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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re K.C. et al., Persons Coming Under the  
Juvenile Court Law.

B251461  
(Los Angeles County  
Super. Ct. No. CK98020)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

TALANA N.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. Tony Richardson, Judge. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel and Jeanette Cauble, Deputy County Counsel for Plaintiff and Respondent.

No appearance for Minors.

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In this appeal, T.N. (mother), challenges the juvenile court's jurisdictional findings under Welfare and Institutions Code<sup>1</sup> section 300 concerning her two sons, 13-year-old A.C., Jr. (A.C. Jr.), and 12-year-old A.C. The findings were made after mother's 16-year-old daughter, K.C., disclosed that mother's live-in companion, Carlos Moore, masturbated in K.C.'s presence. Mother claims K.C.'s allegations of sexual abuse were not credible and, as a result, there was insufficient evidence to support the jurisdictional findings. Mother argues that, even if K.C. was sexually abused, there is insufficient evidence that the children are at risk. We affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The family came to the juvenile court's attention after the Los Angeles County Department of Children and Family Services (the department) filed a section 300 petition on behalf of K.C., A.C. Jr. and A.C. in February 2013. As sustained, the first amended petition alleged that on two occasions in February 2013, mother's male companion, Carlos, sexually abused K.C. by masturbating in K.C.'s presence. Mother knew or reasonably should have known of the sexual abuse and failed to protect K.C. Because of the sexual abuse, K.C. refuses to reside in mother's home. Sexual abuse by the male companion and mother's failure to protect K.C. placed K.C. and her siblings at risk of physical harm and sexual abuse. The amended petition further alleged that the children were at risk of physical and emotional harm because their father, A.C., Sr. (father) has a criminal history of convictions for domestic violence, home invasion and preventing a witness from testifying.<sup>2</sup>

The detention report stated that K.C. was living in a foster home. A.C. Jr. and A.C. were residing with mother. On February 22, 2013, a social worker went to K.C.'s school to respond to an immediate referral. The reporting party stated that K.C. was crying when she came into the school office. K.C. disclosed that Carlos had intentionally

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise stated.

<sup>2</sup> Father is not a party to this appeal.

masturbated in her presence. On the evening of February 21, 2013, as K.C. was getting ready to get into the shower and go to bed, Carlos was standing in mother's bedroom and was masturbating as he stared at K.C. Mother's bedroom and K.C.'s bedroom are directly across from one another. On the morning of February 22, 2013, when K.C. woke up, she saw Carlos masturbating again in the living room. The reporting party said mother was not aware of the incidents because K.C. did not inform her. K.C. feared mother would not believe her. Mother and K.C. do not have a good relationship. K.C. was afraid mother would be extremely upset with her. K.C. said she was afraid to return home. If she had to return home, she would run away. She did not want to run away from home because she was 38 weeks pregnant. K.C. had recently been placed with mother after being placed in Nevada. There was a conflict between K.C. and mother because mother ended K.C.'s placement against K.C.'s request.

When K.C. was interviewed by the social worker, K.C. stated she and her siblings recently began living with mother in November after they had been separated for six years. The children had been living in Nevada with their father, paternal grandmother and then in foster care. Father was incarcerated for domestic violence against his ex-wife, who is not mother. K.C. said she wanted to return to Las Vegas because she was used to it and she wanted to locate her boyfriend. K.C. did not want to leave Nevada; however, she felt she had no choice but to return to mother's home. K.C. could not articulate why she did not want to return to mother's home. K.C. said mother did not physically discipline her but yelled at her.

K.C. had not witnessed domestic violence in mother's home. But, she did witness domestic violence in father's home. K.C. said she used marijuana and alcohol over a year ago. K.C. denied that there was substance abuse in mother's home.

K.C. said she had past mental health diagnoses including, Oppositional Defiance Disorder, Attention Deficit Hyperactivity Disorder, Obsessive Compulsive Disorder and Bipolar Disorder. She refused to take psychotropic medication, which had been prescribed for her in the past.

K.C. reported that Carlos had masturbated in her presence on two occasions: once while mother was sleeping and again while mother was cooking. The incidents did not happen the prior day as stated by the reporting party. Rather, the incidents occurred over a week ago or more but K.C. could not remember the day or week. She reported that the first incident happened as she came out of her room and Carlos was standing in the hallway. During the second incident, Carlos was sitting on the couch. Carlos did not say anything to her and did not stop the inappropriate behavior. K.C. did not say anything to him. K.C. did not tell mother because mother would be upset with her.

