Filed 6/16/17 In re G.R. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re G.R., A Person Coming Under the Juvenile Court Law.	B270560
THE PEOPLE, Plaintiff and Respondent, v. G.R., Defendant and Appellant.	(Los Angeles County Super. Ct. No. NJ27455)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, John C. Lawson, II, and John H. Ing, Judges. Judgment and order affirmed as modified.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Margaret E. Maxwell and Douglas L. Wilson, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court declared G.R. a ward of the court after finding he willfully injured his girlfriend by biting her on the face. G.R. contends the court erred when it admitted evidence that he spat on a witness during a prior physical altercation between him and his girlfriend. G.R. also contends the court erred in issuing a permanent restraining order against him at the detention hearing without advanced notice and an opportunity to be heard. We modify the restraining order to reflect that it is a temporary restraining order that expired 21 days after it was issued. We affirm the judgment in all other respects.

FACTUAL AND PROCEDURAL BACKGROUND

1. The delinquency petition and detention hearing

On October 20, 2015, the People filed a delinquency petition under Welfare and Institutions Code[1] section 602, alleging G.R. willfully inflicted corporal injury on his girlfriend, Briana V., a felony (Pen. Code, § 273.5).[2]

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[1] All undesignated statutory references are to the Welfare and Institutions Code.

[2] G.R. also was the subject of three prior delinquency petitions filed by the People on July 25, 2013 (misdemeanor battery under Penal Code section 243.6), September 20, 2013 (felony criminal threats under Penal Code section 422), and December 11, 2014 (felony criminal threats; misdemeanor battery under Penal Code section 242; misdemeanor unlawful sexual intercourse under Penal Code section 261.5, subdivision (b); and misdemeanor battery under Penal Code section 243, subdivision (e)(1)). G.R. admitted each of the allegations in the July 25, 2013 and September 20, 2013 petitions, and he was ordered placed home on probation. As for the December 11, 2014 petition, G.R. admitted the criminal threats allegation, and the remaining allegations were dismissed. The disposition of the

On October 21, 2015, the court conducted a detention hearing, at which the People made an oral request for a protective order against G.R. The court first issued a "stay-away order," precluding G.R. from having any contact with Briana "pending the outcome of this case." The court then stated that it had received a request for, and was issuing, a "temporary restraining order," requiring G.R. to not have any contact with and to stay at least 100 yards from Briana. The court did not state when the temporary restraining order would expire, nor did it schedule a hearing on whether a permanent restraining order should issue. The court issued the restraining order on a JV-255 form, which also did not include an expiration date.

2. The contested jurisdiction hearing

On January 14, 2016, the court conducted a contested jurisdiction hearing. The following evidence was introduced at that hearing.

2.1. The underlying offense

On October 18, 2015, two Los Angeles Police Department officers responded to the maternity ward of Kaiser Permanente Hospital in Los Angeles. There, the officers met minor Briana V., who had recently given birth to a child, and then 15-year-old G.R., Briana's boyfriend and the child's father. Briana had bite marks on the right side of her face that appeared to be "a few days" old.

When the officers began questioning Briana about the bite marks, G.R. spoke up and said that he had accidentally bitten

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December 11, 2014 petition was conducted concurrently with the disposition of the underlying October 20, 2015 petition.

her on the face about two months earlier, while they were kissing and arguing. The officers then detained G.R. and read him his *Miranda*[3] rights. After deciding to speak to the officers, G.R. stated that he had bitten Briana during an argument on October 15, 2015.

2.2. Evidence of prior incidents of violence

The People called A.M. and a Los Angeles County Sheriff's deputy to testify about an incident that occurred on December 10, 2014, when G.R. physically assaulted Briana and spat on A.M. A.M. saw G.R. and Briana arguing in front of a school. G.R. began pulling on Briana's hair and shirt as Briana tried to walk away from him. G.R. ripped Briana's shirt and exposed her bra. After Briana yelled at G.R. to stop touching her, he hit her in the face with his hand. A.M. then approached the two minors and told G.R. to stop hitting Briana. G.R. turned and spat on A.M.'s face.

The Sheriff's deputy contacted Briana and G.R. shortly after the December 10, 2014 incident. The deputy observed that Briana had a circular bruise on her shoulder that was consistent with a bite mark.

2.3. The court's findings

The court found true beyond a reasonable doubt the allegation that G.R. inflicted corporal injury on Briana when he bit her on October 15, 2015. The court sustained the October 20, 2015 petition and declared G.R. a ward of the court.

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (*Miranda*).

