

IN THE SUPREME COURT FOR THE STATE OF CALIFORNIA

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

_____)	Cal Sup S260839
THE PEOPLE OF)	
THE STATE OF CALIFORNIA,)	
)	2d District Criminal
Plaintiff and Respondent,)	Div 2 B295755
)	
v.)	Los Angeles County
)	Juv. Delinquency
E. F.,)	PJ53161
)	
Defendant and Appellant/Petitioner.)	
_____)	

REPLY TO ANSWER
TO
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

Attorney for Appellant/Petitioner, E. F.

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)	Juv. Delinquency
E. F.,)	PJ52813
)	
Defendant and Appellant/Petitioner.)	
_____)	

REPLY TO ANSWER
TO
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 the Court’s order requesting an answer to the petition for review filed with the Court on March 17, 2020, petitioner received the answer dated June 1, 2020. By further order of the Court, petitioner files this reply to the respondent’s answer within ten (10) days. As the Court has indicated, both the answer and this reply address only the first issue of the initial petition.

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RESTATEMENT 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. (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.

ARGUMENT

IN THE ABSENCE OF A SUFFICIENT SHOWING OF CONCERN OF GREAT OR IRREPARABLE INJURY PENDING AGAINST THE PERSON TO BE PROTECTED, THE DEFENDANT MUST BE AFFORDED SOME REASONABLE NOTICE OF THE INTENT TO IMPOSE A TEMPORARY RESTRAINING ORDER SUCH THAT S/HE MAY BE ABLE TO PREPARE A DEFENSE AGAINST IT.

Respondent suggests that same day, or "no" notice is sufficient to satisfy Welfare and Institutions Code section 213.5. (Hereinafter "section 213.5".) (Answer to Petition for Review p. 15. (Hereinafter "Answer.")) As acknowledged by the parties, section 213.5 permits the imposition of a restraining order without notice where the relevant provision of California Code of Civil Procedure section 527, subdivision (c) are met. (Hereinafter "section 527, subdivision (c).") (Answer p. 15.) Also as acknowledged by the parties, this appears to stand in conflict with the California Rules of Court, rule 5.630, subdivision (d).

Petitioner does not disagree with the position that the plain language of the both the statute and the rules of court permit the imposition of a temporary restraining order “without notice,” however, first, the requirements of section 527, subdivision (c) must be met (as indicated by the plain and express language of the legislature in that section), and second, where there exists 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.”]) Specifically, the Court in *L.W.* found, “Rule 5.630, however, cannot be interpreted to dispense with the requirements of section 213.5.” (*In re L. W.* (2020) 44 Cal. App. 5th 44, 50.)

Specifically, the plain and express language of section 527, subdivision (c) states, unequivocally:

“(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.”

None of these requirements were satisfied in the petitioner's case.

The question is not one of constitutionality, as respondent suggests, as the matter is, as acknowledged by the respondent, one of statutory interpretation. (See Answer p. 16-17.) Respondent does not argue that the plain language of the statutes in question do not state that where notice is to be set aside, then and in that instance, certain underlying substantive and procedural requirements must be met. (See Answer p. 15.) It follows that unless the conditions precedent are satisfied (e. g., there exists evidence that pending great and irreparable injury is of concern; a sworn affidavit stating as much is presented in support of the request), then and in that instance, the defendant is due at least some notice prior to the imposition of even a temporary restraining order in order that s/he may be permitted to prepare a defense against it. (See, *L. W.*, *supra*, 44 Cal. App. 5th at 51.)

Respondent suggests that, in the present case, petitioner was provided with sufficient notice prior to the imposition of the temporary restraining order. (Answer p. 17.) This was categorically not so. The facts unequivocally establish that petitioner was not provided with any notice at all:

At the citation hearing of February 11, 2019, the prosecution requested the juvenile court impose a temporary restraining order on petitioner 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 petitioner 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 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. (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. (RT Vol. 1 8-9.) Further, the substantive sum of the prosecution's oral argument amounted to only a reiteration of the underlying allegations, and that he had not known which public defender was appearing on behalf of petitioner until the hearing in question began. (Vol. 1 RT pages 8-9.)