Law enforcement arrived at the school and interviewed K.C. The social worker, accompanied by law enforcement, transported K.C. to mother's home. When informed of the allegations, mother seemed to be surprised.

Mother said she had been trying to bond with the children since November 2012, when they were reunited. Mother said father had taken the children without her consent. Mother stated that, during the court hearing in Nevada, none of the children wanted to return to her custody. K.C. was "the main child" who refused to return to Los Angeles. Although the boys seemed to have adjusted, K.C. had been frustrated, irritated and angry. Mother said she knew something was going to happen because K.C. got in trouble in the morning and returned home late that day.

Mother confirmed that K.C. had been diagnosed with a number of mental disorders. Mother added that A.C. was also diagnosed with Oppositional Defiance Disorder, Attention Deficit Hyperactivity Disorder and a Mood Disorder. Mother said A.C. Jr. might have been sexually abused while he was in foster care in Nevada; however, she did not know the details of the sexual abuse.

Mother reported that she did not work and was always at home. She has known Carlos since she was 14 or 15 years old. However, they did not begin a relationship until two years ago. Mother was unsure about the sexual abuse allegations because she was always at home and she never left the children alone with Carlos. Carlos did not really deal with the children on a regular basis because he works. Mother does the parenting and he assists her only when needed. Mother said she did not think that the incidents

occurred because K.C. was upset with mother and really wanted to go back to Nevada to be with her boyfriend.

A.C. Jr. reported that he liked living with mother and Carlos. Although he initially did not want to leave Nevada he was adjusting to Los Angeles. He stated mother did not physically discipline him but he had to do pushups if he got in trouble. He denied there was any domestic violence, substance abuse or sexual abuse in mother's home. He felt safe in mother's home. He knew nothing about the allegations made by K.C. and had never seen Carlos being inappropriate. When interviewed, A.C. made similar statements but added that mother and Carlos smoked marijuana.

Carlos said he had known mother many years. He helped mother reunify with the children by financing her trips to Nevada for court hearings. He works as a janitor. He helps mother with the children and does not always deal directly with them. He did not discipline the children. Carlos said he would never masturbate in front of a child. He confirmed that he smoked marijuana, but he had a medical marijuana card. He stated he did not smoke very often and when he did, the children were not around. The social worker noted that throughout the interview, Carlos appeared to be extremely upset and concerned.

K.C. refused to stay in mother's home, stating she did not feel safe because mother would be upset with her. Law enforcement took K.C. into protective custody and released her to the social worker. Mother and the social worker devised a safety plan for the boys. Mother and the two boys would reside with a relative while the allegations were investigated.

On February 25, 2013, mother called the social worker to report the boys had provided mother with more information. A.C. Jr. spoke with the social worker and reported that K.C. had told him and A.C. that she was "planning something." K.C. did not tell them what she was planning. K.C. also told them she had called the paternal grandfather, who lived in Nevada, to come and pick her up so she could return to Nevada.

The department noted mother had an appropriate plan to protect the children but K.C. refused to return home. The department recommended that K.C. be detained and the boys be allowed to remain with mother.

At the detention hearing on February 27, 2013, the juvenile court found A.C., Sr., to be the presumed father of the children. The court ordered K.C. detained in shelter care. Mother was given monitored visits three times a week with K.C. The boys were ordered released to mother.

The May 2013 jurisdiction/disposition report indicated K.C. remained in a foster home. K.C.'s baby was born in March 2013. K.C. said she felt safe in her placement. K.C. reiterated that she had not wanted to return to California to live with mother. However, K.C. said mother did not abuse or neglect her but she did not like mother. Mother made sure K.C.'s needs were met. K.C. wanted to live in Nevada in foster care or with a relative.

K.C. again stated that Carlos masturbated twice in her presence in February 2013. K.C. said the first time she was in her bedroom sitting on her bed. She looked across the hall, and saw Carlos masturbating. He was standing in mother's bedroom. When Carlos saw her, he said "ssh." She looked away and went on with her day. The second incident occurred the next day when she was in the kitchen and Carlos was sitting on the couch in the living room. She and Carlos made eye contact but she ignored him and went to school. Mother was still asleep.