3. The disposition hearing

In February 2016, the court conducted a combined disposition hearing on the December 11, 2014 and October 20, 2015 petitions. The court declared the criminal threats offense in the December 11, 2014 petition and the infliction of corporal injury offense in the October 20, 2015 petition felonies, with a combined maximum term of confinement of five years and four months. The court ordered G.R. removed from his parents' custody and placed in a camp community placement program. As a term of probation, the court ordered G.R. not to harass, annoy, or molest Briana, explaining, "I presume it's going to be consensual, if not, you won't be allowed to have that contact."

G.R. filed a timely notice of appeal.

DISCUSSION

1. Any error in admitting evidence of the prior spitting incident was harmless.

G.R. contends the court abused its discretion and violated his due process rights when it allowed the People to introduce evidence that he spat on A.M. during the December 10, 2014 incident. G.R. contends the evidence of the spitting incident constituted improper propensity evidence and was unduly prejudicial such that the court should have excluded it under Evidence Code sections 352 and 1101, subdivision (a). As we explain below, any error in admitting evidence of the spitting incident was harmless because overwhelming evidence supports the court's finding that G.R. willfully inflicted injury on Briana during the October 15, 2015 incident.

1.1. Relevant Proceedings

Before the contested jurisdiction hearing, the People filed a motion in limine seeking to admit evidence of four prior incidents of violence involving G.R. Specifically, the People sought to admit evidence of the December 10, 2014 incident when G.R. physically assaulted Briana as evidence of prior domestic violence under Evidence Code section 1109. The People also sought to admit evidence of three prior incidents of violence under Evidence Code section 1101, subdivision (b), to prove that G.R. did not accidentally bite Briana during the October 15, 2015 incident. Those included the December 10, 2014 incident when G.R. spat at A.M. and threatened to assault her, an incident in September 2013 when G.R. threatened to attack his mother, and an incident in May 2013 when G.R. tried to assault a counselor at his middle school.

The court granted in part and denied in part the People's motion. The court excluded evidence of the May and September 2013 incidents, as well as the portion of the December 10, 2014 incident when G.R. threatened to assault A.M. Over G.R.'s objection, the court allowed the People to present evidence that G.R. physically assaulted Briana during the December 10, 2014 incident under Evidence Code section 1109. The court also allowed the People to present evidence that G.R. spat on A.M. during the December 10, 2014 incident to establish that G.R. did not accidentally bite Briana during the underlying offense.

1.2. Applicable Law and Standard of Review

Generally, evidence of prior criminal acts is inadmissible to prove a minor's conduct on a specific occasion. (Evid. Code, § 1101, subd. (a).) However, such evidence, if relevant and not

inadmissible under Evidence Code section 352, may be used to prove another fact at issue, such as motive, intent, or absence of mistake or accident. (Evid. Code, § 1101, subd. (b).) To be admissible to negate accident and establish criminal intent, the least degree of similarity between the prior conduct and the charged offense is required. (*People v. McCurdy* (2014) 59 Cal.4th 1063, 1096–1097.) Put another way, " 'the uncharged misconduct must be sufficiently similar to support the inference that the defendant " 'probably harbor[ed] the same intent in each instance.' [Citations.]" [Citation.]' [Citations.]" (*Ibid.*)

We review the trial court's decision to admit evidence of prior uncharged acts for abuse of discretion. (*People v. Abilez* (2007) 41 Cal.4th 472, 500.) The erroneous admission of evidence of uncharged conduct does not warrant reversal unless it is reasonably probable the minor would have obtained a more favorable verdict had the evidence been properly excluded. (*People v. Lopez* (2011) 198 Cal.App.4th 698, 716, citing *People v. Malone* (1988) 47 Cal.3d 1, 22.)

1.3. Any error was harmless

We do not need to determine whether the court erred in admitting evidence of the December 10, 2014 spitting incident because, even assuming admission of that evidence was error, it is not reasonably probable G.R. would have obtained a more favorable adjudication had that evidence been excluded. Specifically, there was overwhelming evidence to support the court's finding that G.R. willfully inflicted injury on Briana during the October 15, 2015 incident.

G.R. admitted to the police officers who responded to the hospital on October 20, 2015 that he bit Briana during an argument on October 15, 2015. Although he initially told the

officers that he had bitten Briana by accident about two months earlier, he changed his story after he was *Mirandized*, admitting that he had actually bitten her three days earlier while they were arguing. The fact that G.R.'s bite during the October 15, 2015 incident was intentional, and not accidental, was supported by evidence admitted under Evidence Code section 1109 that G.R. hit and bit Briana when he became angry with her during a previous argument they had on December 10, 2014, the admission of which G.R. does not challenge on appeal. (See *People v. Brown* (2011) 192 Cal.App.4th 1222, 1233 [under Evidence Code section 1109, when a defendant is charged with an offense involving domestic violence, the trier of fact may consider evidence of a defendant's prior acts of domestic violence as evidence that the defendant has a propensity to engage in such conduct].) The evidence of G.R.'s December 10, 2014 physical assault on Briana was particularly probative in this case because it involved the same victim, the same type of conduct, the same type of injury, and similar circumstances giving rise to the acts of domestic violence as those surrounding the October 15, 2015 incident at issue in the underlying petition.

