Filed 5/8/17 In re Eduardo C. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re EDUARDO C., A Person Coming Under the Juvenile Court Law.	B270365
THE PEOPLE,	(Los Angeles County Super. Ct. No. PJ51825)
Plaintiff and Respondent,	
v.	
EDUARDO C.,	
Defendant and Appellant.	

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Morton Rochman, Judge. Judgment affirmed as modified; order reversed.

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

Kamala Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and J. Michael Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

The juvenile court declared minor Eduardo C. a ward of the court after he admitted to one count of second-degree robbery and related firearm and gang enhancement allegations. At the disposition hearing, the People, for the first time in the case, informed Eduardo and the court that they were seeking a three-year restraining order under Welfare and Institutions Code[1] section 213.5 that would preclude Eduardo from contacting any of the victims named in his delinquency petition. The court denied Eduardo a continuance to prepare an opposition to the People's request and issued the restraining order. On appeal, Eduardo contends the court erred in issuing the restraining order because he did not receive sufficient advanced notice or an adequate opportunity to oppose the People's request. Because we agree with Eduardo, we modify the judgment and reverse the restraining order.

FACTUAL AND PROCEDURAL BACKGROUND

On December 4, 2015, Eduardo (then 16 years old) and six of his companions, including fellow minor Miguel M., were driving in a truck when they approached three men, Randy G., Brandon S., and H.Y., who were walking on the sidewalk. Eduardo and his companions yelled at the men, " 'Where you guys from?' " When the men did not answer, Eduardo and his companions yelled, " 'San Fer'. 'What's in your pockets. Give me everything in your pockets.' " They then got out of the truck, and one of Eduardo's companions pulled a handgun on the men.

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

Eduardo and the rest of his companions took the men's wallets and cell phones.

That same day, Eduardo and his companions also robbed a fourth individual, Justin P. They approached Justin while he was walking on the sidewalk. After exiting the truck, someone from Eduardo's group punched Justin in the face and ripped off his necklace. Eduardo was detained by law enforcement later that day.

The People filed two petitions under section 602, alleging Eduardo and Miguel[2] each committed four counts of second-degree robbery (Pen. Code, § 212.5, subd. (c)), all felonies. The People also alleged as to each count in the minors' petitions gang and firearm enhancement allegations (Pen. Code, §§ 186.22, subd. (b)(1)(B); 12022.53, subd. (b)).

On February 10, 2016, Eduardo admitted to one count of second-degree robbery, including the count's related firearm and gang enhancement allegations. Miguel also admitted to one count of second-degree robbery and the related allegations. The remaining counts and allegations in the minors' petitions were dismissed pursuant to a *Harvey*[3] waiver.

At the February 10, 2016 disposition hearing, the court declared Eduardo and Miguel wards of the court. The court declared Eduardo's offense a felony, with a maximum term of confinement of 11 years, and ordered him placed in a Camp-Community Placement Program for a term of five to seven

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[2] Miguel is not a party to this appeal.

[3] *People v. Harvey* (1979) 25 Cal.3d 754. A *Harvey* waiver allows the sentencing judge to consider a defendant's or minor's entire criminal history, including any dismissed charges. (See *People v. Goulart* (1990) 224 Cal.App.3d 71, 80.)

months. The court also imposed terms of probation for Eduardo, including a no-contact order, precluding the minor from contacting any of the victims or the witnesses of the offenses alleged in his petition ("stay-away order").

The People then requested a three-year restraining order under section 213.5 against Miguel, precluding him from having any contact with Randy G., Brandon S., H.Y., and Justin P. Miguel objected, asserting he received insufficient notice of the restraining order because the People did not notify him of their request until the day of the disposition hearing. Miguel asked the court to continue the hearing to allow the minor to prepare an opposition because a section 213.5 restraining order could negatively affect his criminal record in the future. Miguel also argued the People had failed to present sufficient evidence to support a restraining order under section 213.5.

In response to Miguel's contentions, the People argued they were not required to provide Miguel advanced notice of their request for a restraining order, citing California Rules of Court, rule 5.630 (rule 5.630). The court agreed with the People and issued a three-year restraining order against Miguel.

The People also requested a three-year restraining order against Eduardo, precluding him from having any contact with Randy G., Brandon S., H.Y., and Justin P. Eduardo objected to the People's request, adopting Miguel's arguments about receiving no advanced notice of the request prior to the disposition hearing. Eduardo asked for a continuance to allow him an opportunity to prepare an opposition to the People's request.

Once again, the People argued that under rule 5.630 the court could issue a three-year restraining order against Eduardo

without advanced notice. The court agreed with the People and issued a restraining order on Judicial Council form JV-255, precluding Eduardo from contacting the victims named in his delinquency petition until January 28, 2019.

Eduardo filed a timely appeal.

DISCUSSION

Eduardo contends the juvenile court erred in granting the three-year restraining order under section 213.5 because he was not provided adequate notice or a meaningful opportunity to oppose the People's request for the order. As we will explain below, we agree with Eduardo.

1. Eduardo's appeal is not moot.

As a preliminary matter, we disagree with the People's argument that Eduardo's appeal is moot because he agreed to the stay-away order as a condition of probation that is broader in scope and longer in duration than the restraining order. Although the stay-away order will, assuming his probation continues through 2019,[4] prevent Eduardo from having any contact with the victims named in his delinquency petition if we reverse the three-year restraining order, a favorable decision will nevertheless provide Eduardo effective relief. (See *Ebensteiner Co., Inc. v. Chadmar Group* (2006) 143 Cal.App.4th 1174, 1178-1179 [an appeal is not moot if the decision of the reviewing court will provide the appellant effective relief].)