A.C. Jr. said he did "not know" about the sexual abuse. However, he did not think Carlos "would do anything would like that but [he did] know that [K.C.] would do something like make that up." A.C. Jr. called K.C. a "manipulative liar," who only thought of herself. He said that K.C. never wanted to be in mother's home. K.C. wanted to be back in Las Vegas. She caused a big scene at the Las Vegas hearing and was made to leave the courtroom. Although he wanted to live in Las Vegas, he also wanted to be with his mother, who takes good care of them.

When asked to describe how living with his father was, A.C. Jr. stated there was fighting every day and father would drink a lot and get drunk. A.C. confirmed that there

was a lot of fighting in father's home, which was why father was in jail. He said father would hit them and get drunk. A.C. did not feel safe living with father.

A.C. said he did not believe the sexual abuse allegations. A.C. said that K.C. "told [them] from the beginning she had a plan." They would "know it was happening when a lot of people would come into [their] house." The move back to Los Angeles was hard for K.C. and for him but he reasoned that he would be with mother. K.C. just wanted to get to Las Vegas "so she can do whatever she wants to do." A.C. said Carlos is a good person, who never did anything to him, his brother or sister. A.C. never felt uncomfortable around Carlos, who was good to them. A.C. did not want K.C. to come back home. He said that K.C. is "a lot of drama." She did not want to be with them so they did not want her to be there.

Mother has an adult daughter, who has a name similar to K.C. The adult daughter provided the following statement. "I don't believe that at all. My mother's boyfriend isn't even like that. Not at all. My sister wants to come back to Vegas and be with her boyfriend."

When mother was interviewed on March 25, 2013, she said she did not believe that Carlos masturbated in K.C.'s presence. Mother believed the allegations were made because the children had not lived with her for six years. She said father took the children from her after the parents' relationship ended. Mother said father was abusive and would drink. When she first broke up with him, she would not let the children go with him. But, in 2006, they had an agreement that the children could visit father. However, once he had the children, he refused to return them. Mother said her finances were not good at the time so she let it go. Father would not allow mother to talk to the children except on holidays and their birthdays.

Mother reported the children were detained in 2010 after father was arrested and his wife did not want to take care of them. When the children were released to mother in November 2012, K.C. made a big scene because she wanted to stay with her foster parents. Mother could tell K.C. did not want to be with her.

On the morning K.C. made the allegations, mother found her fully dressed under the covers of her bed. She was under the covers because the window was open. K.C. blamed the boys for opening the window. Mother knew K.C. was lying and was angry because K.C. was willing to let her brothers get into trouble.

Mother said the ““whole thing is just mind boggling.”” Mother questioned K.C.’s allegation about the second incident saying mother was in the kitchen when it happened. Mother said that K.C. has an Obsessive Compulsive Disorder and had to watch her food being cooked or she would not eat it. Mother said Carlos left for work at 4:10 a.m. and did not wake the children up for school.

Mother reported that Carlos had helped her through so much. He knew her heartache over losing her children and helped her get them back. He paid for her parenting and anger management classes that she had to take to get the children returned to her care. Mother said she was always in the home. Mother also had family that lived downstairs and next door. K.C. was not left alone with Carlos. Mother said, ““There is no way this man would do that.”” Carlos has his own daughters and nieces. Mother said K.C. was angry with her because mother would not allow her to remain in foster care. However, mother was ““fine”” with K.C. not living in mother’s home because mother did not want her to influence the younger children. The boys admitted to mother that they plotted to run away because they wanted to return to Las Vegas. They did not go along with the plot after they realized K.C. was trying to get them to go back into foster care in Nevada.

The department acknowledged that mother appeared to be cooperative and forthcoming with the dependency investigator. The department noted that K.C. had unresolved issues with her mother. But, K.C. maintained that the allegations about Carlos were true and she did not want to return to mother’s home.

The department had not been able to contact father, who was incarcerated for a DUI and driving without a license. Father had a hearing scheduled on April 8, 2013, the anticipated date of his release from custody in Nevada.