Further and significantly, the events in question allegedly transpired on December 7, 2018. (Vol. 1 CT 9; Vol. 1 RT 3, 5.) More than two months

had therefore passed before even the temporary protective order was sought, and with no mention of any additional incident or occurrence that would amount to the requisite cause for concern.

The prosecution, in fact, conceded a lack of timeliness, but argued 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 petitioner is an employee of the Office of the Public Defender with offices on site (Vol. CT 13), and 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 petitioner 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.)

Respondent’s concerns about the *Jonathan V.* Court’s holding that temporary restraining orders may be issued without prior notice are already addressed above: Petitioner does not dispute that temporary restraining orders may be issued without prior notice, however this is so only where the conditions precedent established by section 527, subdivision (c) are

met, and a rule of court may not supersede the will of the Legislature.

(Answer p. 18 citing *In re Jonathan V.* (2018) 19 Cal. App. 5th 236, 241.)¹

L. W. was not wrongly decided. Neither has the Court in *L. W.*, nor petitioner herein, parsed out seemingly advantageous sections of any of the relevant statutes and refashioned them in a manner that is in any way contradictory to the spirit and the legislative intent of those codes. The Court in *L. W.* thoroughly and completely reviewed all of the relevant law in question, and petitioner has set forth the same, both in the initial petition and herein. There is nothing superfluous presented the support of petitioner's position. (See Answer p. 19.)

The issue presented herein is not "same day notice" per se, as petitioner was not afforded any notice *at all* in the present instance. That which amounts to sufficient notice should be *reasonable*, that is, it should be commiserate with the underlying and surrounding circumstances of the request.

By way of example, in the present case, the request for the order was not based on anything other than the underlying offense, though it was not made for two months after the filing of the petition. It does not seem reasonable that the prosecution could not have, in this particular instance,

¹ The restraining order in question in *Jonathan V.* was not a temporary restraining order. (*Id.* at 242.)

provided the defense with at least some reasonable notice during those weeks prior, of its intention to have sought the albeit temporary order.

Regardless of the particulars in this present case, or of any suggestions made by the petitioner by way of example, in no instance should notice be less than anything reasonable under the circumstances, and in no instance should the defendant be denied a reasonable opportunity to prepare a defense against the imposition, unless the prosecution can make a proper and substantial showing of concern for a pending “great or irreparable injury” to the person or persons to be so protected.

CONCLUSION

For the foregoing reasons, and for the reasons set forth in the initial Petition for Review, petitioner requests that the Court grant review of the preceding question and/or find that the holding of *L. W.* stands, and that the relevant holding of in petitioner’s case be overturned.

Dated: June 10, 2020

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

CERTIFICATE OF WORD COUNT

In re E. F./People v. E. F. S260839 Second District B295755 [PJ53161]

I certify this Reply to the Answer to the 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 2,609 as counted by Microsoft Word.

Dated: June 10, 2020

/s/ Courtney M. Selan
Courtney M. Selan

CERTIFICATE OF SERVICE BY AN ATTORNEY

In re E. F./People v. E. F. S260839 Second District B295755 [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 June 10, 2020, I filed one true electronic copy (by True-Filing) of the REPLY TO THE ANSWER TO THE PETITION FOR REVIEW 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. On the same date, I served one true electronic copy of the same to CAPLA by regular email to capdocs@lacap.com and to the Sylmar Office of the Public Defender at vkouljian@pubdef.lacounty.gov. On the same date, I served one true paper copy of the same by U. S. First Class Mail on:

Office of the District Attorney
16350 Filbert Street
Sylmar, California 91342

E. F. (Petitioner)
Address on File Court Appeal

Honorable Morton Rochman (Dept 279)
16350 Filbert Street
Sylmar, California 91342

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

Executed on June 10, 2020 at Los Angeles, California

/s/ Courtney M. Selan

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **IN RE E.F.**

Case Number: **S260839**

Lower Court Case Number: **B295755**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **courtneymselan@yahoo.com**
3. I served by email a copy of the following document(s) indicated below:

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Office Office Of The Attorney General Court Added	docketinglaawt@doj.ca.gov	e-Serve	6/10/2020 3:46:23 PM
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

6/10/2020

Date

/s/Courtney Selan

Signature

Selan, Courtney (236770)

Last Name, First Name (PNum)

Courtney M Selan

Law Firm