pp. 960-961.)

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<sup>5</sup> Bradley raises this challenge to the order for the first time on appeal, but the People concede that "a claim based on a term's overbreadth or vagueness is not forfeited on appeal even if the defendant failed to object in the court below." Though an appellant will forfeit issues on appeal that were not initially raised in the trial court (*People v. Smith* (2001) 24 Cal.4th 849, 852), an exception exists for claims that a probation condition is unconstitutionally vague and overbroad, as long as the claim presents a pure question of law. (*In re Sheena K.*, *supra*, 40 Cal.4th at pp. 885-889.) Further, we may address claims if they raise an issue of an unauthorized sentence or a sentencing decision that is in excess of the trial court's jurisdiction. (*Sheena K.*, at p. 886-887; *People v. Ponce* (2009) 173 Cal.App.4th 378, 381, citing *Smith*, at p. 852.)

At least two courts in published opinions, including in the Fourth District, have declined to follow *Patel's* rationale, and the issue has been taken up by the California Supreme Court. (See *People v. Pirali* (2013) 217 Cal.App.4th 1341, 1351; *People v. Moses* (2011) 199 Cal.App.4th 374, 380-381; *People v. Hall* (2015) 236 Cal.App.4th 1124, review granted and opinion superseded Sept. 9, 2015, No. S227193 [reviewing whether "an explicit knowledge requirement [is] constitutionally mandated [in probation conditions]"]; *In re A.S.* (2016) 245 Cal.App.4th 758, review granted and opinion superseded July 31, 2014, No. S220280 [reviewing whether "no-contact probation conditions [must] be modified to explicitly include a knowledge requirement"]; *People v. Gaines* (2015) 242 Cal.App.4th 1035, review granted and opinion superseded Feb. 17, 2016, No. S231723.)

We likewise agree that a categorical approach to the scienter question is not appropriate, but each challenged condition should be evaluated on a case-by-case basis. (Accord, *In re Ana C.* (2016) 2 Cal.App.5th 333, 341-342; *In re Kevin F.* (2015) 239 Cal.App.4th 351, 362, fn. 5; *People v. Pirali*, *supra*, 217 Cal.App.4th at p. 1351.) Bradley, however, does not undertake this approach on appeal, with the exception of the no-contact conditions. As to those no-contact or no-harassment conditions (term Nos. 7, 12, 13, 14 and 18), we conclude modification is not necessary. The orders leave no doubt as to the scope of the prohibited conduct, and the order here specifically identifies the protected person by name. (Accord, *People v. Hartley* (2016) 248 Cal.App.4th 620, 633-635.) The Sixth District Court of Appeal in both *Hartley* and *People v. Rodriguez* (2013) 222 Cal.App.4th 578 rejected the defendant's argument that staying 100 yards away from

the victim's residence, place of employment or victim's vehicle required an express knowledge element. (*Hartley*, at p. 635.) In *Rodriguez*, the court said, "No reasonable law enforcement officer or judge can expect probationers to know where their victims are at all times," and a no-contact condition "does not require [a] defendant to stay away from all locations where the victim might conceivably be. It requires [a] defendant to remove himself ('Stay away at least 100 yards . . . .') when he knows or learns of a victim's presence." (*Id.* at p. 594.) With this understanding, an order requiring Bradley to stay away from an individual victim is perfectly clear and meaningful when he knows the victim, who was his girlfriend, and she is specifically identified in the order as here.

Unlike this case, the condition in *Rodriguez* suffered from the fatal ambiguity that it did not designate from whom the defendant was to stay away, and there were two victims in the case. (*People v. Rodriguez, supra*, 222 Cal.App.4th at p. 594.) Further, the condition did not identify the victims or their addresses or vehicles, and the probation report did not provide that information. (*Id.*, at p. 595.) The defendant pointed out that the circumstances of the crime did not indicate he knew or reasonably should have known the car owner's name, where she worked, or what other vehicles she may operate. (*Ibid.*) The People conceded a knowledge requirement should be added, and thus, the Court of Appeal reversed the order to permit the court to modify the condition to require the defendant not knowingly come within 100 yards of a "known or identified victim." (*Ibid.*) This is not a case like *Rodriguez* where the probation condition referred to "the victim" when there were multiple victims. Here, the victim was Bradley's girlfriend, and she is identified by name in the order. Bradley makes no claim that he cannot reasonably

know where she lives or works, or the vehicle she drives. There is no need for further modification.

As for the other conditions, Bradley makes no specific arguments pointing out how they are vague or overbroad without an express scienter requirement. Though this court has the authority to modify or define conditions if necessary (*In re Sheena K, supra*, 40 Cal.4th at p. 892), we decline to make Bradley's arguments for him. And given the uncertainty as to whether the trial court intended to impose the remaining conditions in the first place, the trial court may assess any challenges made by Bradley on remand.

