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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

B285818

(Los Angeles County
Super. Ct. No. PJ52699)

APPEAL from an order of the Superior Court of Los Angeles County, Fred J. Fujioka, Judge. Reversed.

Courtney M. Selan, 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, Steven D. Matthews and Analee J. Brodie, Deputy Attorney Generals, for Plaintiff and Respondent.

I. INTRODUCTION

Defendant and appellant T.C. appeals from the juvenile court's issuance of a pre-adjudication restraining order against him.¹ T.C. contends he did not receive notice prior to the hearing of the People's intent to seek the restraining order, and the order is unsupported by substantial evidence. We agree that T.C. did not receive adequate notice and therefore reverse.

II. BACKGROUND

The District Attorney of Los Angeles County filed a petition pursuant to Welfare and Institutions Code section 602 charging T.C. with lewd and lascivious behavior upon a child in violation of Penal Code section 288, subdivision (a), a felony (count 1); sodomy upon a child in violation of Penal Code section 286, subdivision (b)(1), a felony (count 2); and oral copulation involving a child in violation of Penal Code section 288a, subdivision (b)(1), a felony (count 3). According to the petition, T.C. was detained.

A detention report was filed with the juvenile court on September 29, 2017, which provided: "[T.C.] was in his apartment complex laundry with the victim (neighbor). [He] told the victim to pull her pants down. [He] pulled down his pants and underwear. [He] then pulled down [the victim's] pants and told her to lick his penis. Victim put her mouth on his penis." The victim was three years old at the time of the incident.

¹ Juvenile court restraining orders are appealable. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 208.)

At an October 3, 2017, hearing, the juvenile court was presented with a restraining order. T.C. was present at the hearing.

The juvenile court inquired whether counsel wanted to be heard on the proposed issuance of the restraining order. T.C.'s counsel stated, "At this point . . . I believe it's premature for the court to sign that. He is on [Community Detention Program]. The court in the past has done oral stay away orders. I believe that would be appropriate under the circumstances here. And there's not been a hearing or anything to determine the need for that restraining order. We don't have a disposition yet . . . —sometimes we have those signed—or the judge will sign them when we have a disposition in the case. [¶] I believe at this point it's premature to sign that, and so I'm asking the court not to do so at this time and make an oral stay away order or even a written one where the People have in the past submitted written stay away orders that are not restraining orders. That's what I'm asking for in this case. [¶] As I stated, [T.C.] is on [Community Detention Program]. So, you know, if he were to step outside of the unit, [Community Detention Program] would be violated as well."

The prosecutor responded: "[T.C.] was presented to the People as a detained. It's my understanding that probation exercised its discretion and released him based on his age. Based on the nature of the crime, the age of the victim, who was three [years old] at the time, the fact that he lured her to a laundry room on a different floor at this complex, and the seriousness of the actual allegations, I would ask the restraining order be signed."

The juvenile court signed the restraining order,² and T.C. was served in open court by the bailiff. The restraining order states that it expires on October 3, 2020, three years from the October 3, 2017, hearing. It orders T.C.: (1) to stay 100 yards away from the victim; (2) not to attempt or actually prevent or dissuade any victim or witness from attending a hearing or testifying; (3) not to have personal, electronic, telephonic, or written contact with the victim or his/her family; and (4) not to have contact with the victim through any third party, “except attorney of record.” T.C. filed a timely notice of appeal.

III. DISCUSSION

A. *Inadequate Notice*

T.C. contends he did not receive adequate notice of the People’s intention to seek a restraining order at the hearing. We agree.

As an initial matter, the Attorney General contends that T.C. forfeited his claim on appeal because he failed to object on this ground or otherwise raise the issue of inadequate notice in the proceedings below. “[A] reviewing court ordinarily will not consider a challenge to a ruling if an objection could have been but was not made in the trial court. [Citation.] The purpose of this rule is to encourage parties to bring errors to the attention of the trial court, so that they may be corrected.” (*In re S.B.* (2004)

² The original record on appeal contained only three pages of the four-page restraining order. We obtained a complete copy of the restraining order from the juvenile court, and augment the record on appeal with it. (Cal. Rules of Court, rule 8.155.)

