S260839

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

In re E. F., a Person Coming Under the Juvenile Court Law.

THE PEOPLE OF THE STATE OF CALIFORNIA,	)	S_____
Plaintiff and Respondent,	)	2d District Criminal Div 2 B295755
v.	)	Los Angeles County Juv. Delinquency PJ53161
E. F.,	)	
Defendant and Appellant/Petitioner.	)	

PETITION FOR REVIEW

FOLLOWING AFFIRMANCE OF THE JUDGMENT OF THE
LOS ANGELES COUNTY JUVENILE COURT
BY DIVISION TWO OF THE
SECOND DISTRICT COURT OF APPEAL

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By Appointment of the Court of Appeal for the Second District
Assigned "Independent Case" by the California Appellate Project

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IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

In re E. F., a Person Coming Under the Juvenile Court Law.

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, v. E. F., Defendant and Appellant/Petitioner.	)	S_____ 2d District Criminal Div 2 B295755 Los Angeles County Juv. Delinquency PJ52813

PETITION FOR REVIEW

TO THE HONORABLE CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to rule 8.500 of the California Rules of Court, minor, E. F. petitions this Court for review of the decision of Division Two of the Second District Court of Appeal, filed February 13, 2020, which affirmed the judgment below in full. A copy of the Slip Opinion is attached hereto as Appendix A.

/ / /

ISSUES PRESENTED [1]

1. Whether Welfare and Institutions Code section 213.5, subdivision (b), by way of Code of Civil Procedure section 527, subdivision (c) requires a minor defendant be provided with some form of notice prior to the request for, and imposition of a pre-adjudication temporary restraining order.

2. Whether Welfare and Institutions Code section 213.5, subdivision (b) permits the imposition of a pre-adjudication protective order, whether a temporary restraining order or a protective order imposed after a noticed hearing, absent some factual finding additional to the allegations supporting the underlying petition, and accordingly, whether the two protection orders imposed on petitioner in the present case were adequately supported.

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[1] Petitioner's claims pertaining to the temporary restraining order are no longer of any direct concern to petitioner. (See, Slip Opinion pages 2-3.) The questions pertaining thereto however are of broad public interest and significantly likely to recur, in particular given their express occurrence in *In re L. W.* (2020) 44 Cal. App. 5th 44 (257 Cal. Rptr. 315, 319) (S260690 Petition for Review filed February 17, 2020.) Petitioner asks that the Court exercise its inherent discretion to address both of her claims, regardless of temporal concerns. (See, *In re William M.* (1970) 3 Cal. 3d 16, 23; *In re Robin M.* (1978) 21 Cal. 3d 337, 342 fn. 6. *See also*, *Moore v. Ogilvie* (1969) 394 U.S. 814, 816, finding that reviewing courts retain jurisdiction over those questions that are of general public concern and are "capable of repetition, yet evading review.")

NECESSITY FOR REVIEW

In a published opinion, the appellate court in petitioner's case has found that, first, no notice need be provided to a defendant prior to the request for, and imposition of a pre-adjudication restraining order, and second, that both temporary restraining orders and protective orders imposed after a notice hearing need not be supported by some evidence amounting to more than a restatement of the underlying allegation and a blanket assertion that an order is therefore required.

With respect to the first matter, concerning notice, though the Court in petitioner's case found that no notice was due to the defendant prior to the request for and the imposition of a pre-adjudication restraining order, (see Slip Opinion pages 4-8), in another, recently published opinion, *L. W.*, Division Six of the Second District found that such notice was required. (See, *L. W.*, *supra*, 257 Cal. Rptr. at 319) (S260690 Petition for Review filed February 17, 2020 on other grounds.)

With respect to the second matter concerning sufficient evidentiary support, in both the published opinion in petitioner's case and in *L. W.*, the Courts have established that, essentially, minors are due a lesser quality sufficient evidence due process right than their adult counterparts, though pre-adjudication restraining orders restrict the freedoms of minors in the same manner as pre-trial restraining orders do adults. (See, *L. W.*, *supra*, 257 Cal. Rptr. at 321, finding that Welfare and Institutions Code section

213.5, subdivision (b) permits the imposition of a pre-adjudication restraining order on the basis of the underlying allegations, and that the findings in *People v. Babalola* (2011) 192 Cal. App. 4th 948 do not apply to juveniles.)

Though certain freedoms pertaining to both fourth amendment and sixth amendment rights have been modified to allow for greater protection of minors and greater flexibility for the juvenile courts in the maintenance of that protection, these distinctions are generally prohibited in matters concerning sufficiency of evidence, and fifth amendment due process protections. In consideration of the divide within the Second District with respect to the first question concerning due prior notice, and in further consideration of the fact that the sufficient evidence question effects petitioner's due process rights, petitioner requests review of both of the determinations of the Court, both of which have been published in the underlying decision.

STATEMENT OF THE FACTS AND CASE

Petitioner adopts the Statements of the Facts and the Statement of the Case as set forth in the Slip Opinion. (See, Slip Opinion pages 2-5.) As is necessary, additional facts raised herein cite the clerk's transcript and reporter's transcript, which are part of the record on appeal.

I.

THE STANDARD OF REVIEW FOR BOTH CLAIMS IS DE NOVO AND THE RULE OF LENITY SHOULD ALSO APPLY.

The imposition of a restraining order is reviewed, generally speaking, for abuse of discretion, whether the order is a temporary restraining order, or a protective order imposed after a noticed hearing,. (*In re Carlos H.* (2016) 5 Cal.App.5th 861, 866.) However, where the subject of the controversy is statutory interpretation, the question should be reviewed independently. (See Slip Opinion page 4; *In re Jonathan V.* (2018) 19 Cal. App. 5th 236, 243.) This is unquestionably so where the question is procedural. (See Slip Opinion page 4.)

