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,	)	Supreme Court S260839
Plaintiff and Respondent,	)	2d District Criminal Div 2 B295755
v.	)	Los Angeles County
E. F.,	)	Juv. Delinquency PJ53161
Defendant and Appellant/Petitioner.	)	

HONORABLE MORTON ROCHMAN, JUDGE PRESIDING

PETITIONER S BRIEF ON THE MERITS

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ISSUE PRESENTED ON REVIEW

Does Welfare and Institutions Code section 213.5, subdivision (b) (hereinafter "section 213.5, subdivision (b)"), by way of Code of Civil Procedure section 527, subdivision (c) (hereinafter, "section 527, subdivision (c)") require that a minor defendant be provided with some form of notice prior to the request for, and imposition of a pre-adjudication temporary restraining order?

ANSWER

Yes. In a published opinion, the appellate court in the present case found that no notice need be provided to a minor defendant prior to a

request for, and imposition of a pre-adjudication restraining order. In another recently published opinion however, Division Six of the Second District found that such notice *was* required. (*In re L. W.* (2020) 44 Cal. App. 5th 44, 50-51. Emphasis added.)

Pursuant to a plain reading of section 213.5, subdivision (b) and section 527, subdivision (c), *L. W.* was correctly decided. Both section 213.5, subdivision (b), and section 527, subdivision (c) expressly state that, absent exigent circumstances, at least some notice of an intention to seek a temporary restraining order is required prior to the imposition of that order. (*L. W.*, *supra*, 44 Cal. App. 5th at 50-51.)

Further, though certain rights afforded to adults pursuant to the fourth amendment and sixth amendment have been curtailed to allow for greater well-being protection of minors, and therefore greater flexibility and discretion for the juvenile courts, such modifications are generally prohibited in matters concerning due process rights. (See, e. g., *In re Winship* (1970) 397 U. S. 358, 364, concerning the extension of "sufficient evidence" principles to juvenile proceedings.)

The due process right to "sufficient notice" has historically been treated as sacrosanct. (*L. W.*, *supra*, 44 Cal. App. 5th, 50-51; *Babalola v. Superior Court* (2011) 192 Cal. App. 4th 948, 965 ["The essential requirements of due process are notice and an opportunity to respond."]) Even temporary restraining orders have warranted at least some warning of

their pending imposition, absent emergency circumstances. (*Ibid*.)"[(W)e have no doubt such emergency orders are proper in cases involving violent crimes in other contexts as well, provided there is an adequate showing of the need for a temporary order and the court thereafter schedules a hearing to consider whether the order should continue for the duration of the criminal case."])

Pursuant to a plain reading of section 213.5, subdivision (b) and section 527, subdivision (c), as well as to due process concerns, some notice of the prosecution s intention to seek the imposed temporary restraining order was due petitioner prior to its imposition. Accordingly, the relevant findings and holding of Division Two of the Second District should be reversed.

STATEMENT OF THE CASE

On January 28, 2019, a non-detained, single-count section 602 petition was filed in the Los Angeles County Juvenile Court, alleging that on or about December 7, 2018, and within the County of Los Angeles, petitioner was in violation of Penal Code section 347, subdivision (a) (poisoning, a felony). (Vol. 1 CT 1.) At the citation hearing of February 11, 2019, petitioner denied the allegations. (Vol. 1 CT 8.) She was permitted to remain at home pending her adjudication. (Vol. 1 CT 8.)

On the same day, the juvenile court imposed a JV-250 temporary restraining order on petitioner, and set a noticed protective order hearing for March 5, 2019. (Vol. 1 CT 9.) This order was appealed on February 14, 2019. (Vol. 1 CT 13.) Counsel was appointed to represent petitioner on appeal on March 27, 2019.

On April 2, 2019, the juvenile court imposed a JV-255 protective order on petitioner. (Vol. 2 CT 27.) This order was appealed on April 17, 2019. The two appeals were consolidated on May 13, 2019.

