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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT CYRUS CRATTY,

Defendant and Appellant.

B283572

(Los Angeles County
Super. Ct. No. MA070220)

APPEAL from a judgment of the Superior Court of Los Angeles County. Shannon Knight, Judge. Affirmed.

Jerome J. Haig, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Jr. and David A. Wildman, Deputy Attorneys General, for Plaintiff and Respondent.

Robert Cyrus Cratty appeals from a judgment which sentences him to 40 years to life in state prison for criminal threats and injury to a spouse. Cratty contends the trial court erred when it denied his request to represent himself, admitted evidence of his prior convictions, and refused to strike his prior strikes at sentencing. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

The Domestic Violence Incident

On December 19, 2016, J.C., Cratty's wife of 14 years called 911 and told the dispatcher she was fighting with Cratty, who punched the wall and her head. As a result, she had a big lump on her forehead. A Los Angeles County Sheriff's Deputy responded to the call. When she arrived, J.C. was distraught and crying, but did not slur her words and did not appear to be under the influence of alcohol or any drugs.

J.C. told the deputy that Cratty called her "a demon who causes all the problems." She said he pushed her to the floor of their bedroom and fell on top of her. Cratty then stood up, grabbed her hair, and slammed her head against the door approximately three times. J.C. saw flashes of light each time. Cratty threatened J.C. to "shut the fuck up," and if she didn't, he would shut her up. Cratty also threatened to kill her and cut her body up into little pieces.

When J.C. managed to push Cratty away from her, Cratty blocked the door to prevent her from leaving the bedroom. He also pushed her, grabbed her arms, and punched her on the forehead with his left fist. They continued to struggle as the fight progressed from the bedroom into the living room. After J.C. sat on the couch, Cratty pinned her against it and positioned his face approximately one inch away from her face. J.C. escaped to their

neighbor's house to call 911 when Cratty eventually went to the bathroom.

The deputy observed J.C. had a contusion on her forehead, abrasions behind her right shoulder and on both sides of her abdomen, and bruises on her calves, arms, and right hand.

J.C. was transported to the hospital, where she received a domestic violence examination by a sexual assault nurse examiner. J.C. reported to the nurse that the fight began in the morning when J.C. attempted to call her mother, who had dropped food off earlier. J.C. did not answer the door, because she wanted to hide her black eye and bruises from her family.

Cratty accused her of cheating, having an abortion, and "seeing" people online. He slapped and punched her. He also strangled her three times; J.C. estimated the force of Cratty's strangulation to be a 10 on a scale of 1 to 10, with 10 being the greatest force. J.C. had significant marks on the front and back of her neck consistent with strangulation, which the nurse doubted were self-inflicted.

J.C. reported feeling nauseated and dizzy, coughing, and suffering from bruises all over her body as a result of Cratty's abuse. She also reported she had urinated on herself. She had trouble breathing, difficulty swallowing, and a persistent sore throat after the strangulation. The nurse observed a slowly raised bruise from the bridge of her nose to her forehead, pink marks on the back of her neck, and bruising inside her bottom lip by the gum.

Three days later, J.C. called the Sheriff's Department and asked for assistance in picking up some items from their home because she was afraid of Cratty. The responding deputy observed J.C. to be distraught and crying, and noted she had

some physical injuries. When the officer escorted her to her home, Cratty was present and the deputy served him with a temporary restraining order that J.C. had obtained the day before. He arrested Cratty for domestic violence.

The Jailhouse Calls

Notwithstanding the restraining order, Cratty spoke with J.C. several times from jail after his arrest. In those calls, Cratty instructed J.C. to deny he ever hurt her or threatened to kill her. He pleaded that “you’ve gotta make it sound like I’m innocent.” He also told her to “just make up something.” He suggested J.C. say that her scratches were the result of moving and putting things in storage; that she was anemic and bruised easily. He further suggested, “hey, tell ‘em the scratches came from maybe sex on the couch. Who knows?” He promised, “I’m not going to touch you ever again.”