In addition however, as petitioner's substantive, sufficient evidence claim also requires an statutory interpretation, that is whether Welfare and Institutions Code section 213.5, subdivision (b) permits the imposition of a restraining order (either temporary or otherwise) without the due process protections afforded by *Babalola*, *supra*, 192 Cal. App. 4th at 964, that question too must be reviewed independently. [2]

[2] Subsequent to the Court's determination of the question of whether the principles of *Babalola* are to apply to juvenile delinquency cases, the Court addresses the remaining question of whether the temporary restraining order, and the more permanent protective order imposed after the noticed hearing imposed, respectively on petitioner in the present case were

Further, and also pertaining to questions of statutory interpretation, the rule of lenity requires that this Court read the applicable language of the legislature in a defendant's favor. (*People v. Garcia* (1999) 21 Cal. 4th 1, 10-11.) A statute applicable to a defendant's freedoms, even a juvenile defendant's freedoms, should be construed in favor of the defendant "as the language and circumstances of its application may reasonably permit." (See, *In re M. M.* (2012) 54 Cal. App. 4th 530, 545; *People v. Avery* (2002) 27 Cal. 4th 49, 57 ["We have repeatedly stated that when a statute defining a crime or punishment is susceptible of two reasonable interpretations, the appellate court should ordinarily adopt that interpretation more favorable to the defendant."])

Petitioner therefore requests that the Court review her two claims pursuant to the principles of independent review and the rule of lenity. Then, and pursuant to the Court's determination, petitioner requests that the Court review the remaining questions of whether the temporary restraining order, and the protective order imposed after a notice hearing were each adequately supported according to the applicable rules and principles of substantial evidence.

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adequately supported by "sufficient evidence", accordingly. "Sufficient evidence" in this instance is understood to mean "substantial evidence." (See Slip Opinion page 4; *In re N. L.* (2015) 236 Cal. App. 4th 1460, 1465-1466.)

II.

PETITIONER WAS NOT PROVIDED WITH SUFFICIENT NOTICE OF THE INTENTION TO SEEK THE TEMPORARY RESTRAINING ORDER.

A. Welfare and Institutions Code section 213.5 Requires Some Notice Be Provided to a Juvenile Defendant Prior to the Imposition of a Pre-Adjudication Temporary Restraining Order.

Prior to the issuance of even a temporary protective order against a minor, some notice of the intent to seek the order must be provided. (*L. W.*, *supra*, 257 Cal. Rptr. at 319.) Temporary restraining orders are governed by, largely, the same provisions of legislative code and California Rules of Court as non-temporary, more permanent protective orders.

Subdivision (a) of section 213.5 pertains to minors subject to dependency proceedings, and is not relevant to delinquency proceedings. Subdivision (b) however pertains to delinquency proceedings and 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, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by section 527 of the Code of Civil Procedure, 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."

Relevantly, the California Code of Civil Procedure section 527 states:

"(c) No *temporary* restraining order shall be granted without notice to the opposing party, unless *both* of the following requirements are satisfied:

(1) It appears from facts shown by affidavit or by the verified complaint that great or irreparable injury will result to the applicant before the matter can be heard on notice.

(2) The applicant or the applicant's attorney certifies one of the following to the court under oath:

(A) That within a reasonable time prior to the application the applicant informed the opposing party or the opposing party's attorney at what time and where the application would be made.

(B) That the applicant in good faith attempted but was unable to inform the opposing party and the opposing party's attorney, specifying the efforts made to contact them.

(C) That for reasons specified the applicant should not be required to so inform the opposing party or the opposing party's attorney."

(C. C. P. sec. 527, subd. (c). Emphasis added.)

Put most simply, "(p)rior notice is *always* required before the court issues a preliminary injunction. Even a temporary restraining order requires prior notice unless it is shown by affidavit that great or irreparable injury will result before the matter can be heard on notice, and even under that circumstance, informal notice is required except under the most extreme circumstances." (*Pacific Decision Science Corp. v. Superior Court* (2004) 121 Cal. App. 4th 1100, 1110. Emphasis in the original.) ("*Pacific Decision*") Though *Pacific Decision* concerned a preliminary injunction in a civil case, the Court's position contemplates temporary restraining orders, and the need for a showing of great or irreparable injury in the same manner as in a juvenile delinquency case.

California Rules of Court, rule 5.630, subdivision (d), last amended January 1, 2014 (concerning a temporary restraining order issued against a minor by the juvenile court) ("rule 5.630") indicates that notice is not required, provided that ample review by the juvenile court is undertaken. However, rule 5.630 stands in conflict with Welfare and Institutions Code section 213.5, subdivision (b), which appears to require a greater showing of urgency.

Where there is a conflict between legislation and the Rules of Court, the legislation shall control. (*Butler-Rupp v. Lourdeaux* (2007) 154 Cal. App. 4th 918, 926 ["Rules promulgated by the Judicial Council may not conflict with governing statutes. If a rule is inconsistent with a statute, the

statute controls."]) Further, the Court in *L. W.* has found, expressly, "Rule 5.630, however, cannot be interpreted to dispense with the requirements of section 213.5." (*L. W., supra*, 257 Cal. Rptr. at 320 citing *In re Jonathan V.* (2016) 19 Cal. App. 5th 242, 242, fn 7.) The Court further stated, "In any event, rule 5.630(a) makes clear that 'the court may issue restraining orders *as provided in section 213.5*. Section 213.5 also makes clear that applications for restraining orders must be made 'in the manner provided by Section 527 of the Code of Civil Procedure.'" (*Ibid*. Emphasis in the original. Internal citations omitted.)

Welfare and Institutions Code section 213.5, subdivision (c) states that *If* a temporary restraining order is granted without notice, then and in that event it shall be subject to a particular time of expiration, et al. (See, Welf. and Inst. Code sec. 213.5, subd. (c). Emphasis added.) Section 213.5, subdivision (c) does not provide the prosecution with the ability to forgo the notice requirements established by subdivision (b) and Code of Civil Procedure section 527, subdivision (c). Rather, it simply states that *if*, meaning *where* or *when* or *in the event that* the requirements for forgoing notice are otherwise met, then and in that event, the following provision shall apply. This is the plain meaning of the word "If." [3]

[3] 1. "In the event that"; 2. "Allowing that"; 3. "On the assumption that"; or 4. "On condition that" (See, Merriam Webster Online Dictionary https://www.merriam-webster.com/dictionary/if as of February 19, 2020.)