After receiving statements from all involved parties, which refuted K.C.'s allegations, the department was "unable to determine if the allegations are true." The department was concerned that mother did not believe K.C. even though K.C. had a plan in place to be removed from mother's care. The department was also concerned that mother did not receive any family maintenance services in November 2012. The department believed that the family needed services to address the issues, which led to the children's removal and separation from mother for six years. The department recommended the children be declared dependents of the court.

In a May 31, 2013 interim review report, the department reported father was released from incarceration in April 2013 after being incarcerated for three years. Father admitted his criminal history and that there was domestic violence in his home. However, he said that things were overstated and blown out of proportion. He said that he was worried about K.C., who is "very unique" and had her own way of dealing with pressure and authority.

Father said paternal uncle, Roderick C., was interested in having K.C. placed in his home. The department's attempts to locate paternal uncle on four different dates in May were unsuccessful.

Father said he began caring for the children after mother brought them to his home and left their clothes. Father did not know if she was returning when she left the children. She returned to Las Vegas in 2004 but then left without saying anything. Mother would call periodically but would not write. Father said he was sure mother would have a different version.

Paternal grandmother, Diana J., said she had the children in her care after father was incarcerated for domestic violence with his wife. They were removed from her care "because of some lies." The children moved in with paternal grandmother because father's wife was mistreating them. The stepmother also mistreated her own children, and as a result ended up in jail.

On May 31, 2013, the department filed an amended petition to add an allegation that father had a criminal history of convictions for domestic violence, home invasion and

preventing a witness from testifying. Also on May 31, 2013, K.C.'s counsel advised the juvenile court that K.C. wanted to be placed with father. The matter was continued for arraignment on the first amended petition to July 10, 2013. Adjudication was set for August 20, 2013. Due to issues of proof of service on father, arraignment on the first amended petition was continued several times. On August 9, 2013, father did not appear and counsel entered a general denial on behalf of father.

Prior to the adjudication hearing, the department filed last minute informations for the court on July 15, 2013 and July 29, 2013, which reported unsuccessful efforts to have K.C. placed with paternal uncle. The paternal uncle stated that he thought the evaluation was only for K.C.'s baby. In a July 29, 2013 last minute information for the court, the department attached a number of Nevada court documents outlining father's criminal convictions for home invasion and domestic violence charges. The department also attached family juvenile court documents related to a petition to terminate father's parental rights regarding his other children.

In an August 20, 2013 last minute information for the court, the department reported that K.C. still did not want to return to mother's custody. Efforts to contact father were unsuccessful.

Also on August 20, 2013, mother signed and filed a written waiver of reunification of services with K.C. The waiver indicated mother did not want services of any kind and mother did not want to reunify with K.C. or have K.C. placed in her custody.

At the adjudication hearing on August 20, 2013, the juvenile court admitted into evidence the various reports and the three last minute informations for the court. No witnesses or other documentary evidence was presented.

Mother requested the court to dismiss the sexual abuse allegations or dismiss mother from the petition. Counsel argued the department failed to meet its burden of proof by a preponderance of the evidence because of the statement that the department was unable to determine if the allegations were true. In addition, counsel argued that K.C. reported mother was asleep at the time of the alleged incident and that she never informed mother of the incidents. K.C. only told school personnel about the incidents

weeks later. Counsel further argued that K.C. had motives for making up the allegations. K.C. does not like mother. K.C. did not want to move from Las Vegas and live with mother. K.C. wanted to go back to Las Vegas and live with either father or someone else.

Father's counsel argued that the allegations against father should be dismissed because the attached documents did not establish the domestic violence with his wife was "severe." In addition, his criminal history had not been tied to K.C.'s allegations, which brought the family before the juvenile court.

Counsel for A.C. Jr. and A.C. argued that her clients should be dismissed from the petition because they were differently situated than K.C. Counsel also argued there was no risk of harm to A.C. Jr. and A.C. that had been shown at that time.

K.C.'s counsel requested that the juvenile court sustain the sexual abuse allegations and that K.C. not be returned to mother's custody. Counsel requested that the court dismiss the allegations as to father.

The department's counsel argued that the statement about the department's inability to determine the truthfulness of the allegations was "strange" because it was the court's function to determine the truthfulness of allegations. The department further argued that the boys were at risk of physical harm regardless of their sex or age.