2. The October 21, 2015 restraining order is modified to reflect that it was a temporary restraining order that expired 21 days after it was issued.

G.R. contends the court erred in issuing the October 21, 2015 restraining order. Specifically, he argues that because the court issued the restraining order on the JV-255 form, the order is a so-called "permanent restraining order," which could not be issued without advanced notice and a hearing. As we explain below, it is clear from its oral pronouncement at the detention hearing that the court intended to issue only a temporary

restraining order. We therefore modify the October 21, 2015 restraining order to reflect that it expired 21 days after the date it was issued.

Section 213.5 authorizes a juvenile court to issue a restraining order in a delinquency proceeding. (§ 213.5, subds. (b)-(d).) Under subdivision (c) of that statute, a court may issue only a temporary restraining order without notice and a hearing. (See § 213.5, subds. (c)(1) & (d).) Such an order may remain in effect for a period not to exceed 21 days, or if good cause is shown, 25 days, at which point the court must either hold a hearing on whether to issue a permanent restraining order or dissolve the temporary restraining order. (§ 213.5, subd. (c)(1).) Under subdivision (d), a court may issue a restraining order with an effective period of up to three years, a so-called "permanent" restraining order, but only after "notice and a hearing." (§ 213.5 subd. (d)(1).) The court may also issue a temporary restraining order after notice and a hearing under subdivision (d). (See § 213.5, subd. (d)(1) ["The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c)."].)

Rules 5.625 and 5.630 of the California Rules of Court specify what type of forms the court must use when issuing restraining orders in a juvenile proceeding. If the court issues a temporary restraining order—i.e., a restraining order issued without advanced notice and a hearing, it must use the JV-250 form. (Cal. Rules of Court, rules 5.625, subd. (a); 5.630, subd. (d)(2).) If the court issues a restraining order following notice and a hearing, it must use the JV-255 form. (Cal. Rules of Court, rules 5.625, subd. (a); 5.630, subd. (f)(2).) The JV-255 form provides that if the court does not include an expiration date, the

restraining order expires three years from the date the order was issued.

Here, the court issued the October 21, 2015 restraining order on the JV-255 form, without including an expiration date. Thus, under the terms of the form used by the court, the restraining order issued against G.R. would remain in effect for three years from October 21, 2015. Such an order would be invalid, since the court did not provide G.R. advanced notice or an opportunity to prepare an opposition to the People's request for a restraining order. (See § 213.5, subd. (d); see also *Babalola v. Superior Court* (2011) 192 Cal.App.4th 948, 965.)

We do not need to reverse the October 21, 2015 restraining order, however, because it is clear from the court's statements at the detention hearing at which the order was issued that the court intended to issue only a temporary restraining order against G.R. When there is a discrepancy between the court's oral pronouncement and its written order, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) Where the discrepancy in the written order is the result of clerical error, that error may be corrected at any time to reflect the court's oral pronouncement. (*Ibid.*) "[O]n its own motion, the reviewing court may order the correction or certification of any part of the record." (Cal. Rules of Court, rule 8.155, subd. (c)(1).)

At the October 21, 2015 detention hearing at which the restraining order was issued, the court stated that it had received a request for a "temporary restraining order," and that it was issuing a "temporary restraining order." The court never stated that it intended to issue a permanent, or three-year, restraining order. In addition, at the February 2016 disposition hearing on

the underlying petition, which was held after the court issued the challenged restraining order, the court ordered G.R. not to have any **nonconsensual** contact with Briana, an order that would be inconsistent with a permanent restraining order precluding G.R. from having **any** contact with Briana. It therefore appears the court made a clerical error when it issued the restraining order on the JV-255 form without including an expiration date. Accordingly, we modify the October 21, 2015 restraining order to reflect that it is a temporary restraining order that expired on November 11, 2015, 21 days after it was issued. (See § 213.5, subd. (c)(1).) On remand, the court shall correct its records to reflect this modification, and take all necessary steps to notify law enforcement agencies, including agencies responsible for administering the California Restraining and Protective Order System and the California Law Enforcement Telecommunications System (CLETS) in which the October 21, 2015 restraining order was registered, that the order expired on November 11, 2015.

DISPOSITION

The October 21, 2015 restraining order is modified to reflect that it expired on November 11, 2015. The court shall correct its records to reflect this modification, and notify law enforcement agencies, including the agencies responsible for administering CLETS, of the order's correct expiration date. The judgment is affirmed in all other respects.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.