Courts are to conduct statutory interpretation by first, assigning a term's plainly understood meaning to any term in controversy. (*Santa Ana Unified School Dist. v. Orange County Dev. Agency* (2001) 90 Cal. App. 4th 404, 409; See also *Wasti v. Superior Court* (2006) 140 Cal. App. 4th 667, 683 ["We give the words of the statute their ordinary meaning and construe them in the context of the statute as a whole, using the statutory language as the most reliable indicia of the Legislature's intent;"] *California Teachers Assn v. Governing Board of Hilmar Unified School Dist.* (2002) 95 Cal. App. 4th 183, 191 ["Our fundamental task in construing a statute is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the language, giving the words their regular meaning. If there is no ambiguity, then we presume the lawmakers meant what they said, and the plain meaning of the language governs."])

Welfare and Institutions Code section 213.5, subdivision (c) doesn't grant the juvenile court a *carte blanche* power to impose a temporary restraining order absent some prior notice provided to the defendant. (See, *L. W.*, *supra*, 257 Cal. Rptr. at 319.) It merely provides for the procedural life of the temporary restraining order should the requirements for "without notice" have otherwise been met, presumably as prescribed by the Code of Civil Procedure 527, subdivision (c).

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B. Petitioner Was Not Afforded the Required Notice.

The facts pertaining to the temporary restraining order establish, unequivocally that the defense had no notice of the prosecution's intention to seek the order until it announced those intentions during the citation hearing. Even in that instance, the defense was not provided with a copy of the order until late into the discussion. (See generally, Vol. 1 RT pages 3-7.) Therefore, as there can be no question that "no notice" was provided, the validity of the issuance of the order rests on whether the Legislature's provisions for "no notice" were met, per above. The relevant facts of petitioner's case establish that those requirements were not met.

The hearing does not address, nor does the record contain any copy of any sworn affidavit or verified complaint articulating concern of great or irreparable injury that could result without the imposition of a restraining order. (See above, specifically C.C.C.P. sec. 527, subd. (c)(1).) The only documentation presented for the court's review in seeking the order appears to have been a) the underlying petition; b) an attached police report predicated on L. S.'s statements made to investigating officers prior to petitioner's arrest; and c) the order. (See generally, Vol. 1 RT pages 8-9.) Further, the substantive sum of the prosecution's oral argument amount to only a reiteration of the underlying allegations, and that he had not known which public defendant was appearing on behalf of petitioner until the hearing in question began. (See generally, Vol. 1 RT pages 8-9.)

In addition, the events in question allegedly transpired on December 7, 2018. (Vol. 1 CT 9; Vol. 1 RT 3, 5.) More than two months passed before the protective order was sought, and with no cite to or evidence of any additional incident or occurrence that would amount to the requisite cause for concern.

The prosecution, in fact, concedes a lack of timeliness, but argues that it was caused, at least in part, because defense counsel had not checked-in with the prosecution prior to the hearing: "I didn't inform her in time partially due to the fact that she never checked in with me until 11:00 something a.m. right when the case was called." (Vol. 1 RT 8.) However, counsel for appellant is an employee of the Office of the Public Defender with offices on site. (Vol. CT 13) It is implausible that the prosecution could have not communicated with the office of the defense prior to the hearing, regardless of which specific deputy public defender was assigned to represent appellant on that particular day. (See generally, *Ligda v. Superior Court* (1970) 5 Cal. App. 3d 811, 827, establishing the existence of the larger office of the county public defender, and the manner in which any particular deputy might be assigned to a case.)

In sum, the requirements of the applicable Welfare and Institutions Code section 213.5, subdivision (b) and by extension, California Code of Civil Procedure, section 527, subdivision (c), were not met. Given the likelihood of repetition of the practice in future juvenile delinquency cases,

and the given the findings of Division Two in *L. W.*, petitioner requests review of this question.

III.

WELFARE AND INSTITUTIONS CODE SECTION 213.5 SHOULD BE READ IN HARMONY WITH PENAL CODE SECTION 136.2 AND THE PRINCIPLES SET FORTH IN *BABALOLA.*

Petitioner requests review of the appellate court's determination that Welfare and Institutions Code section 213.5, subdivision (b) permits the imposition of a pre-adjudication restraining order on a minor absent factual support other than the prosecution's assertion of the underlying accusation. Where the underlying charge is any charge other than Penal Code section 136.1 or a domestic violence charge, the supporting evidence must exceed that of the allegations leading to the charges themselves. (*Babalola v. Superior Court (*2011) 192 Cal. App. 4th 948, 951.)

A. Welfare and Institutions Code Section 213.5 Should Be Interpreted to Require Some Factual Support In Addition to the Allegations Supporting the Underlying Petition.

The reviewing court in petitioner's case found, expressly, that Welfare and Institutions Code section 213.5, subdivision (b) allows for the imposition of a pre-adjudication restraining order predicated on allegations supporting the underlying petition, and that the principles espoused in

Babalola, which require that the prosecution present something more than the underlying allegations, do not apply to juvenile delinquency cases. (Slip Opinion pages 10-11.) However, this finding is contrary to the well-established determination that the same due process concerns applicable to adults in criminal proceedings shall be granted to their minor counterparts.

1. Due process concerns are afforded to minors in the same manner that they are afforded to adults.

Minors are to be afforded the same due process concerns as their adult counterparts. Distinctions between adults and minors are found only in other, fourth amendment protections against overly intrusive searches and seizures, and the sixth amendment right to a jury trial.

For example, petitioner, by virtue of his youth, is not necessarily guaranteed the same, more stringent fourth amendment protections against unreasonable searches and seizures when he is on school grounds as his adult counterparts would be on a college campus. (*New Jersey v. T. L. O.* (1985) 469 U.S. 325, 341-342 (finding that balancing the concerns of a minor's privacy rights with the need to provide a safe environment for other school children and staff warranted lowering the standard for a warrantless search from "probable cause" to "reasonable suspicion.")

Nor is petitioner guaranteed the right to be tried by a jury. (*McKeiver v. Pennsylvania* (1971) 403 U.S. 528, 547; *In re Javier A.* (1984) 159 Cal.

App. 3d 913 (finding that the unique strengths of the juvenile law system would likely be brought down by the imposition on an otherwise unnecessary jury trial requirement.) Juveniles are also subject to broader probation conditions that would otherwise be unconstitutional were they imposed on an adult. (*In re Antonio R.* (2000) 78 Cal. App. 4th 937, 941.)