The juvenile court found that the allegations of the petition were true. The court found the children were persons described by section 300 and sustained the petition under subdivisions (b), (d) and (j). The court ordered K.C. removed from the parents' physical custody. The court noted mother had made it clear through the waiver of reunification services that she did not want K.C. placed in her custody. The court further noted K.C. was unwilling to return to mother's custody. The court ordered reunification services for father.

The court found that A.C. Jr. and A.C. were not similarly situated as K.C. and ordered them placed with mother. The court found them to be dependents of the court. The department was ordered to provide mother and the boys family maintenance

services. Mother filed a timely appeal challenging the court's jurisdictional order over A.C. Jr. and A.C.

## **DISCUSSION**

### **I. Applicable Statutes and Standard of Review**

Mother claims no substantial evidence supports the jurisdictional findings because: there was no substantial evidence that sexual abuse occurred; and if there was substantial evidence of sexual abuse, the boys are not at risk of physical harm within the meaning of section 300, subdivision (b), (d) and (j).

Section 300, subdivision (b) provides, in part, that a child is a dependent when “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse.”

Section 300 subdivision (d) states that the child is dependent if “[t]he child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.”

Section 300, subdivision (j) provides for dependency when “[t]he child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or

neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.”

“In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. “In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the light most favorable to the court’s determinations; and we note that issues of fact and credibility are the province of the trial court.” [Citation.]

“We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court.

[Citations.] “[T]he [appellate] court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence . . . such that a reasonable trier of fact could find [that the order is appropriate].”

[Citation.]” [Citation.]’ [Citation.]” (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

## **II. Sufficiency of Evidence of Sexual Abuse**

While acknowledging the applicable standard of review, mother claims that there was insufficient evidence of sexual abuse because K.C.’s credibility was compromised. Mother points out: the inconsistency in some of K.C.’s statements; the beliefs of other family members that the abuse did not occur; and the department’s statement that it was unable to determine the truth of the allegation.

We cannot resolve the evidentiary disputes or reweigh the evidence in a manner which is more favorable to mother because those tasks are the exclusive province of the juvenile court. “Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a [judgment]. [Citation.]” (*People v. Young* (2005) 34 Cal.4th 1149, 1181; see also *In re S.A.* (2010) 182 Cal.App.4th 1128, 1149.) We have no basis for rejecting K.C.’s statements, which were believed by the trier of fact. There is nothing about her

statements that made them either physically impossible or inherently improbable. (*People v. Friend* (2009) 47 Cal.4th 1, 41; *In re Jordan R.* (2012) 205 Cal.App.4th 111, 136.) Although K.C. was the only witness to the sexual abuse, her statements were sufficient evidence to support the finding of sexual abuse and that she was a person described by section 300, subdivisions (b) and (d). She maintained throughout the proceedings that Carlos masturbated in her presence. Her statements are sufficient evidence that the sexual abuse occurred notwithstanding contrary statements by other parties or mother's own personal beliefs as to what occurred. The juvenile court was acting within its province to resolve the evidentiary conflicts in this case even though the resolution was unfavorable to mother's beliefs or claims to the contrary.

### **III. Sufficiency of the Evidence of a Risk to the Boys**

As an alternative argument, mother claims that, even if there was abuse, there was no evidence A.C. Jr. and A.C. were at risk under either subdivision (b), (d) or (j).

Our Supreme Court recently considered the question of the sufficiency of evidence to support jurisdiction over male children when a female child was sexually abused by her father but there was no evidence the male children were sexually abused or aware of the sexual abuse of their sister. (*In re I.J., supra*, 56 Cal.4th at p. 770.) The court concluded: “[A] father’s prolonged and egregious sexual abuse of his own child may provide substantial evidence to support a finding that all his children are juvenile court dependents.” (*Ibid.*)

The juvenile court may assume jurisdiction under section 300 even though a child has not actually been sexually abused or neglected. (*In re I.J., supra*, 56 Cal.4th at p. 773.) Section 300 only requires a “substantial risk” that the child will be abused or neglected. “The legislatively declared purpose of these provisions ‘is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children *who are at risk of that harm.*’ (§ 300.2, italics added.) ‘The court need not wait until a child is seriously abused

or injured to assume jurisdiction and take the steps necessary to protect the child.’ [Citation.]” (*In re I.J., supra*, at p. 773.)