The Trial

Cratty was charged with one count of injuring a spouse or cohabitant (Pen. Code, § 273.5, subd. (a); count 1)¹ and one count of criminal threats (§ 422, subd. (a); count 2). Three prior strike convictions (§§ 667, subd. (d), & 1170.12 subd. (b)) and three prior serious felony convictions (§ 667, subd. (a)(1)) were additionally alleged.

At trial, the People presented evidence of the domestic violence incident through testimony from the sheriff’s deputies and the nurse. J.C. refused to testify, invoking her rights under

¹ All further statutory references are to the Penal Code, unless otherwise indicated.

the Fifth Amendment² and denying any recollection of the incident or the jailhouse calls on examination by the prosecutor. Transcripts of the jailhouse calls and J.C.'s 911 call were also admitted into evidence.

Cratty testified on his own behalf and admitted to five prior convictions. He recalled J.C. was angry because she had been on drugs that day and had not slept in three or four days because she was coming off methamphetamine. She was also annoyed because they were being evicted from their apartment and she did not want to pack and move.

He argued with her over a "friend request" he received from a woman on Facebook; J.C. accused Cratty of having sex with her. Cratty admitted he called J.C. a whore, a bitch, and told her that she was acting like a demon. However, Cratty claimed he acted in self-defense, and denied he threatened her or hurt her. He explained he was packing his bag that morning because he was tired of her cheating accusations. He said he was trying to keep J.C. from coming into the bathroom. He slammed the door because J.C. was screaming and cursing at him. Cratty explained that when he and J.C. got into a heated exchange, one of them would typically take a walk; he said he left after he slammed the door.

Cratty's explanations for J.C.'s injuries aligned with the instructions he had given her during the jailhouse calls: the injury to her forehead resulted from a mountain bike hitting her in the head as she attempted to take it off a ceiling rack in the

² J.C. continued to refuse to testify despite her attorney's warning that she had no legitimate Fifth Amendment privilege in this case and could be subject to contempt of court and substantial fines.

garage; the bruises on her arms were from moving boxes; she is anemic and bruises very easily; she could have gotten bruised during sex, because she enjoys rough sex. Cratty also testified J.C.'s stomach injury was from a dog that jumped on her and scratched her.

Cratty denied coaching J.C. during the jailhouse phone calls. He instead recalled that he told J.C., "Say whatever you want. Tell them the truth, you know. Tell them what happened." Cratty testified that he told J.C. that she did a good job in her testimony under the circumstances.

During closing arguments, Cratty interrupted the prosecutor to ask, "Is that why you're trying to give me 25 years to life?" He then ranted, "17 years I haven't been arrested and you're trying to strike me out—25 years to life." The court paused the closing arguments, admonished the jury to ignore Cratty's outburst, and removed him from the courtroom.

The jury found Cratty guilty on both counts. In a separate bench trial, the trial court found true the prior strike allegations. Cratty was sentenced to a total of 40 years to life, comprised of 25 years to life in state prison on count 2, plus three 5-year consecutive terms pursuant to section 667, subdivision (a). On count 1, he was sentenced to the upper term of four years, doubled pursuant to the Three Strikes law; that term was ordered to run concurrently with the sentence in count 2. A timely notice of appeal was filed.

DISCUSSION

I. Cratty's Misconduct Warranted Denial of His Request for Self-Representation

Cratty contends the judgment must be reversed because his request for self-representation should have been granted. We disagree.

A. The Governing Law

A defendant has a constitutional right of self-representation. (*Faretta v. California* (1975) 422 U.S. 806, 835 (*Faretta*).) We review for abuse of discretion a claim that the trial court erred in denying a defendant's motion for self-representation. (*People v. Welch* (1999) 20 Cal.4th 701, 729 (*Welch*).)

