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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re O.V., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

O. V.,

Defendant and Appellant.

F068467

(Super. Ct. No. JJD064950)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Tulare County. Jennifer Shirk, Judge.

Candice L. Christensen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Lewis A. Martinez, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Gomes, J. and Kane, J.

INTRODUCTION

Appellant O.V. challenges the finding that he committed battery on a person with whom he was in a dating relationship, as set forth in Penal Code section 243, subdivision (e)(1),¹ contending there was insufficient evidence to establish he and the victim were in a dating relationship. He further contends the probation condition prohibiting him from possessing or handling any knife is overbroad. We will affirm the true finding on the section 243, subdivision (e)(1) offense and modify the probation condition.

FACTUAL AND PROCEDURAL SUMMARY

On August 18, 2013, a sheriff's deputy was dispatched to a possible domestic violence call. The deputy contacted the female party, L.C., and found her to be uncooperative and evasive. She denied being in a physical altercation with her boyfriend, O.V., and claimed they were just arguing. The deputy noticed L.C. had a swollen lip that was scabbed over and did not appear freshly inflicted.

The next day a sheriff's deputy was on duty in the parking lot of a local school when he was approached by a female and was told that a male and female were engaged in an argument. The deputy went to the location where he had been told the parties were arguing. Upon arriving he saw O.V. holding on to L.C.'s arm as she was trying to pull away. When O.V. saw the deputy approaching, he let go of L.C.

As the deputy approached, he heard L.C. say to O.V., "You see. This is what happens." L.C. was agitated, upset, and crying. L.C. told the deputy that O.V. had spit in her face and would not let go of her. The deputy detained O.V. and, as he was placing O.V. in the patrol car, O.V. stated he "just wanted to get her back."

Photographs were taken to document the injuries to L.C. Those photos showed a scratch on her upper back, an abrasion on her lower back, a burn from a cigarette lighter,

¹All further statutory references are to the Penal Code.

and an abrasion on her neck where O.V. had choked her. O.V. was interviewed about the incident, after waiving his rights under *Miranda v. Arizona* (1966) 384 U.S. 436.

During the interview, O.V. admitted holding on to L.C. to keep her from getting away from him. When asked about the injury to L.C.'s lip, O.V. stated that "she told him to do it." As for the burn mark, O.V. initially was surprised when asked about it and then refused to answer a question about how the injury occurred. O.V. admitted pushing L.C. to the ground on occasion, but maintained he always fell with her to prevent injuries. He denied any attempt at choking her.

On August 21, 2013, a Welfare and Institutions Code section 602 petition was filed against O.V., alleging that he committed two misdemeanor violations of section 243, subdivision (e)(1). At the time this petition was filed, O.V. had prior sustained juvenile petitions. On October 8, 2013, the juvenile court found count 1 of the petition not true and count 2 to be true.

On November 19, 2013, the juvenile court declared O.V. to be a ward of the juvenile court and found the maximum term of confinement to be one year, placed him in the custody of his parents under the supervision of a probation officer, and imposed various terms and conditions of probation. One of the terms and conditions of probation was that O.V. "not possess, own, or handle any firearm, knife, weapon, fireworks, explosives, or chemicals that can produce explosives."

DISCUSSION

O.V. challenges the true finding on the section 243, subdivision (e)(1) offense on the grounds that there was insufficient evidence of a dating relationship between L.C. and him. He also contends the condition of probation that prohibits possessing, owning, or handling any knife is overbroad. His first contention lacks merit, but the second does not.

I. Sufficiency of the Evidence

O.V. claims there was insufficient evidence establishing he had a dating relationship with L.C. as required by section 243, subdivision (e)(1). We disagree.

““When the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence—i.e., evidence that is credible and of solid value—from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt.”” (*People v. Hill* (1998) 17 Cal.4th 800, 848-849; *People v. Villalobos* (2006) 145 Cal.App.4th 310, 321-322; see *People v. Duran* (2002) 97 Cal.App.4th 1448, 1456-1457.) This same standard applies in juvenile cases. (*In re Macidon* (1966) 240 Cal.App.2d 600, 607.)

Section 243, subdivision (e)(1) proscribes battery against a person “with whom the defendant currently has, or has previously had, a dating or engagement relationship.” “Dating relationship” is defined in section 243, subdivision (f)(10) as “frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.” A ““dating relationship” does not include “a casual relationship or an ordinary fraternization between [two] individuals in a business or social context.”” (*People v. Upsher* (2007) 155 Cal.App.4th 1311, 1323 (*Upsher*).

Here, there was evidence of frequent contact between L.C. and O.V. that went beyond ordinary fraternization in a social context. O.V. stated L.C.’s swollen lip had occurred two days prior to the incident for which he was detained when he was “playing around” with L.C. He acknowledged (1) occasionally playing around with and pushing L.C.; (2) L.C. was crying and trying to get away from him while he held on to her; (3) the two were arguing; and (4) the contact with L.C. the previous day when she indicated she had been arguing with her boyfriend, O.V. O.V. also acknowledged holding on to L.C.

during their argument in order to keep her with him. He stated he just “wanted to get her back” and “keep her with him.”

The “possible domestic violence” call named O.V. and L.C. as the two juveniles involved in the altercation. The officer responded to the residence given by the caller. If the interactions between O.V. and L.C. were indicative of schoolyard “bullying,” as asserted by O.V.’s counsel at oral argument, it is highly unlikely the two would be together at a private residence. One does not invite a schoolyard bully to one’s home. Such an invitation is more indicative of a dating relationship between the two.

These actions and statements indicate L.C. and O.V. were in a relationship that went beyond a casual relationship or ordinary fraternization in a social context. Heated arguments involving crying, restraining an individual, statements about wanting to hold on to the individual and wanting to “get her back,” and the reasonable inferences that may be drawn from this evidence indicate a dating relationship between O.V. and L.C. (*Upsher, supra*, 155 Cal.App.4th at pp. 1323-1324.)

I. Probation Condition

O.V. contends the probation condition prohibiting him from possessing, owning, or handling any knife is overbroad. The People concede the issue and urge this court to modify the probation condition.

An appellate court can modify probation conditions. (*In re Justin S.* (2001) 93 Cal.App.4th 811, 816.) A probation condition that prohibits owning, possessing, or using any dangerous or deadly weapons, including firearms, knives, and other concealable weapons, has been held to be constitutionally sound. (*People v. Moore* (2012) 211 Cal.App.4th 1179, 1183, 1189.)

The People suggest, and we agree, that the probation condition be modified to read that O.V. “not possess, own, or use, any object that is a dangerous or deadly weapon, including: firearms, knives, fireworks, explosives, or chemicals that can produce

explosives.” This modification addresses and resolves the concern that the condition is overbroad.

DISPOSITION

The probation condition regarding possession, use, or handling of a knife is modified as set forth in this opinion. In all other respects the disposition order and terms and conditions of probation are affirmed.