However, none of the aforementioned matters pertain to a minor's due process rights where the burden in question requires evaluation for sufficient evidence. Such due process considerations demand that the minor be afforded the same considerations as the adult. "(T)he same considerations that demand extreme caution in fact-finding to protect the innocent adult apply as well to the innocent child." (*In re Winship* (1970) 397 U.S. 358, 365-366.)

> "We made clear . . . that civil labels and good intentions do not themselves obviate the need for criminal due process safeguards in juvenile courts, for a proceeding where the issue is whether the child will be found to be 'delinquent' and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution. ¶ Nor do we perceive any merit in the argument that to afford juveniles the protection of proof beyond a reasonable doubt would risk destruction of beneficial aspects of the juvenile process. Use of the reasonable- doubt standard during the adjudicatory hearing will not disturb . . . policies that a finding that a child has violated a criminal law does not constitute a criminal conviction, that such a finding does not deprive the child of

> his civil rights, and that juvenile proceedings are confidential. Nor will there be any effect on the informality, flexibility, or speed of the hearing at which the fact-finding takes place. And the opportunity during the post-adjudicatory or dispositional hearing for a wide-ranging review of the child's social history and for his individualized treatment will remain unimpaired. Similarly, there will be no effect on the procedures distinctive to juvenile proceedings that are employed prior to the adjudicatory hearing."

(See also, *In re Jacob J.* (2005) 130 Cal. App. 4th 429, 432 (applying the adult maximum term of confinement scheme to juvenile delinquency cases.)

2. The cases cited in the Slip Opinion and in L. W. are inapplicable to the question presented.

The appellate court draws a comparison between the inapplicable Welfare and Institutions Code section 213.5, subdivision (a) to the applicable subdivision (b). Subdivision (a) allows for the imposition of a pre-adjudication restraining order on the subject of subdivision (a), that is, an adult person to be restrained in a dependency case. Subdivision (a) permits the imposition of a restraining order on this adult person on sole basis of the underlying allegations; that is, a finding that he or she having "previously molested, attacked, struck, sexually assaulted, or battered (the object) child." (Slip Opinion page 11.)

However, and as noted in the Slip Opinion, this more permissive imposition is raised within the parameters of dependency cases, and applies to those subject adults who are to be restrained from the to-be-protected child. (See, 213.5, subd. (a).) In this respect, subdivision (a), and subdivision (b) are entirely unrelated. (See, Slip Opinion page 9 citing *In re Bruno M.* (2018) 28 Cal.App.5th 990, 997; *L. W.*, *supra*, 257 Cal. Rptr. at 322 citing *In re B. S.* (2009) 172 Cal. App. 4th 183, 193; See also *In re Brittany K.* (2005) 127 Cal. App. 4th 1497; *In re Cassandra B.* (2004) 125 Cal. App. 4th 199, all of which pertain to dependency, not delinquency cases.)

Further, any additional reliance on *Carlos H.* is also misplaced. The sole issue addressed in *Carlos H*. was whether the restraining order against Carlos, directing him to stay 100 yards away from the victim, was imposed in an abuse of discretion where the JV-255 form in question did not expressly permit the 100 yard restriction. (*Carlos H.*, *supra,* 5 Cal.App.5th at 863.) The reviewing court was not, at any point, presented with the substantive question of whether the pre-adjudication restraining order was adequately supported by sufficient evidence.

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3. Welfare Institutions Code section 213.5 does not articulate the necessary level of evidentiary support required to warrant the imposition of a pre-adjudication restraining order, but neither does Penal Code section 136.2 concern pre-trial restraining orders, and the Court has nevertheless found that substantial evidence applies thereto.

Welfare and Institutions Code section 213.5, subdivision (b) is silent on the matter of adequate evidentiary support, stating only, 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, and until the time that the petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure or, if related to domestic violence, in the manner provided by Section 6300 of the Family Code, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) 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. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure or, if related to domestic violence, in the manner provided by Section 6300 of the Family Code. A court may also issue an ex parte order enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, including, but not limited to, making annoying telephone calls as described in Section 653m of the Penal Code, destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace of the child's current or former probation officer or court appointed special advocate, upon application in the manner provided by Section 527 of the Code of Civil Procedure."

Penal Code section 136.2 is likewise silent on the matter. (See generally, Pen. Code sec. 136.2)

Yet, the reviewing court in *Babalola* found, unequivocally, that where the underlying charge is neither Penal Code section 136.1 (for dissuading a witness), nor one of the enumerated domestic violence charges, something more than the prosecution's assertion of the facts supporting the underlying charge must be presented in order for the imposition of the order to be upheld. (*Babalola*, *supra*, 192 Cal. App. 4th at 951 ["It therefore follows that the required good cause must show a threat, or likely threat to criminal proceedings or participation in them."]) An absence of substantial and therefore sufficient evidence is cause for reversal. (*Ibid*.) A finding of past harm does not suffice. (*Babalola*, *supra*, 192 Cal. App. 4th at 964.)

In *Babaloa*, the defendant was accused of assaulting his victims, and there was a concern that due to the assaults, themselves, and the close proximity in which the parties lived to one another, the defendant might seek to further harm the victims, prior to trial. (*Babalola, supra,* 192 Cal. App. 4th at 964.) The prosecution sought and obtained a protective order admonishing the defendant to stay a certain distance away from the victims at all times. (*Ibid*.) On appeal however, the Court overturned the trial court's order, finding, "That potential for 'bad blood' between the participants in the assault, as the prosecutor described it, and the proximity of their residences do suggest further conflict may be possible," but bad blood between neighbors, without a greater suggestion of the likelihood of

impending harm, was insufficient to warrant the imposition of a restraining order against the defendant. (*Ibid*.)

Protective orders are to be issued only where there is "a good cause belief that harm to, of intimidation or dissuasion of a victim or witness has occurred or is reasonably likely to occur." (*People v. Selga* (2008) 162 Cal. App. 4th 113, 118.) Protective orders should only be issued in "rare and compelling circumstances." (*People v. Ponce* (2009) 173 Cal. App. 4th 378, 385.)