Trial courts are required to grant a defendant's *Faretta* motion for self-representation when the defendant's motion is (1) unequivocal, (2) knowing and intelligent, and (3) made within a reasonable time before trial. (*Welch, supra*, 20 Cal.4th at p. 729.) However, the right of self-representation is not a license to abuse the dignity of the courtroom. (*People v. Carson* (2005) 35 Cal.4th 1, 8 (*Carson*).) Thus, "[the] government's interest in ensuring the integrity and efficiency of the trial at times outweighs the defendant's interest in acting as his own lawyer." (*People v. Williams* (2013) 58 Cal.4th 197, 253; *Martinez v. Court of Appeal* (2000) 528 U.S. 152, 162.)

A request for self-representation may be denied when a defendant's conduct prior to the *Faretta* motion gives the court a reasonable basis for believing that the self-representation will create disruption or obstruct the rules and procedures of the court. (*Welch, supra*, 20 Cal.4th at p. 734.) "One form of serious and obstructionist misconduct is witness intimidation, which by

its very nature compromises the factfinding process and constitutes a quintessential ‘subversion of the core concept of a trial.’ ” (*Carson, supra*, 35 Cal.4th at p. 9.) Under such circumstances, the defendant’s *Faretta* rights are subject to forfeiture. (*Carson*, at p. 10.)

B. Analysis

The trial court did not abuse its discretion when it denied Cratty’s *Faretta* motion. The record contains multiple instances of witness intimidation by Cratty and threats to disrupt the courtroom proceedings, which provided the trial court with a reasonable basis to believe Cratty would obstruct the rules and procedures of the court. Thus, his rights under *Faretta* were forfeited.

Despite a restraining order, Cratty managed to threaten the court and J.C. in several phone calls from jail. In one call, Cratty called J.C. “an abusive piece of shit.” He then proceeded to threaten, “I ain’t going to be working with no goddamned feelings in the courtroom. I’ll be looking at you like you’re the worst thing I’ve ever seen in my life. You want to see a motherfucker full of hate? I’m going to show you. I’m going to show you and the court All you motherfuckers in there like you’re the fucking demon from hell, all of you. That is what I’m going to do.”

In a separate call, Cratty asked, “[t]hink being on the stand with the D.A. was rough? You wait. I’m going to be putting shots out there – bam, bam, bam, bam, bam – left and right.” Cratty also made numerous references to having access to razor blades and threatened to “butcher” J.C.

As a result of these threats, Cratty's phone privileges were rescinded. The trial court also ordered a stealth belt³ be used during trial to restrain Cratty. Despite these efforts, Cratty's intimidation efforts were successful, because J.C. refused to testify at trial. Prior to trial, the court also noted the Sheriff's Department had reported that Cratty had refused to come to court on multiple occasions in the past.

Cratty's threats to the court and to J.C., the key witness, along with his reluctance to attend court hearings, are sufficient to support a reasonable belief that he would disrupt the proceedings or obstruct the rules and procedures of the court if allowed to represent himself. The trial court did not abuse its discretion in denying his request for self-representation.

Cratty argues his misconduct was insufficient to strip him of his right to self-representation, relying on *People v. Butler* (2009) 47 Cal.4th 814 (*Butler*) and *People v. Superior Court (George)* (1994) 24 Cal.App.4th 350, 353). He is mistaken. *Butler* and *George* are distinguishable.

In *Butler*, the defendant was involved in numerous violent incidents, including stabbing another inmate. He was also found with razor blades and a deputy observed him hide a four-inch long shank prior to being transported to court. (*Butler, supra*, 47 Cal.4th at p. 820.) The Supreme Court reversed his conviction based on the erroneous revocation of his *Faretta* rights. Acknowledging that the defendant was a security risk, the court reasoned, "there was no showing that his pro. per. status increased the risk in any way." (*Butler*, at p. 826.)

³ Stealth belts, as the name suggests, are designed to be an unobtrusive way to restrain a defendant to his chair.

In *George*, *supra*, 24 Cal.App.4th at page 354, the court found the trial judge had improperly denied the defendant his right to self-representation by failing to first use physical restraints or other measures to ensure courtroom safety.