### III. *Statutory Authority To Impose Term Nos. 8 Through 10, 14, 17 and 18*

Bradley contends the trial court exceeded its statutory authority by imposing some of the protective order's terms. He maintains that under the plain language of section 273.5, subdivision (j), the court may issue an order "restraining the defendant from any contact with the victim," but the statute does not authorize the court to issue the conditions reflected in term Nos. 8, 9, 10, 14, 17, and 18. The People respond that each of the terms is either authorized by section 273.5, subdivision (j), or by other applicable statutes.<sup>6</sup> They argue "the Judicial Council appropriately adopted the terms and conditions from section 273.5, subdivision (j), and other relevant and applicable statutes in creating Form CR-160," and thus the form is statutorily authorized.

"[T]here are exceptions to this rule for unauthorized sentences and sentencing decisions that are in excess of the trial court's jurisdiction." (*People v. Ponce, supra*, 173

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<sup>6</sup> We note the People discuss the court's authority to impose term Nos. 7, 12 and 13, the statutory authority for which is not challenged by Bradley.

Cal.App.4th at p. 381.) "A claim that a sentence is unauthorized . . . may be raised for the first time on appeal, and is subject to judicial correction whenever the error comes to the attention of the reviewing court." (*People v. Dotson* (1997) 16 Cal.4th 547, 554, fn. 6.) "Although the cases are varied, a sentence is generally 'unauthorized' where it could not lawfully be imposed under any circumstance in the particular case. Appellate courts are willing to intervene in the first instance because such error is 'clear and correctable' independent of any factual issues presented by the record at sentencing." (*People v. Scott* (1994) 9 Cal.4th 331, 354.) Where a case involves the jurisdictional validity of the trial court's decision to issue a protective order during sentencing, we may consider the claim on the merits. (*Ponce*, at pp. 381-382; *People v. Robertson* (2012) 208 Cal.App.4th 965, 995-996.)

Here, the trial court checked only one box on the form to indicate the applicable legal authority, that of section 273.5, subdivision (j). However, "[i]t is not the content or format of the Judicial Council form that determines the propriety of the challenged protective order, but the authorizing statute." (*People v. Stone* (2004) 123 Cal.App.4th 153, 158; *People v. Robertson, supra*, 208 Cal.App.4th at p. 996.) We look to each of the challenged conditions to determine whether the court lawfully could impose them under any statute.

A. *Term Nos. 10, 14, 17 and 18*

Section 273.5, subdivision (j) provides that "[u]pon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from *any contact with the victim*, which may be valid for up to 10 years, as determined by

the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family. This protective order may be issued by the court whether the defendant is sentenced to state prison or county jail, or if imposition of sentence is suspended and the defendant is placed on probation." (§ 273.5, subd. (j), italics added.) Bradley was convicted of violating section 273.5, subdivision (a), so subdivision (j) of that section gave the court authority to impose the protective order in accordance with its terms.

At issue is section 273.5, subdivision (j)'s language authorizing the court to issue an order "restraining the defendant from any contact with the victim." "We review de novo questions of statutory construction. [Citation.] In doing so, 'our fundamental task is 'to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute.' " [Citation.] We begin with the text, 'giv[ing] the words their usual and ordinary meaning [citation], while construing them in light of the statute as a whole and the statute's purpose [citation].' [Citation.] 'If no ambiguity appears in the statutory language, we presume that the Legislature meant what it said, and the plain meaning of the statute controls.' " (*People v. Blackburn* (2015) 61 Cal.4th 1113, 1123; see also *People v. King* (2006) 38 Cal.4th 617, 622 [if plain, commonsense meaning of a statute's words is unambiguous the plain meaning controls].) The plain meaning of contact is "an establishing of communication with someone . . ." (Merriam-Webster's Collegiate Dictionary (11th ed. 2006) p. 268), as well as the state or condition that exists "when two people . . . physically touch each other," or when "people see and communicate

with each other." (Merriam-Webster Dictionary <<http://www.merriam-webster.com/dictionary/contact>> [as of Sept. 19, 2016].) The statute broadly prohibits "any contact," which we interpret to include all forms of contact whether direct or indirect.

Additionally, section 136.2 requires trial courts to consider the issuance of protective orders "[i]n all cases in which a criminal defendant has been convicted of a crime involving domestic violence as defined in Section 13700 . . . ."

(§ 136.2, subd. (i)(1).) "Domestic violence" is defined in section 13700 as "abuse committed against . . . a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship." (§ 13700, subd. (b).) "Abuse" is defined as "intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another."

(§ 13700, subd. (a).) Bradley's offense against the victim, his girlfriend, which caused her bodily injury, qualifies as a crime of domestic violence under these provisions and authorized the court to issue a criminal protective order under section 136.2. (Accord, *Babalola v. Superior Court* (2011) 192 Cal.App.4th 948, 963-964 ["in domestic violence cases past harm, as evidenced by the underlying charges or other information concerning the defendant's criminal history, or threat of future harm to the victim may provide good cause for issuance of a criminal protective order"].)

When a court enjoins a party pursuant to section 136.2, section 132.3 provides that the court "shall . . . prohibit[ that party] from taking any action to obtain the address or

location of a protected party or a protected party's family members, caretakers, or guardian, unless there is good cause not to make that order." (§ 136.3, subd. (a).)