In *Ponce*, a post conviction three-year protective order was reversed on the basis of loss of jurisdiction, however the reviewing court also found that the order, itself, was not supported by sufficient evidence, and was therefore erroneously ordered.

> "Here there was no evidence that after being charged Ponce had threatened, or had tried to dissuade any witness, or had tried to unlawfully interfere with the criminal proceedings. The prosecutor did not make an offer of proof or any argument to justify the need for a protective order. He simply said, '[W]e'd also like to have a stay-away order in this case . . .' But a prosecutor's wish to have such an order, without more, is not an adequate showing sufficient to justify the trial court's action."

(*Ponce*, *supra*, 173 Cal. App. 4th at 384-385.)

There is no basis for finding that the principles allowing for a more easily imposed pre-adjudication restraining order under Welfare and Institutions Code section 213.5, subdivision (a) should apply to the more burdensome on the minor imposition addressed in subdivision (b). Due process considerations require greater urgency, and something more than the prosecution's request for an order on the basis on only those allegations which led to the filing of the delinquency petition.

B. Petitioner Finds No Applicable Distinction Between A Temporary Restraining Order and an Order Imposed After a Noticed Hearing.

The temporary restraining order was no different from the more permanent restraining order, in terms of the burden that was placed on petitioner. The only difference between the temporary restraining order and the more permanent protective order was the length of time for which it was active.

The JV-250 temporary restraining order lives for twenty-one (21) days before it expires. (Sec. 213.5, subd.(c)(1).) However, the burden that was placed on the petitioner, and that will be placed on those minors similarly situated in the future, is largely the same burden that arises out of the more lengthy order. It therefore follows that the temporary JV-250 restraining order, carrying the same burdens and same consequences as the

more permanent JV-255 protective order, should be supported by the same requisite substantial evidence.

C. The Protective Orders Imposed in Petitioners Case Were Inadequately Supported.

1. Facts Underlying the Temporary Restraining Order

At the citation hearing of February 11, 2019, the prosecution requested the juvenile court impose a temporary restraining order on appellant pending her adjudication. (Vol. 1 RT 3, 5.) The defense objected on the grounds that the requirements of the California Code of Civil Procedure had not been met. (Vol. 1 RT 3.) The defense had not received prior notice of the prosecution's intention to seek a temporary order. (Vol. 1 RT 4.) At the time of the prosecution's request, the defense had not been provided with a copy of the sought order, and therefore still had not had the opportunity to review the sought order. (Vol. 1 RT 6.) The juvenile court had not seen the sought order, either. (Vol. 1 RT 6.) The prosecution had not brought copies of the order to the hearing, but only the original for the juvenile court's signature. (Vol. 1 RT 6.) Only after the prosecution had been afforded the opportunity to have made the copies did the defense have the opportunity to review the order. (Vol. 1 RT 6.) The defense argued that, upon review of the sought order, the sought order nevertheless did not meet the statutory requirements for imposition. (Vol. 1 RT 7.)

In support of the requested order, the prosecution cited the fact that a) he had not met defense counsel until the moment of the hearing; b) that the officer's report, which was attached to the original petition for the juvenile court's review, contained ample evidence of what had transpired from the victim witness' point of view which was reiterated by the prosecution orally at the hearing: that appellant had (allegedly) heated up a "Cup of Noodles" containing bleach and handed it to the victim witness for the victim witness to consume knowing that this would make the victim witness sick. (Vol. 1 RT 8-9.)

The juvenile court found that the prosecution had met its burden, and imposed the temporary restraining order. (Vol. 1 RT 10.) The defense requested that a hearing be set after the temporal statutory limitation had run, and that hearing was set. (Vol. 1 RT 4-5.)

2. Facts Underlying the Protective Order Imposed After a Noticed Hearing.

The victim witness, L. S., testified at the protective order hearing in support of the imposition of the order. (Vol. 2. RT 3.) On December 7, 2018, L. S. and appellant were in art class together. (Vol. 2 RT 4.) Appellant told L. S. that she had a "Cup of Noodles," and asked L. S. if he wanted it. (Vol. 2 RT 5.) L. S. said that he did, and appellant went off to microwave the noodles. (Vol. 2 RT 5.) Appellant brought L. S. the prepared Cup of Noodles, and as L. S. was about to drink the broth, he noticed that it

smelled "weird" and he asked appellant what was in it. (Vol. 2 RT 5.) But appellant was no longer paying attention to L. S. or to the Cup of Noodles, and still not knowing why the noodles smelled "weird," L. S. threw the noodles away. (Vol. 2 RT 5.)

L. S. clarified that he "kind of" recognized the funny smell but couldn't place it. (Vol. 2 RT 5.) It was similar to the smell of bleach. (Vol. 2 RT 5.) L. S. wasn't sure that he was concerned with what would happen if he had consumed the noodles, but as they smelled funny, he threw them away. (Vol. 2 RT 5.) [4]

L. S. did not report the incident. (Vol. 2 RT 8.) L. S. did not believe the incident to be particularly serious, and therefore he had simply ignored it. (Vol. 2 RT 8.) L. S. understood appellant to be a "class clown" and a "prankster." (Vol. 2 RT 8.) Approximately one week later however, L. S. wrote a letter to the assistant principle of his school explaining what had happened on December 7th in art class. (Vol. 2 RT 13.) Still, L. S. did not tell the assistant principal that he was afraid of appellant, or afraid of what appellant might still do to him. (Vol. 2 RT 15.) L. S. had told the assistant principal that he understood appellant to be a "prankster." (Vol. 2 RT 15.) Further, on February 20, 2018, L. S. told the defense investigator that he

[4] L. S. later stated that he understood that something bad might possibly have happened to him if he would have consumed the noodles. (Vol. 2 RT 14.)

never believed that appellant was trying to hurt him, he was not scared of appellant, and that he incident was not a "big deal." (Vol. 2 RT 16.) L. S. told the investigator that he had started home-school because his previous school was not a "good fit" for him, in addition to the incident with appellant. (Vol. 2 RT 17-18.)