Unlike in *George* and *Butler*, Cratty's misconduct was not solely related to safety issues. He also successfully intimidated the chief witness against him. Moreover, he had previously refused to attend pre-trial hearings. The denial of his request for self-representation was intended to mitigate the risks he presented, including intimidating J.C. through questioning her on the stand and disrupting the jury trial by refusing to attend. (§ 1043, subd. (b) [the voluntary absence of the defendant in a felony case after the trial has commenced in his presence shall not prevent continuing the trial].) Neither *Butler* nor *George* addressed witness intimidation or refusal to attend court hearings. As a result, the cases do not assist Cratty in his attempt to find error in the trial court's denial of his *Faretta* motion.

II. The Prior Convictions Were Properly Admitted For Impeachment Purposes

During the People's case in chief, defense counsel indicated Cratty planned to testify and asked the trial court to exclude evidence of his prior convictions. The trial court denied the request. Cratty now argues the trial court erred when it refused to exclude evidence of the prior convictions. Specifically, Cratty contends the prior convictions were remote in time, irrelevant, and unduly prejudicial. He also contends the trial court should have sanitized the prior convictions. We find no abuse of discretion.

A. Governing Law

California permits the admission of evidence of any prior felony conviction to be used for purposes of impeachment or enhancement of sentence in any criminal proceeding. (Cal. Const., art. I, § 28, subd. (f); see also Evid. Code, § 788 [evidence that a witness has been convicted of a felony may be admitted to attack his credibility].) The California Supreme Court has limited the admissibility of prior convictions under this provision to those which necessarily involve moral turpitude, even if the immoral trait is one other than dishonesty. (*People v. Castro* (1985) 38 Cal.3d 301, 306.)

In addition, the trial court may exercise its discretion to exclude evidence of prior convictions under Evidence Code section 352, which allows the trial court to “exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” (Evid. Code, § 352.) “Prejudice for purposes of Evidence Code section 352 means evidence that tends to evoke an emotional bias against the defendant with very little effect on issues, not evidence that is probative of a defendant’s guilt.” (*People v. Crew* (2003) 31 Cal.4th 822, 842.)

“‘When determining whether to admit a prior conviction for impeachment purposes, the court should consider, among other factors, whether it reflects on the witness’s honesty or veracity, whether it is near or remote in time, whether it is for the same or similar conduct as the charged offense, and what effect its admission would have on the defendant’s decision to

testify.’ [Citation.]” (*People v. Edwards* (2013) 57 Cal.4th 658, 722 (*Edwards*).)

The exclusion of evidence relevant to a defendant’s credibility may unfairly “clothe[] [the witness] in a ‘ “false aura of veracity.’ ” ’ ” (*People v. Clark* (2011) 52 Cal.4th 856, 932 (*Clark*).) Because the court’s discretion to admit or exclude impeachment evidence “is as broad as necessary to deal with the great variety of factual situations in which the issue arises” (*People v. Collins* (1986) 42 Cal.3d 378, 389), a reviewing court ordinarily will uphold the trial court’s exercise of discretion (*ibid.*; see *People v. Hinton* (2006) 37 Cal.4th 839, 888; *People v. Stewart* (1985) 171 Cal.App.3d 59, 65).

B. Analysis

Cratty admitted during direct examination that he was convicted of burglary in 1990 and 1996, criminal threats and stalking in 1997, and criminal threats in 2001. He was not asked any questions by defense counsel about his prior convictions beyond the fact of the convictions themselves. On cross-examination, the prosecutor did not ask Cratty any questions about the prior convictions.⁴

The trial court did not abuse its discretion when it deemed admissible the evidence of Cratty’s prior convictions. There is no question the prior convictions were highly probative of the issues to be resolved by the jury. The trial boiled down to a “he-said-she-said” credibility contest between Cratty and J.C. Indeed,

⁴ Cratty does not contend his trial counsel was ineffective for introducing evidence of the prior convictions. We note that it is considered sound trial strategy to introduce such evidence in the first instance, rather than allowing the prosecution to do so, given the trial court’s ruling that the prior convictions were admissible for impeachment.

