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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

J.V.,

Defendant and Appellant.

G049570

(Super. Ct. No. DL039009)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Affirmed in part, reversed in part, and remanded with directions.

Jean Matulis, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland and Brendon W. Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

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The People alleged that on December 10, 2013, minor, J.V., committed misdemeanor domestic battery causing corporal injury upon the victim. (Pen. Code, § 273.5, subd. (a).) After a bench trial, the court found the allegation to be true and sentenced J.V. to 90 days in custody, with 30 days credit, for a total of 60 days. The court also issued a three-year, no contact restraining order pertaining to both the victim and their child. J.V. timely appealed.

First, J.V. contends the court erred by excluding evidence of prior criminal acts by the victim that impeached her credibility. We conclude any error in excluding such evidence was harmless. Second, J.V. contends the restraining order, as it pertains to J.V.'s child, was both not supported by the evidence and issued without due process. We agree and reverse the restraining order to the extent it applied to J.V.'s child. In all other respects, we affirm.

## FACTS

The victim was the primary witness in this case. The victim is the mother of J.V.'s child. On the day of the incident, the victim got off work and went to J.V.'s mother's house to pick up their child. She walked into J.V.'s room, where the child was at the time. "[A]nd then we started talking. And things just got out of control, and [J.V.] got a little bit violent, and then he wouldn't allow me to step out of the room. [¶] I can't tell you how long I had been in there until somebody started banging on the door. I

believe it was his mom, started knocking. And I jumped out the window. [¶] And I don't know what happened. I ran home, and then I just called her and told her if I could have my son. And then maybe an hour later or so, I was at my friend's, and my brother calls me telling me my son's at the house. I went home." The victim could not recall why he got violent. She could not remember if she was standing or not. After J.V. started pushing her, the victim testified, "I pushed forward trying to get out. I was — I started telling him if he wouldn't let me out of the room, I was going to call the police on him. And he took my phone, and he started getting more violent. I started cursing at him. And then he started, like, punching my arm, and he just — I don't know. He just got out of control. And then that's when, like, things went down. [¶] I think his mom, I believe, was knocking on the door — the front door. And then I jumped out the window because I was really scared. And then I just went home." As a result of the incident, the victim had bruises on her arm, leg, and bottom lip. Afterwards the victim called J.V.'s mother about retrieving her child, and her child was later dropped off at her house. The victim called the police and reported the incident the following day.

On cross-examination the victim testified that "the physical part where there was pushing and hitting, that was only about 15 seconds." The victim also testified that when she left through the window, J.V. had the child in his arms.

The only other witness in the case was the investigating police officer. His report, based on an interview with the victim, differed somewhat from her testimony in that he reported J.V.'s mother actually walked into the room and that, rather than leaping out a window, the victim simply took the child and left.

Prior to trial, defense counsel learned that the victim had committed several potentially impeaching prior criminal acts, for which the defense requested discovery, including the police reports. The acts included three batteries (Pen. Code, § 242), two of which were adjudicated, one of which was not; a petty theft (Pen. Code, § 484); driving a stolen vehicle (Veh. Code, § 10851), which also was not adjudicated but was somehow

resolved informally; escape from a juvenile detention facility (Wel. & Inst. Code, § 871, subd. (a)); and vandalism (Pen. Code, § 594).

With regard to the vandalism, the court refused to turn over the police report stating, “The 594 matter is not moral turpitude material and could not be used to impeach a character as a witness.” The court later elaborated, “That was the vandalism matter that I deemed to involve matters that would only complicate the trial but not be pertinent or relevant. And, thereby, weighing the potential, I don’t find that it could be a crime of moral turpitude such as to impeach a witness’s credibility. So I will not be releasing that material. [¶] The young lady was not alone, so the other minor would, likewise, have the right to block the information being revealed. Moreover, there was information that it had to do with the issues other than general destruction of public materials that would connote moral turpitude. This had reasons having to do with gang identity and, therefore, that would not necessarily be able to be argued a moral turpitude crime.”

With regard to the three battery offenses, under an Evidence Code section 352 analysis the court permitted J.V.’s counsel to inquire about an incident in 2008, but ruled an incident admitted by the victim in 2007 was too remote in time and was duplicative of the 2008 incident. The court also ruled that a 2010 incident that was not admitted by the victim would require an undue consumption of time and be duplicative. The court did permit questioning regarding the petty theft. And the prosecutor stipulated that the victim could be asked about whether she took and drove a stolen vehicle. Ultimately, J.V.’s counsel cross-examined the victim about the prior petty theft, the 2008 battery, and driving a stolen vehicle.

After the trial, the court found the allegations against J.V. to be true. Regarding the credibility of the victim, the court commented, “I would concur with . . . certain assessments made by both counsel that the primary witness had aspects to herself that were less than sterling. But, as often said, even paranoids have enemies, . . . and even though there were certain points as to her testimony inconsistent with that which she discussed when she did finally make a report, I do accept and find that the substance of her testimony as to material points of the incident [was] correct.”