32 Cal.4th 1287, 1293, fn. omitted, superseded by statute on other grounds as stated in *In re S.J.* (2008) 167 Cal.App.4th 953, 962.) We disagree that T.C. forfeited his claim on appeal.

At the hearing, T.C.'s counsel stated: "At this point . . . I believe it's premature for the court to sign that. . . . [T]here's not been a hearing or anything to determine the need for that restraining order. . . . [¶] I believe at this point it's premature to sign that, and so I'm asking the court not to do so at this time and make an oral stay away order or even a written one where the People have in the past submitted written stay away orders that are not restraining orders." The reference by T.C.'s counsel to a hearing not yet occurring, and that the restraining order was premature, sufficiently informed the juvenile court that counsel objected to T.C. not having received prior notice of the People's intention to seek a restraining order.

As to the substance of T.C.'s claim that he received inadequate notice, we agree.

"The question whether the order was authorized under the statute, as a matter of statutory interpretation, is reviewed de novo. [Citation.] We review procedural due process claims de novo because 'the ultimate determination of procedural fairness amounts to a question of law.' [Citation.]" (*In re Jonathan V.* (2018) 19 Cal.App.5th 236, 241 (*Jonathan V.*)).³

The procedure for issuing restraining orders in juvenile delinquency proceedings is governed by Welfare and Institutions

³ The trial court did not have the benefit of the decision in *Jonathan V.*, *supra*, 19 Cal.App.5th at p. 241, which was filed after the court proceedings at issue here. We find the reasoning of that decision persuasive and adopt it.

Code section 213.5 (section 213.5.).⁴ Under section 213.5, after a petition has been filed, the juvenile court may issue an order “enjoining any person from molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning . . . , destroying the personal property, contacting, either directly or indirectly, by mail or otherwise, coming within a specified distance of, or disturbing the peace” of a child. (§ 213.5, subd. (a).) Section 213.5 provides for two types of restraining orders: “(1) temporary orders that may be issued without notice and a hearing, and which may remain in effect for a maximum of 25 days [subd. (c)]; and (2) restraining orders that may be issued after notice and a hearing and which can remain in effect for a period of up to three years [subd. (d)].” (*Jonathan V.*, *supra*, 19 Cal.App.5th at p. 241.)

The challenged order in this case is effective for three years, which exceeds the maximum duration for restraining orders that may be issued without notice under section 213.5. The restraining order therefore was subject to the notice and hearing requirements set forth in section 213.5, subdivision (d).

The parties do not dispute that T.C. was not given notice of the People’s intention to seek a restraining order prior to the hearing. “While the specific amount of time necessary to satisfy the ‘notice’ requirement is not delineated in section 213.5, more than courtroom notice is required. [Citation.]” (*Jonathan V.*, *supra*, 19 Cal.App.5th at p. 245.)

⁴ We note that California Rules of Court, rule 5.630 also applies to the issuance of restraining orders in juvenile delinquency proceedings. To the extent any portion of rule 5.630 is inconsistent with section 213.5, the statute controls. (*People v. Guerra* (2016) 5 Cal.App.5th 961, 966.)

“In addition to his statutory rights, [T.C.’s] right to due process entitled him to advance notice of the People’s request for [the three-year] restraining order, plus a meaningful opportunity to present evidence in opposition to that request, before the court could issue the restraining order. [Citations.]” (*Jonathan V.*, *supra*, 19 Cal.App.5th at p. 242.) As noted above, T.C.’s attorney objected that the issuance of the restraining order was premature. Nonetheless, the juvenile court issued the permanent restraining order.

We therefore reverse the order. In doing so, we note that our decision does not preclude the juvenile court from entering a new permanent restraining order against T.C., upon a proper showing, if T.C. is afforded advanced notice of any new request for a restraining order and an opportunity to present an opposition to that request, so long as T.C. is still a ward of the court. (See Cal. Rules of Court, rule 5.630.)

B. *Other Contention*

T.C. contends that the restraining order was not supported by substantial evidence. Because we conclude that he did not receive adequate notice of the People’s intent to seek the restraining order, we do not reach this contention.

IV. DISPOSITION

The order is reversed.

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KIM, J.

We concur:

BAKER, Acting P. J.

JASKOL, J.^{*}

^{*} Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6, of the California Constitution.