As far as L. S. knew, the Cup of Noodles was never tested for any nefarious chemicals. (Vol. 2 RT 10.) Also, L. S. stated that appellant had not done anything or attempted to do anything, harmful or otherwise, to appellant since she had given him the noodles in art class on December 7, 2018. (Vol. 2 RT 10.)

Concerning the sought protective order, L. S. stated that he wanted the order to be imposed on appellant because he was scared of what she might do to him in the future. (Vol. 2 RT 6, 9, 11.) [5] However, L. S. was not the party who contacted the district attorney's office seeking the order. (Vol. 2 RT 9.) Likewise, L. S. stated that these concerns had only occurred to him as of the date of the hearing and having spoken to the prosecution, and not at any time prior. (Vol. 2 RT 7, 9.)

[5] L. S. implied that finding out that appellant had been arrested concerning her handing him the Cup of Noodles had led to his wanting the protective order imposed, though the time and place of this discovery is not clear from his statements. (Vol. 2 RT 12.)

In addition to L. S.'s testimony, the prosecution informed the court that it had both L. S.'s mother, and the assistant principal of L. S.'s former school present, presumably to testify in support of the imposition of the protective order. (Vol. 2 RT 18.) However, neither of these individuals were sworn in or provided testimony. (Vol. 2 RT 18-19.) Neither had the defense been provided with a copy of the sought order until the conclusion of the testimony. (Vol. 2 RT 20.)

3. It is apparent that both the temporary restraining order, and the protective order imposed after a noticed hearing, were imposed based solely on the evidence underlying the decision to file the wardship petition.

The record on appeal makes clear that the juvenile court's imposition of both the temporary order, and the more permanent, three-year protective order were both predicated on the underlying facts, and not on any additional urgent need for such an order. These decisions, and the appellate decisions to uphold such impositions, stand directly in opposite of and contrary to the Court's determination in *Babalola*, that the imposition of, at the very least, the more permanent protective order, must be supported by some showing of urgency, either by way of additional facts, or by way of an underlying domestic violence violation or an alleged violation of Penal Code section 136.1. (*Babalola*, *supra*, 192 Cal. App. 4th at 951.)

Absent any such showing, and comporting with the mandates concerning juveniles and due process protections of *Winship*, *supra*, 397 U.S. at 365-366, the restraining orders in question in petitioner's case, and in like circumstances that may be found in *L. W.* and others, should have been overturned. For these reasons, petitioner requests review of the appellate court's recent findings and holdings.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court review the decisions of Division Two to deny relief to both the procedural claim concerning due notice, and the substantive claim concerning substantial evidence, as each pertains to the protective orders in question.

Dated: February 24, 2020

Respectfully submitted,
/s/ Courtney M. Selan
Courtney M. Selan
Attorney for Appellant, E. F.

CERTIFICATE OF WORD COUNT

In re E. F./People v. E. F. Division Two B295755 [Los Angeles PJ53161]

I certify this Petition for Review was produced by the Microsoft Word word-processing program, that the font type and size is Times New Roman 13 point, and that the word count for the document is 7,471 as counted by Microsoft Word.

Dated: February 24, 2020

/s/ Courtney M. Selan
Courtney M. Selan

CERTIFICATE OF SERVICE BY AN ATTORNEY

In re E. F./People v. E. F. Division Two B295755 [Los Angeles PJ53161]

I, Courtney M. Selan, declare that I am over eighteen (18) years old, I am an active member of the California State Bar, and not a party to the within action. My electronic address is courtneymselan@yahoo.com, and my business address is 11664 National Boulevard No. 258, Los Angeles, California 90064.

On February 24, 2020, I filed one true electronic copy (by True-Filing) of the PETITION FOR REVIEW AND APPENDIX A with the California Supreme Court. On the same date, I served one true electronic copy of the same also by True-Filing to the 1) Second District Court of Appeal and 2) Los Angeles Office of the Attorney General. One the same date, and per request, I served one true electronic copy of the same to CAPLA by regular email to capdocs@lacap.com. Also on the same date, I served one true paper copy of the same by First Class Mail on:

Office of the District Attorney Sylmar Juvenile Courthouse 16350 Filbert Street Sylmar, California 91342	E, F. (Appellant) Address on File Court Appeal
Honorable Morton Rochman, Judge Sylmar Juvenile Courthouse (Dept 279) 16350 Filbert Street Sylmar, California 91342	Office of the Public Defender Sylmar Juvenile Courthouse 16350 Filbert Street Sylmar, California 91342

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 24, 2020 at Los Angeles, California

/s/ Courtney M. Selan

APPENDIX A

Filed 2/13/2020

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re E.F., A Person Coming Under the Juvenile Court Law.	B295755 (Consolidated with B297079) (Los Angeles County Super. Ct. No. PJ53161)
THE PEOPLE, Plaintiff and Respondent, v. E.F., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County, Morton Rochman, Judge. Affirmed.

Courtney M. Selan, under appointment by the Court of Appeal, for Defendant and Appellant E.F.

Jackie Lacey, District Attorney, Phyllis Asayama and Grace Shin, Deputy District Attorneys, for Plaintiff and Respondent.

* * * * * *

The juvenile court entered a temporary restraining order (TRO) and, subsequently, a three-year restraining order against a 14-year-old charged with poisoning one of her high school classmates. Among other things, this appeal presents the following question: Is a prosecutor seeking a TRO under Welfare and Institutions Code section 213.5 required to give advance notice of her intent to do so (or is notice at the hearing where the TRO is requested sufficient)?[1] The Court of Appeal in *In re L.W.* (2020) 44 Cal.App.5th 44 (*L.W.*) held that advance notice is required. We respectfully disagree, and publish to explain why. We also reject the juvenile's challenge to the lengthier restraining order, and affirm.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

In December 2018, E.F. (minor) and L.S. were ninth graders enrolled in the same art class in high school. For unknown reasons, minor offered L.S. a Cup of Noodles, microwaved it, and handed it to him. When L.S. went to drink the broth, it smelled of bleach and he threw it out.

II. Procedural Background

In January 2019, the People filed a petition urging the juvenile court to exert delinquency jurisdiction over minor because she had committed the crime of poisoning, a felony (Pen. Code, § 347, subd. (a)).

On February 11, 2019, minor first appeared in juvenile court with counsel for arraignment and denied the allegation.