The court ordered that J.V. serve 90 days in custody, with 30 days of credit, for a total of 60 days, and complete a batterer’s treatment program. The court also issued a three-year, no contact restraining order pertaining to both the victim and their child. J.V.’s counsel objected on the grounds that there was no evidence of harm to the child and thus the restraining order unlawfully interfered with his parental rights. The court responded, “I do understand your position. Unfortunately, the testimony in this courtroom was that he had the child, the infant, in his arms as he was physically struggling with the woman, and that placed the child not only in physical risk, but every study shows that an infant in the presence of even hearing physical violence between the parents suffers enormous trauma and anti-social repercussions. This is direct harm to the infant. [¶] For that reason, I do find grounds that at least until training and understanding of the victim’s needs in a domestic violence scenario have been absorbed by the young man, that there be no contact.”

## DISCUSSION

J.V.’s first contention is that the court erred by prohibiting J.V.’s counsel from introducing evidence of the victim’s vandalism and the two excluded incidents of battery. The People concede the court erred to the extent it ruled vandalism is not a crime of moral turpitude that can be used for impeachment. The People contend, however, that

excluding the two batteries was not error, and, in any event, any error was harmless. We agree.

“[T]he admissibility of any past misconduct for impeachment is limited at the outset by the relevance requirement of moral turpitude. Beyond this, the latitude section 352 allows for exclusion of impeachment evidence in individual cases is broad. The statute empowers courts to prevent criminal trials from degenerating into nitpicking wars of attrition over collateral credibility issues.” (*People v. Wheeler* (1992) 4 Cal.4th 284, 296, fn. omitted.) The court ruled the excluded battery incidents were duplicative of the admitted battery incident, and that the 2007 incident was remote in time, and thus concluded admission of the evidence would necessitate undue consumption of time (Evid. Code, § 352) relative to the minimal probative value of litigating additional instances of battery.

We find no abuse of discretion. Both the 2007 and 2008 incidents involved the victim ganging up with friends to beat up a person from her junior high school. There is nothing particularly striking about the 2007 incident that renders it different from the 2008 incident. And as the court noted, the 2010 incident was not adjudicated and thus would have required a mini trial. These rulings were well within the court’s discretion.

Regarding the vandalism, the parties agree the court erred in concluding vandalism is not a crime of moral turpitude. (See *People v. Campbell* (1994) 23 Cal.App.4th 1488, 1492-1493 [concluding vandalism is a crime of moral turpitude].) Any error, however, was harmless. Whether considered under the reasonably-probable standard (*People v. Watson* (1956) 46 Cal.2d 818, 836) or the “harmless beyond a reasonable doubt” standard reserved for constitutional errors (*Chapman v. California* (1967) 386 U.S. 18, 24), there is nothing in this record to suggest that adding a fourth crime to the three that already came into evidence would have made any difference. The court already knew the victim had a checkered past. And there is nothing peculiar to

vandalism that suggests moral turpitude or dishonesty any more than the crimes already admitted.

Next, J.V. contends the court erred by imposing a restraining order not only as to the victim, but also as to his child. We agree.

Welfare and Institutions Code section 213.5, subdivision (b), states in relevant part, “After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, . . . in the manner provided by Section 6300 of the Family Code, the juvenile court may issue ex parte orders . . . enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.” Family Code section 6300 provides, “An order may be issued under this part, with or without notice, to restrain any person [to prevent acts of domestic violence, abuse, and sexual abuse and to provide for a separation of the persons involved in the domestic violence for a period sufficient to enable these persons to seek a resolution of the causes of the violence], if an affidavit or testimony and any additional information provided to the court pursuant to Section 6306, shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse.”<sup>1</sup>

The court offered two factual bases for the no contact order as to J.V.’s child. First, the court described the evidence as showing that J.V. engaged in violence towards the victim while holding the child, thus endangering the child. However, the record does not bear that out. The victim testified that the violence lasted only 15 seconds. She also testified that *as she was leaving* out the window, J.V. was holding the child. There was no evidence, however, that J.V. was holding the child during the 15 seconds of violence. Second, the court referred to unspecified studies for the proposition that children within hearing distance of a physical altercation between parents suffer

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<sup>1</sup> The bracketed portion replaces the words “for the purpose specified in Section 6220” with the text of Family Code section 6220.

psychological consequences later in life. As J.V. points out, however, not only were these studies not in evidence and thus not subject to cross-examination, but “there was no evidence that generalizations found in any such studies applied specifically in the instant case, or that any potential harm was offset by the benefits of ongoing contact between [J.V.] and his son.” Because the evidence does not support a restraining order as to the child, that aspect of the restraining order must be reversed.

Additionally we note that the court did not provide adequate notice to J.V. that it was considering a long term restraining order as to the child. While Family Code section 6300 does provide that a restraining order may issue “with or without notice,” Welfare and Institutions Code section 213.5, subdivision (c) states, “If a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 21 days or, if good cause appears to the court, 25 days from the date the temporary restraining order is granted.” Here there was no notice to J.V. of an impending restraining order affecting his child. The petition in this matter listed only the victim, and there was no discussion of a restraining order affecting J.V.’s child prior to the disposition hearing. Yet the restraining order issued for three years.

## DISPOSITION

The court's order restraining J.V. from contacting his child is reversed. The court is directed to modify the restraining order issued on January 9, 2014, by removing J.V.'s child as a protected person. This disposition is without prejudice to the People bringing an application, upon proper notice, for a restraining order protecting J.V.'s child. In all other respects, the judgment is affirmed.

IKOLA, J.

WE CONCUR:

O'LEARY, P. J.

FYBEL, J.