First, the stay-away order and the restraining order in this case carry different sanctions for violations of their terms.

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[4] We cannot determine from the record when Eduardo's probation will end.

A violation of the stay-away order would subject Eduardo to a probation violation proceeding only, since a violation of that condition, by itself, is not a separate criminal act. A violation of the restraining order, on the other hand, could subject Eduardo to a probation violation proceeding **or** a new delinquency or criminal proceeding, or both. As reflected on the JV-255 form on which Eduardo's restraining order was issued, a violation of that order is a separate crime. In fact, a willful and knowing violation of a restraining order issued under section 213.5 is a misdemeanor punishable under Penal Code section 273.65. Therefore, as a result of the restraining order challenged in this appeal, Eduardo is subject to a new delinquency or criminal proceeding if he were to contact the victims named in his petition.

Second, unlike the stay-away order issued as a condition of probation, the restraining order was entered into the California Restraining and Protective Order System through the California Law Enforcement Telecommunications System (CLETS). Once entered into CLETS, notice of the restraining order is available to all public law enforcement agencies. (See *People v. Morris* (2008) 166 Cal.App.4th 363, 370–371.) Further, the CLETS computer printout itself, which purports to report an individual's criminal history, is admissible evidence under the official records exception to the hearsay rule. (*People v. Martinez* (2000) 22 Cal.4th 106, 111.)

2. The law applicable to restraining orders issued in juvenile delinquency proceedings

Before we turn to the merits of Eduardo's appeal, we review the due process protections set forth in section 213.5. In doing so, we independently review Eduardo's claim, applying principles of

statutory interpretation to that provision. (See *People v. Bankers Ins. Co.* (2016) 247 Cal.App.4th 1004, 1007.)

The procedure for issuing restraining orders in juvenile delinquency proceedings is governed by section 213.5. (§ 213.5, subds. (b)-(d).) Under that statute, there are two types of restraining orders: (1) orders that may be issued without notice and a hearing (subdivision (c)); and (2) orders that may be issued after notice and a hearing (subdivision (d)).

Under subdivision (c) of section 213.5, a court may issue only a **temporary** restraining order without notice and a hearing. A restraining order that is issued without notice 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 set a hearing on whether to issue a permanent restraining order or dissolve the temporary restraining order. (§ 213.5, subd. (c)(1).) The temporary restraining order may be extended for a limited time if the court grants either party a continuance. (§ 213.5, subd. (c)(2)–(4).) Subdivision (d), on the other hand, permits a court to 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 subdivision (d)(1).) The party to be restrained by an order issued under section 213.5 is "entitled, as a matter of course, to one continuance, for a reasonable period, to respond to the petition." (§ 213.5, subd. (c)(2).)

3. The court erred in issuing the three-year restraining order against Eduardo.

The challenged order in this case is effective for three years, or through January 28, 2019, which far exceeds the maximum duration for restraining orders that may be issued

without notice under section 213.5. The restraining order was therefore subject to the notice and hearing requirements set forth in section 213.5, subdivision (d). That means that before the court could issue the restraining order, Eduardo was entitled to advanced notice of the People's request for the restraining order, as well as an opportunity to present evidence in opposition to that request. (See *Babalola v. Superior Court* (2011) 192 Cal.App.4th 948, 965 (*Babalola*) [a party opposing a request for a restraining order is "entitled at a minimum to some notice that the request was going to be made so he [can] prepare for the hearing"]; see also *In re Large* (2007) 41 Cal.4th 538, 552 ["The very purpose of giving the parties notice and the opportunity to be heard is to give them a chance to present information that may affect the decision"].)

Eduardo was not afforded these due process protections. As the record shows, Eduardo was first informed of the People's request for the permanent restraining order on February 10, 2016, the date of the disposition hearing at which the order was requested and issued. Eduardo objected to the court issuing the restraining order without advanced notice, arguing that he did not have a sufficient opportunity to prepare an opposition to the People's request, but the court overruled the objection. In addition, the court denied Eduardo's request for a continuance that he was entitled to receive as a matter of course. (§ 213.5, subd. (c)(2).)

As the People conceded at oral argument in this case, the court erred in issuing the permanent restraining order because Eduardo was not afforded advanced notice of the People's request for the order or a meaningful opportunity to present an

opposition to that request.[5] (See *Babalola*, *supra*, 192 Cal.App.4th at p. 965.) We therefore reverse the three-year restraining order entered against Eduardo. In doing so, we note that our decision does not preclude the court from entering a new permanent restraining order against Eduardo if he is afforded advanced notice of any new request for a restraining order and an opportunity to present an opposition to that request, and so long as Eduardo is still a ward of the court and on probation for the offense giving rise to the underlying delinquency proceeding. (See Cal. Rules of Court, rule 5.630 [a party may request a restraining order any time after a section 602 petition has been filed, and until wardship is terminated or the ward is no longer on probation].)

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[5] Specifically, at oral argument, the People limited their argument to the issue of mootness and conceded that the court could not issue a three-year restraining order against Eduardo without advanced notice of the request for the order.

DISPOSITION

The judgment is modified to delete any reference to entry or service of the three-year restraining order; as modified, the judgment is affirmed. The three-year restraining order is reversed.

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LAVIN, J.

WE CONCUR:

EDMON, P. J.

ALDRICH, J.