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1 All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The prosecutor asked the juvenile court to issue a TRO enjoining minor from having any contact with L.S. and ordering her to stay away from him. Minor objected on the ground that the prosecutor's request did not meet the procedural requirements set forth in Code of Civil Procedure section 527. Citing the arrest report that summarized the offense, the juvenile court overruled minor's objection and issued the requested TRO, which was set to expire on March 5, 2019 when the court would hear evidence on whether to issue a further restraining order.

On March 5, 2019, the juvenile court continued the hearing until April 2, 2019, and ordered that the TRO remain in effect until that date.

At the April 2, 2019 hearing, the prosecutor called L.S. as a witness in support of the People's request for a longer, three-year restraining order. L.S. testified to the facts set forth above. He also repeatedly affirmed that he wanted a restraining order to protect him because he was unsure what else minor might do, although he admitted that he did not think minor's conduct was "a big deal" at the time. The juvenile court issued the further restraining order with terms mirroring the TRO's.

Minor filed timely notices of appeal from the TRO and the restraining order. We consolidated the appeals.

DISCUSSION

On appeal, minor argues that (1) the TRO was invalid because (a) it was procedurally defective and (b) unsupported by substantial evidence, and (2) the restraining order is invalid because it is unsupported by substantial evidence. We have jurisdiction to hear her appeals of these orders. (*In re Jonathan V.* (2018) 19 Cal.App.5th 236, 238, fn. 1 ["Restraining orders issued in juvenile proceedings are appealable."] (*Jonathan V.*).)

I. TRO

A. *Mootness*

As a threshold matter, minor's challenge to the TRO is moot. (*O'Kane v. Irvine* (1996) 47 Cal.App.4th 207, 210, fn. 4 [an "appeal from [a] TRO, following [a] trial court's grant of [a longer] restraining order, is moot"].)

Minor urges us to exercise the discretion we have to overlook mootness as to issues that are ""capable of repetition, yet evading review."" (*United Farm Workers v. Superior Court of Santa Cruz County* (1975) 14 Cal.3d 902, 906-907, quoting *So. Pac. Terminal Co. v. Int. Comm. Comm.* (1911) 219 U.S. 498, 515.) At most, this discretion extends to her procedural challenge, since her substantial evidence challenge is necessarily grounded in the facts of this case and hence not "capable of repetition."

B. *Notice requirement for TROs under section 213.5*

In her procedural challenge, minor argues that the juvenile court erred in issuing the TRO because the prosecutor did not provide her advance notice of his intention to seek a TRO before the hearing when it was requested. Because minor's argument turns on statutory interpretation, our review is de novo. (*Jonathan V.*, *supra*, 19 Cal.App.5th at p. 241.)

Section 213.5 authorizes a juvenile court, when a petition to exert delinquency jurisdiction is pending, to issue an "ex parte order" that "enjoin[s] 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." (§ 213.5, subd. (b).) More specifically, section 213.5 explicitly authorizes two different types of ex parte restraining orders: (1) TROs that may be "granted without notice," but which presumptively expire after 21

to 25 days (§ 213.5, subd. (c)(1)), and (2) restraining orders that may be granted "upon notice and a hearing," but which may be effective for up to three years (*id.*, subd. (d)(1)). (See *Jonathan V.*, *supra*, 19 Cal.App.5th at p. 241 [so recognizing].) The applicable Rule of Court echoes these distinctions, providing in pertinent part that a TRO application "may be submitted without notice." (Cal. Rules of Court, rule 5.630(d).) In light of the plain language of section 213.5 spelled out above, a juvenile court that issues a TRO (rather than a longer-term restraining order) may do so "without notice"—that is, even when a prosecutor does not give the juvenile advance notice of his or her intent to do so. (*People v. Maultsby* (2012) 53 Cal.4th 296, 299 ["The statute's plain language controls unless its words are ambiguous."].)

Minor resists this conclusion by highlighting the language contained in subdivision (b) of section 213.5. That is the subdivision that authorizes both types of restraining orders (that is, TROs and longer-lasting restraining orders), and it requires an "application in the manner provided by Section 527 of the Code of Civil Procedure." (§ 213.5, subd. (b).) From this, minor argues that (1) Code of Civil Procedure section 527 provides that "[n]o temporary restraining order shall be granted without notice to the opposing party" unless (a) an "affidavit" or "verified complaint" "show[]" "that great or irreparable injury will result to the applicant before the matter can be heard on notice," and (b) the applicant "certifies . . . under oath" to his or her efforts to give notice (Code Civ. Proc., § 527, subd. (c)); and (2) several cases have held that "notice" for purposes of granting a restraining order means notice *in advance of the hearing where the order is granted* (*Babalola v. Superior Court* (2011) 192 Cal.App.4th 948, 965 [so noting, in dicta] (*Babalola*); *Jonathan V.*, *supra*, 19

Cal.App.5th at p. 242 [so noting]). Thus, minor concludes, the issuance of the TRO in this case was improper because section 213.5, through its cross-reference to Code of Civil Procedure section 527, requires advance notice unless one of its special requirements are met and the prosecutor did not meet those requirements here.

We reject minor's argument—and thus part ways with *L.W.*—for three reasons.

First, minor's reading of section 213.5 contravenes the plain language of section 213.5 and that language, as discussed above, expressly contemplates—and hence expressly authorizes—that "a temporary restraining order" may be "granted without notice." (§ 213.5, subd. (c)(1).) At best, section 213.5's cross-reference to Code of Civil Procedure section 527 creates some degree of ambiguity regarding the necessity of advance notice insofar as section 213.5 does not require advance notice for TROs and Code of Civil Procedure section 527 presumptively does. But any ambiguity must be resolved in favor of section 213.5's explicit language that TROs issued under its auspices may be issued "without notice." This resolution is the only construction of section 213.5 that gives effect to the subdivision that most directly and specifically speaks to the notice required for TROs issued under section 213.5 (*State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 960 ["'more specific provisions take precedence over more general ones'"], that harmonizes *both* subdivisions of section 213.5 by giving effect to section 213.5's specific language dispensing with advance notice for TROs while incorporating all Code of Civil Procedure section 527's procedures that do not conflict with section 213.5's specific language (*Ste. Marie v. Riverside County Regional Park & Open-*

Space Dist. (2009) 46 Cal.4th 282, 289 ["We must of course read statutes as a whole so that all parts are harmonized and given effect."]), and that avoids rendering section 213.5's specific language superfluous (*People v. Villatoro* (2012) 54 Cal.4th 1152, 1173 ["We generally avoid interpretations that render any part of a statute superfluous."]).