The juvenile court found jurisdiction over the boys under subdivisions (b), (d) and (j). We consider whether there was sufficient evidence section 300, subdivision (j) because the juvenile court took jurisdiction over the boys after sustaining allegations that their sibling had been sexually abused. Section 300, subdivision (j) applies when: a child’s sibling has been sexually abused within the meaning of other subdivisions (subds. (b) & (d)); and there is a substantial risk of abuse or neglect. Section 300 subdivision (d) refers to the definition of sexual abuse as defined in Penal Code section 11165.1. Penal Code section 11165.1, subdivision (b)(5) describes “sexual assault” conduct as “[t]he intentional masturbation of the perpetrator’s genitals in the presence of a child.” In this case, Carlos sexually abused the boys’ 16-year-old sister by masturbating in K.C.’s presence on two different occasions.

Thus, the question is whether the 13-year-old and 12-year-old boys were at risk of abuse. “[S]ubdivision (j) was intended to expand the grounds for the exercise of jurisdiction as to children whose sibling has been abused or neglected as defined in section 300, subdivision (a), (b), (d), (e), or (i). Subdivision (j) *does not* state that its application is limited to the risk that the child will be abused or neglected *as defined in the same subdivision* that describes the abuse or neglect of the sibling. Rather, subdivision (j) directs the trial court to consider whether there is a substantial risk that the child will be harmed under subdivision (a), (b), (d), (e) *or* (i) of section 300, notwithstanding which of those subdivisions describes the child’s sibling.’ [Citation.] [¶] Unlike the other subdivisions, subdivision (j) includes a list of factors for the court to consider: ‘The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.’ (§ 300, subd. (j).) ‘The “nature of the abuse or neglect of the sibling” is only one of many factors that the court is to consider in assessing whether the child is at risk of abuse

or neglect in the family home. Subdivision (j) thus allows the court to take into consideration factors that might not be determinative if the court were adjudicating a petition filed directly under one of those subdivisions. [¶] The broad language of subdivision (j) clearly indicates that the trial court is to consider the totality of the circumstances of the child and his or her sibling in determining whether the child is at substantial risk of harm, within the meaning of *any* of the subdivisions enumerated in subdivision (j). The provision thus accords the trial court greater latitude to exercise jurisdiction as to a child whose sibling has been found to have been abused than the court would have in the absence of that circumstance.’ [Citation.]” (*In re I.J.*, *supra*, 56 Cal.4th at p. 774, original emphasis.)

*In re I.J.* noted that the appellate courts had reached “sharply conflicting results” in determining whether sexual abuse of a daughter supports the finding a son is a dependent of the court. (See *In re I.J.*, *supra*, 56 Cal.4th at pp. 774-777, and cases cited therein.) In evaluating the issue based on the evidence under review, the Supreme Court stated: “‘Some risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great. . . . Conversely, a relatively high probability that a very minor harm will occur probably does not involve a “substantial” risk. Thus, in order to determine whether a risk is substantial, the court must consider both the likelihood that harm will occur and the magnitude of potential harm. . . .’ [Citation.] In other words, the more severe the type of sibling abuse, the lower the required probability of the child’s experiencing such abuse to conclude the child is at a substantial risk of abuse or neglect under section 300. If the sibling abuse is relatively minor, the court might reasonably find insubstantial a risk the child will be similarly abused; but as the abuse becomes more serious, it becomes more necessary to protect the child from even a relatively low probability of that abuse.” (*In re I.J.*, *supra*, at p. 778.)

Mother claims that this case is factually distinguishable from the facts of *In re I.J.* where the father’s behavior was found to be “‘aberrant in the extreme,’” prolonged and serious. (*In re I.J.*, *supra*, 56 Cal.4th at p. 778.) Here, there was no evidence there was prolonged sexual abuse. However, the record shows the children had only been living in