1. *Term No. 10: Must Not Obtain Addresses or Locations*

This term enjoins Bradley from obtaining the addresses or location of the victim or her family members, caretakers, or guardian. The term applies by use of the form without the need to check a box on form CR-160 (the form provides a box to check if the court "finds good cause *not* to make the order in item 10"). The term is plainly intended to prevent Bradley from taking steps to contact the victim by obtaining information about or locating her whereabouts. Because the trial court did not have to check a box and it did not recite this term on the record, it is not clear the court intended to impose it on Bradley. On remand, if the court elects to impose the term, we conclude section 273.5, subdivision (j) authorizes it as against the victim, and the term as to family members, caretakers, or guardians is further authorized by section 136.3 unless the court finds there is good cause not to make that order.

2. *Term No. 14: Come Within 100 Yards of the Victim*

This condition prevents Bradley from contacting the victim, since he cannot touch, meet, or communicate face-to-face with her. This condition provides the victim with a cushion of distance that allows her to contact law enforcement or remove herself. This term is consistent with the Legislature's intent to prohibit "any contact with the victim." It is authorized by section 273.5, subdivision (j).

3. *Term No. 17: Record any Prohibited Communication*

This condition permits the victim to record Bradley if he engages in a prohibited communication with her. The recording would enable the victim to establish a violation of the protective order in which Bradley has contacted her. On remand, should the court elect to include this term, we hold it is authorized by section 273.5, subdivision (j).

4. *Term No. 18: Stay Away from Home, Employment, and Vehicle*

This term prevents Bradley from contacting or attempting to contact the victim by going to places where she is likely to be present. On remand, should the court elect to include this term, it is authorized by the plain language of section 273.5, subdivision (j).

B. *Term Nos. 8 and 9*

1. *Term No. 8: Own, Possess, Buy or Receive Firearm or Ammunition*

Section 136.2 provides: "A person subject to a protective order issued under this section shall not own, possess, purchase, receive, or attempt to purchase or receive a firearm while the protective order is in effect." (§ 136.2, subd. (d)(1).) When a court issues a criminal protective order under section 136.2, it is required to order the defendant "to relinquish any firearms he or she owns or possesses pursuant to Section 527.9 of the Code of Civil Procedure." (§ 136.2, subd. (d)(2); see Code Civ. Proc., § 527.9, subd. (b) [requires an order that defendant "relinquish any firearm in that person's immediate possession or control, or subject to that person's immediate possession or control, within 24 hours of being served with the order"].) Section 29825, subdivision (d) requires the Judicial Council to provide notice on all protective orders that the respondent is prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm while the protective order is in effect, among other notices.

The court was not required to check a box to include term No. 8, and it did not recite the term during the sentencing hearing. However, term No. 8 is incorporated into form CR-160 by law, as stated above. And given Bradley's crime of domestic violence, the court was not only authorized, but mandated by section 136.2, to impose term No. 8.

In any event, Bradley acknowledged in his plea agreement that he cannot possess firearms or ammunition. Bradley also admitted to a prior serious felony charge and as a felon he is prohibited from possessing or owning a firearm or ammunition under section 29800, subdivision (a)(1). Bradley is prohibited from owning, possessing, buying or receiving firearms or ammunition regardless of imposition of this condition.

*2. Term No. 9: Must Not Attempt to or Actually Prevent any Victim or Witness from Attending a Hearing or Testifying or Making a Report to any Law Enforcement Agency or Person*

Term No. 9 bars Bradley from attempting to or preventing or dissuading any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person, conduct constituting a violation of section 136.1. The court was not required to check a box to include term No. 9, and it did not recite the term during the sentencing hearing.

Section 136.2, subdivision (a) provides that "[u]pon a good faith belief that harm to . . . a victim . . . has occurred, a court with jurisdiction over a criminal matter may issue . . . [¶] . . . [¶] . . . [a]n order that a defendant shall not violate any provision of Section 136.1." (§ 136.2, subd. (a)(1)(B).) Given Bradley's offense involving harm to the victim, the court was authorized to issue an order including term No. 9. Further, it is

arguable that Bradley would have to make some sort of direct or indirect contact to attempt to or actually prevent any victim from attending or testifying or making a report to any law enforcement agency or person, making such a term authorized by section 273.5, subdivision (j). However, unidentified witnesses cannot be included in the order unless the court finds good cause that harm to, or intimidation or dissuasion of a witness has occurred or is likely to occur. (§ 136.2.)

On remand, the trial court must clarify whether it intended to impose term No. 9, which must be supported by a good faith belief of circumstances as stated above.

#### DISPOSITION

The matter is remanded with directions that the trial court clarify its intentions regarding term Nos. 7, 8, 9, 10, 17, and 18 of the criminal protective order. The trial court must impose term No. 8, but may consider Bradley's claims of overbreadth and

vagueness, if any, on remand. In all other respects, including as to term Nos. 12, 13 and 14 of the protective order, the judgment is affirmed.

O'ROURKE, J.

WE CONCUR:

HALLER, Acting P. J.

AARON, J.