Second, giving effect to section 213.5's express language dispensing with advance notice for TROs also gives effect to the reasonable line drawn by our Legislature: TROs do not need advance notice because they are typically issued under more emergency circumstances, while longer-lasting restraining orders do need advance notice because they are typically issued under less pressing circumstances (usually because a TRO is already in place). Indeed, all of the cases minor cites in support of her argument that advance notice is required all deal with non-TROs. (*Babalola*, *supra*, 192 Cal.App.4th at pp. 951, 965 [restraining order to protect witnesses under Penal Code section 136.2]; *Jonathan V.*, *supra*, 19 Cal.App.5th at pp. 240-242 [two-year restraining order under section 213.5]; see also, *People v. Ponce* (2009) 173 Cal.App.4th 378, 380-383 [restraining order to protect witnesses under Penal Code section 136.2] (*Ponce*); *People v. Selga* (2008) 162 Cal.App.4th 113, 115-119 [same] (*Selga*).) None deals with TROs, as *Jonathan V.* was careful to point out. (*Jonathan V.*, at p. 242 ["[t]he restraining order in this case is not a temporary restraining order"].)

Lastly, giving effect to section 213.5's express language disavowing any advance notice requirement still accords with due process. Although section 213.5 and its implementing Rule of Court purport to authorize TROs "without notice," TROs issued at arraignments are not literally "without notice"; instead, they

are issued without notice *in advance of the hearing*. The minor appearing at the arraignment with counsel is still notified of the prosecutor's TRO application and has the opportunity to oppose the application. Because due process guarantees notice and the opportunity to be heard (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212), the issuance of TROs under section 213.5 accords with due process and thus provides no basis to read section 213.5 in a counter-textual manner to avoid possible constitutional infirmity. (E.g., *People v. Garcia* (2017) 2 Cal.5th 792, 815 [noting "canon of constitutional avoidance" obligating courts to "construe statutes to avoid serious constitutional problems if such a reading is fairly possible"].)

II. Restraining Order

We review a trial court's issuance of a restraining order for an abuse of its discretion, and the evidentiary foundation for such an order for substantial evidence. (*In re Carlos H.* (2016) 5 Cal.App.5th 861, 864 (*Carlos H.*); *In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-211.) Under substantial evidence review, we "interpret the facts in the light most favorable to the [order], indulge . . . all reasonable inferences in support of the trial court's order," and do not reweigh the evidence. (*Hilb, Rogal & Hamilton Ins. Services v. Robb* (1995) 33 Cal.App.4th 1812, 1820.)

Substantial evidence supports the juvenile court's issuance of the restraining order in this case. As noted above, and as pertinent here, the court may issue an order that "enjoin[s] the child from . . . disturbing the peace of any person the court finds to be at risk from the conduct of the child." (§ 213.5, subd. (b).) To issue such an order, "[t]here need only be evidence that the

[minor who is restrained] 'disturbed the peace' of the protected child"—that is, that the minor engaged in "'"conduct that destroy[ed] the mental or emotional calm of the other party."'" (*In re Bruno M.* (2018) 28 Cal.App.5th 990, 997, (*Bruno M.*), quoting *Perez v. Torres-Hernandez* (2016) 1 Cal.App.5th 389, 401.) Here, L.S. testified that minor put a chemical smelling like bleach in a Cup of Noodles she offered to prepare for him, and that he was "possibly" concerned that drinking bleach could cause "something bad" to happen to him. Minor's act of putting bleach in food given to a classmate, who recognized that ingesting it could hurt him and feared that she could do something similar in the future, is sufficient to destroy that classmate's "mental or emotional calm." Thus, it was enough to support the restraining order.

Minor resists this conclusion. Citing *Selga*, *supra*, 162 Cal.App.4th at p. 118, and *Ponce*, *supra*, 173 Cal.App.4th at pp. 383-385, she contends that the People also needed to prove a potential for future intimidation or dissuasion and points out the absence of any evidence that minor has since tried to harm L.S. Citing *Carlos H.*, *supra*, 5 Cal.App.5th 861, she further argues that there is no reason to apply a different standard for juveniles than adults. As noted above, however, *Selga* and *Ponce* regard orders to protect witnesses under Penal Code section 136.2 and are for that reason inapt. Unlike Penal Code section 136.2, section 213.5 does not require "evidence of a reasonable apprehension of future physical abuse" or potential harm as a predicate to the issuance of a restraining order. (*Bruno M.*, *supra*, 28 Cal.App.5th at p. 997.) Thus, the different standards rest—not on the age of the restrained party—but on the different substantive standards in the two different statutes. And *Carlos*

H. is not to the contrary; indeed, it merely held that section 213.5 empowers a juvenile court to issue a stay-away order like the ones available for adults, but in no way held that section 213.5 is limited to the types of restraining orders (or the subset of such orders authorized by Penal Code section 136.2) that may be issued against adults. (*Carlos H.*, at p. 870.) Citing Code of Civil Procedure section 527, subdivision (c), minor asserts that the People also needed to prove that L.S. would suffer "great or irreparable injury" if the order were not issued. But this showing is only required when a restraining order is issued "without notice to the opposing party" (Code Civ. Proc., § 527, subd. (c)), and the restraining order issued by the juvenile court on April 2, 2019 was preceded by weeks' worth of notice. Minor lastly notes that the People failed to prove that she actually put bleach in L.S.'s Cup of Noodles. But under substantial evidence review, we are to indulge reasonable inferences favorable to the order and one can reasonably infer that a liquid that smells like bleach may contain bleach.

DISPOSITION

The orders are affirmed.

CERTIFIED FOR PUBLICATION.

_____, J.
HOFFSTADT

We concur:

_____, P.J.
LUI

_____, J.
CHAVEZ