STATEMENT OF THE FACTS

At the citation hearing of February 11, 2019, the prosecution asked the juvenile court to impose a temporary restraining order on petitioner pending her adjudication. (Vol. 1 RT 3, 5.) The defense objected because 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 the temporary order. (Vol. 1 RT 4.)

At the time of the prosecution s request, the defense had still not yet 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 multiple 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 make copies of the sought order did the defense have the opportunity to review it. (Vol. 1 RT 6.) The defense argued that, upon review of the sought order, the prosecution still had not met the statutory requirements for imposition of the temporary order. (Vol. 1 RT 7.)

In response to the defense s objection, and in support of the requested order, the prosecution cited that a) he had not met defense counsel until the moment of the hearing, and b) the police officer s arrest report, which was attached to the original petition for the juvenile court s review, contained ample evidence of what had transpired from the alleged victim s ("L. S.") point of view. When challenged, the prosecution added only that petitioner had (allegedly) heated up a "Cup of Noodles" containing bleach and handed it to L. S. for L. S. to consume, petitioner knowing that Cup of Noodles would make L. S. sick. (Vol. 1 RT 8-9.)

Over the defense s renewed objection, 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 for after the temporal statutory limitation for the temporary order had run, and that hearing was set. (Vol. 1 RT 4-5.)

/ / /

ARGUMENT

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

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 is reviewed independently. (*In re Jonathan V.* (2018) 19 Cal. App. 5th 236, 243.) In addition, although petitioner s claim is primarily statutory in nature, it is also premised on due process protections, review of which are also conducted *de novo*. (*Id.* at 241.)

Further, and 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." (*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."])

A. Section 213.5 Requires Some Notice of the Prosecution s Intent to Seek a Temporary Restraining Order Be Provided to a Juvenile Defendant Prior to Its Imposition.

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*, 44 Cal. App. 4th at 50-51.) 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.

Specifically, 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 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."

(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, as is raised in petitioner s case. (*Ibid*.)

Nevertheless, 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) (hereinafter, "rule 5.630") indicates that prior notice of intent to seek the order is not required, provided that ample review by the juvenile court is undertaken. Rule 5.630 therefore stands in conflict with 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 however, 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.* found, expressly, "Rule 5.630, however, cannot be interpreted to dispense with the requirements of section 213.5." (*L. W., supra*, 44 Cal. App. 4th at 50 citing *Jonathan V.*, 19 Cal. App. 5th at

242, fn 7.) [1] The *L. W.* 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.)

In addition, Welfare and Institutions Code section 213.5, *subdivision (c)* (hereinafter, "section 213.5, subdivision (c)") states that, *If* a temporary restraining order is granted without notice, *then* it shall be subject to a particular time of expiration, et al. Section 213.5, subdivision (c) does not provide the prosecution with the opportunity to avoid the notice requirements established by section 213.5, subdivision (b) and section 527, subdivision (c). Rather, section 213.5, subdivision (c) 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 provision shall apply. [2]

---

[1] The restraining order in question in *Jonathan V.* was not a temporary restraining order. (*Id*. at 242.) However, the Court in *L. W*. saw fit to apply its findings and holding to questions concerning temporary restraining orders. (*L. W*., *supra*, 44 Cal. App. 5th at 51.)

[2] 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 August 5, 2020.)

This is the plain meaning of the word "If." [3] Unless the conditions precedent are satisfied (e. g., there exists evidence that pending great and irreparable injury is of concern, and/or a sworn affidavit stating as much is presented in support of the request), the defendant is due at least some notice of the prosecution s intention to seek the temporary order prior to the imposition of that order, so that s/he may be permitted to prepare a defense against it. (*L. W., supra*, 44 Cal. App. 5th at 51.)

Section 213.5, subdivisions (b) and (c) do not grant the juvenile court a *carte blanche* power to impose a temporary restraining order absent some prior notice provided to the minor of the prosecution s intent. (*L. W., supra,* 44 Cal. App. 5th at 51.) Section 213.5 subdivisions (b) and (c)

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[3] 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."])

merely provide for the procedural life of the temporary restraining order should the requirements for "without notice", presumably as prescribed by section 527, subdivision (c), be otherwise satisfied.