Cratty's testimony directly contradicted J.C.'s statements to the police and the nurse about the assaults and threats. Had the court excluded the prior convictions, it would have clothed Cratty in a "false aura of veracity." (*Clark, supra*, 52 Cal.4th at p. 932.)

Neither did the testimony about the prior convictions necessitate an undue consumption of time. The questions and Cratty's answers comprised less than one page of the reporter's transcript, reflecting just a few minutes of testimony. Moreover, the questioning was limited only to the fact of the convictions, not to any details regarding the underlying offenses. As a result, the trial court could reasonably have concluded the prior convictions did not create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury. Moreover, Cratty's prior crimes were not more inflammatory or heinous than the crimes he was charged with in this case. Indeed, his assaultive conduct toward J.C. demonstrates more serious criminal conduct than his previous convictions.

Cratty, however, contends the prior convictions should have been excluded because they were too remote, as the last occurred at least 16 years before the present convictions. We disagree. In considering whether a prior conviction should be excluded because of its remoteness, a trial court may consider: (1) the length of time that has elapsed since the conviction; (2) the length of sentence served on the prior conviction; (3) the nature of the conviction; (4) the age of the defendant at the time the previous crime was committed; and (5) the defendant's subsequent conduct. (*Edwards, supra*, at pp. 738–739.)

These convictions are not so distant that they should have been excluded. (See *People v. Branch* (2001) 91 Cal.App.4th 274, 284 [uncharged prior offense from 30 years ago was admissible].)

Although Cratty focuses on the length of time between the present convictions and his previous convictions, he ignores the fact that he served multiple prison sentences over a 12-year period. Before his most recent 2017 arrest and conviction, Cratty spent time in and out of state prison, from 1990 until 2002. He was sentenced to two years in prison for first degree burglary in 1990. In 1993, he was sentenced to three and a half years in prison for burglary. He was then sentenced to 32 months in prison in 1996 for felony stalking and another 32 months in 1997 for criminal threats. In 2001, he was again convicted of criminal threats and sentenced to 32 months in prison. He was paroled in 2002 and discharged from this latest sentence in 2005.

Cratty also contends the stalking and criminal threats convictions should have been excluded because they were highly prejudicial, tending to show propensity to commit the same crimes. However, there is no automatic bar to prior convictions that are similar or identical to the charged offense being used for impeachment. (See *Clark, supra*, 52 Cal.4th at p. 932 [“Although the similarity between the prior convictions and the charged offenses is a factor for the court to consider when balancing probative value against prejudice, it is not dispositive.”].) Indeed, such impeachment evidence has been approved in many cases. (See, e.g., *ibid.*; *People v. Hinton, supra*, 37 Cal.4th at p. 888; *People v. Green* (1995) 34 Cal.App.4th 165, 183; *People v. Muldrow* (1988) 202 Cal.App.3d 636, 647; *People v. Castro* (1986) 186 Cal.App.3d 1211, 1216–1217; *People v. Dillingham* (1986) 186 Cal.App.3d 688, 695–696; *People v. Stewart, supra*, 171 Cal.App.3d at p. 66.) Admission of the criminal threats convictions here was particularly relevant because they were the most recent convictions. Excluding these convictions would

mislead the jury to believe Cratty had led a blameless life for over two decades.

Cratty next contends the trial court should have “sanitized” the prior convictions by referring to them generally. Cratty has forfeited this argument because a request to sanitize was never made at trial. (*People v. Medina* (1995) 11 Cal.4th 694, 751; Evid. Code, § 353.) He only requested the prior convictions be excluded, and never asked that they be sanitized if admitted. Indeed, his own counsel questioned Cratty about the prior convictions without sanitizing them.

III. The *Romero* Motion Was Properly Denied

Cratty contends the trial court abused its discretion in denying his *Romero*⁵ motion to dismiss two of his three prior strikes. We find no abuse of discretion.