the home for about four months and K.C. reported the abuse within a week after it happened. Nevertheless, there was evidence Carlos masturbated on two different occasions in front of K.C. in a relatively short period of time. Intentional masturbation in front of a child is a crime. (Pen. Code, § 11165.1, subd. (b)(5).) The first incident occurred in mother's bedroom with the door open. Carlos was visible across the hallway in K.C.'s bedroom. The second incident occurred the following morning while Carlos was sitting on the living room sofa prior to the children going to school. Carlos perpetrated the sexual abuse while the boys were living in the same apartment. On either occasion the boys, who were then 13 and 12 years old, could easily have seen Carlos or learned of the abuse because they were living in the same home. Furthermore, we disagree with mother's claim that the boys are not at risk because Carlos is no longer living with mother. Mother and the social worker decided on a safety plan whereby mother would live with a relative until the case was resolved. However, throughout the proceedings, mother continued to vehemently deny that the sexual abuse of her daughter even occurred. Mother, who did not believe Carlos had in fact sexually abused one of her children, would be less likely to protect her other children. Mother's denial that a sexual abuse problem even existed was pertinent to assessing the risk of detriment to her other children. (*In re A.J.* (2011) 197 Cal.App.4th 1095, 1104-1106.) Mother seemed to think that removing K.C. from the home was an answer to the issues that brought the family to the court's attention. But, K.C.'s removal from the mother's home would not protect the boys from the risk of harm of sexual abuse if mother moved back in with Carlos. This is particularly true given the evidence that mother was dependent on Carlos in a number of ways including for financial and emotional support. Under the totality of the circumstances, the juvenile court could infer that, without supervision, the boys were at risk of harm because mother denied that there were any sexual abuse issues other than those fabricated by her daughter.

Because there was sufficient evidence to support jurisdiction of the boys under section 300 subdivision (j), we need not consider mother's claims that there was insubstantial evidence to support jurisdiction under subdivisions (b) and (d) as to her.

“‘When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court’s jurisdiction, a reviewing court can affirm the juvenile court’s finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence.’ [Citation.]” (*In re I.J.*, *supra*, 56 Cal.4th at p. 773.)

In addition, mother also asserts the juvenile court’s jurisdictional findings that father’s criminal history placed the children at risk of harm within the meaning of section 300, subdivision (b) were not supported by the evidence. A child may be adjudged a dependent of the juvenile court when the actions of either parent bring the child within one of the subdivisions of section 300. (*In re Alysha S.* (1996) 51 Cal.App.4th 393, 397.) Thus, mother’s conduct was sufficient for jurisdictional purposes.

In any event, there was sufficient evidence that father’s criminal conduct placed the children at risk. Mother candidly admitted that, while she was involved with father, she was a victim of domestic abuse and that father abused alcohol. Depending on whose version of the facts were believed, the children were left with father for a number of years preceding the current dependency action (either because father refused to return them to mother or because mother abandoned the children). The boys described father’s home as one full of fighting and drinking on a daily basis. Father admitted the children witnessed “pushing and shoving” in his home prior to his incarceration. Section 300, subdivision (b) supports jurisdiction in cases such as this when a child is exposed to a parent’s domestic violence. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 717; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 598-599; *In re Heather A.* (1996) 52 Cal.App.4th 183, 193-194.) Furthermore, father’s conduct resulted in the children being placed in foster care in Nevada after father was incarcerated for domestic violence against his wife in 2010. The department presented supporting documentation, which showed father was incarcerated for domestic violence, home invasion (of his wife’s home), and intimidating a witness. After father was incarcerated, his wife mistreated the

children, who then went to live with paternal grandmother. The children were subsequently removed from paternal grandmother's home. The children were then placed in foster care in Nevada until they were placed with mother in November 2012. Thus, during father's three-year incarceration, the children were mistreated and their lives were disrupted and destabilized. There was sufficient evidence to support the jurisdictional finding that father's criminal conduct including domestic violence placed the children at risk under section 300, subdivision (b).

Mother also claims that the issue of the risk to the children from father's incarceration had already been litigated by the Nevada court when custody was restored to her. Mother claims that res judicata and claim preclusion doctrines precluded the juvenile court from relitigating the issue. However, this issue was not raised in the court below; so, it has been forfeited. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 686; *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98; see also *In re Amanda D.* (1997) 55 Cal.App.4th 813, 819-820.) Even if the issue was not forfeited, mother's claim lacks merit because K.C. wanted to be placed with father. In addition, there is no indication that father's parental rights were terminated by the Nevada court; therefore, risk of harm to his children by his criminal conduct remained an issue.

### **DISPOSITION**

The order of the juvenile court is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

FERNS, J.\*

We concur:

BOREN, P.J.

CHAVEZ, J.

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