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 temporary restraining order until it announced those intentions during the citation hearing. The prosecution, in fact, conceded a lack of notice, but argued that it was caused, at least in part, by virtue of the fact that defense counsel had not checked-in with the prosecution prior to the hearing, and that the prosecution therefore had not known which public defender was appearing on behalf of petitioner until the hearing in question began. (See generally, Vol. 1 RT pages 8-9.)

Specifically:

At the citation hearing of February 11, 2019, the prosecution asked that 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 any prior notice of the prosecution s intention to seek the temporary order. (Vol. 1 RT 4.)

Even at the time of the prosecution s request, the defense still had not been provided with a copy of the sought order, and therefore still had not had the opportunity to review it. (Vol. 1 RT 6.) The juvenile court had not yet seen it 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.) Having done so, the defense argued that, upon review, the order still did not meet the statutory requirements for imposition without sufficient notice of the prosecution s intentions, and thus petitioner was unfairly denied the opportunity to have prepared a defense. (Vol. 1 RT 7.)

In response to the renewed objection, the prosecution cited the facts that a) he had not met defense counsel until the moment of the hearing; and b) that the police report, which was attached to the original petition for the juvenile court s review, contained ample evidence of what had transpired, justifying the imposition of the sought order. The prosecution then reiterated the allegations orally: Petitioner had (allegedly) heated up a "Cup of Noodles" containing bleach, and handed it to the victim for the victim to consume, knowing that this would make the victim sick. (Vol. 1 RT 8-9.)

Notably: 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, and which would have otherwise satisfied the exception to the notice requirement. (Sec. 527, subd. (c)(1).) The only documentation presented for the juvenile court s review in support of the requested order appears to have been a) the underlying petition; b) the police report predicated on L. S. s statements made to investigating officers prior to petitioner s arrest; and c) the order, itself. (RT Vol. 1 8-9.) The sum of the prosecution s oral argument amounts to only a reiteration of the underlying allegations, and an explanation that the prosecution had not known which public defender was appearing on behalf of petitioner until the hearing in question began. (Vol. 1 RT pages 8-9.)

Conspicuously, the alleged events in question 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 cause for the new concern, let alone emergency-like circumstances obviating the need for some form of notice.

The prosecution, in fact, conceded to the lack of notice, but explained that it was due, at least in part, to the fact that 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, defense counsel for petitioner was 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 for 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 Office of the County Public Defender, and the manner in which any particular deputy might be assigned to a case.)

L. W. was not wrongly decided. Neither has the Court in *L. W.*, nor petitioner herein, parsed out advantageous sections of any of the relevant statutes and refashioned them in a manner that is in any way contradictory to their spirit or underlying legislative intent. 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 for review, and herein. There is nothing superfluous, piecemeal, or jerry-rigged in either *L. W.'s* analysis, or in petitioner s position.

The issue presented herein is not even one "same day notice", 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, 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 of an intention to seek a restraining order, temporary or otherwise, be less than anything reasonable under the circumstances. In no instance should a defendant be denied a reasonable opportunity to prepare a defense against any such imposition, unless the prosecution can make a proper and substantial showing of concern of some pending "great or irreparable injury" to the person or persons to be so protected.

CONCLUSION

The requirements of section 213.5, subdivision (b), section 527, subdivision (c), and due process were not met. The decision of Division Two of the Second District should therefore be reversed.

Dated: August 5, 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 the Petitioner s Brief on the Merits 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 4,219 as counted by Microsoft Word.

Dated: August 5, 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 August 5, 2020, I filed one true electronic copy (by True-Filing) of the PETITIONER S BRIEF ON THE MERITS 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 vkoulian@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
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E. F. (Petitioner)
Address on File Court Appeal

Honorable Morton Rochman (Dept 279)
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I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 5, 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**

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Courtney M Selan
Law Firm