A. Governing Law

In *Romero*, the California Supreme Court ruled that the Three Strikes law did not remove a sentencing court’s discretion to dismiss a defendant’s prior strike or strikes to achieve a punishment in the furtherance of justice. (*Romero, supra*, 13 Cal.4th at p. 504.) In deciding whether to grant a *Romero* motion, the trial court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*).) However,

⁵ (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, (*Romero*).)

“the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack.’” (*People v. Carmony* (2004) 33 Cal.4th 367, 378 (*Carmony*).)

When the factors cited in *Williams* “manifestly support the striking of a prior conviction and no reasonable minds could differ[,] the failure to strike would constitute an abuse of discretion.” (*Carmony, supra*, 33 Cal.4th at p. 378.) “[A] trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not ‘aware of its discretion’ to dismiss [citation], or where the court considered impermissible factors in declining to dismiss.” (*Ibid.*) The burden is on the party challenging the sentence to clearly show the sentence was irrational or arbitrary. (*Id.* at p. 377.) Further, a sentence will not be reversed merely because reasonable people might disagree. (*Ibid.*)

B. Proceedings Below

The trial court, after consideration of the parties’ briefs and argument, denied the motion to strike under *Romero*. The trial court concluded, “in light of the degree of violence in the current offense and . . . looking at the nature of his priors, two of them being for criminal threats, as well as his efforts to thwart the criminal justice system by dissuading his wife from giving truthful testimony, the court does not find that Mr. Cratty falls outside the spirit of the Three Strikes law. It would appear to the court that even though there has been a passage of time between his last strike prior—his last prior of any kind and the current

offense, that he still, based on his actions in this case, does fall squarely within the spirit and the letter of the Three Strikes law, and it would not be in the interest of justice to strike any of his strike priors.”

C. Analysis

The record supports the trial court’s ruling. The circumstances of this case are not so extraordinary that Cratty can be deemed to fall outside the spirit of the Three Strikes law. First, his lengthy criminal history weighs in favor of the trial court’s decision. In 1988 and 1989, he had two misdemeanor convictions for joyriding. In 1990, he was convicted of first degree burglary, resulting in a two-year prison term. In 1992, he was convicted of misdemeanor battery. In 1993, he was convicted of burglary, resulting in a three-and-a-half year prison term. In 1996, he was convicted of felony stalking, resulting in a 32-month prison term. In 1997, he was convicted of criminal threats, resulting in a 32-month prison term. In 2001, he was again convicted of criminal threats and sentenced to 32 months in prison.

In the present matter, Cratty violated a protective order by threatening J.C. and attempting to persuade her to testify falsely. He also threatened the court and the prosecutor in his comments to J.C. Indeed, his behavior in the present matter suggests an increase in violent behavior: he slammed J.C. into a door three times, choked her, punched her, and threatened to kill her, then chop her into pieces. In light of all the circumstances, the trial court did not abuse its discretion in denying Cratty’s *Romero* motion. Cratty’s current offense, combined with his criminal history, support sentencing as a third strike.

IV. Cratty's Sentence is not Cruel and Unusual

Cratty contends his sentence, as it stands, violates the Eighth Amendment's prohibition against cruel and unusual punishment. We disagree. As a preliminary matter, Cratty has forfeited the issue because he failed to raise an objection to his sentence based on cruel and unusual punishment principles in the trial court. (*People v. Speight* (2014) 227 Cal.App.4th 1229, 1247.)

Even assuming the issue is not forfeited, we examine Cratty's punishment under the Eighth Amendment in light of the principle of proportionality. (*Ewing v. California* (2003) 538 U.S. 11, 20.) We do not find Cratty's sentence to be so disproportionate to his violent crimes against J.C. and his lengthy criminal history that it violates constitutionally prescribed sentencing limits. (See, e.g., *Lockyer v. Andrade* (2003) 538 U.S. 63, [three strikes sentence did not violate Eighth Amendment rights of defendant convicted of shoplifting videotapes].)

DISPOSITION

The judgment is affirmed.

BIGELOW, P.J.

We concur:

GRIMES, J.

GOODMAN, J.*

* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.