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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

JUAN CARLOS MANCHENO,

Defendant and Appellant.

A142433

(Contra Costa County  
Super. Ct. No. 5-130551-5)

Juan Carlos Mancheno appeals from a judgment upon his plea of no contest to possession of an assault weapon (Pen. Code, § 30605, subd. (a)). He contends that the trial court abused its discretion in issuing a restraining order as a condition of probation. He also argues that the condition impermissibly infringes on his right to travel and other constitutionally protected activity. We affirm.

**I. FACTUAL BACKGROUND**

Defendant and E.D. were formerly involved in a relationship and are the parents of a teenage daughter. Defendant also has another daughter. Both daughters attend the same school. E.D. is married to A.D. (the D.'s). In March 2012, A.D. obtained a three-year restraining order against defendant. The restraining order prohibited defendant from possessing firearms.<sup>1</sup>

On August 21, 2012, A.D. reported to the police that defendant brandished a gun at him while A.D. was in a parked car in the school's parking lot to pick up E.D.'s

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<sup>1</sup> Defendant was also subject to another three-year restraining order issued on August 4, 2011, protecting another victim.

daughter. In investigating the incident, the police learned that defendant had two handguns registered in his name which had not been surrendered as required by the restraining order. In a subsequent search of defendant's residence, the police found three AR-15 assault rifles with pistol grips and open magazine wells. The rifle cases contained several high capacity detachable magazines. The police also found a green canvas bag containing a high capacity detachable drum, which was loaded with ammunition for an AR-15 rifle. In addition, the police located two rifles, a .38 caliber Sauer handgun that was registered to defendant, and ammunition. Finally, the police found a glass vile containing a steroid.

Upon his arrest, defendant admitted ownership of the guns but denied any awareness of the prohibition against firearms in the restraining order.

Following the preliminary hearing, the court held defendant to answer to three counts of possessing an assault weapon (Pen. Code, § 30605, subd (a)), possessing a controlled substance (Health & Saf. Code, § 11377, subd. (a)), and disobeying a court order (Pen. Code, § 166, subd. (a)(4)).<sup>2</sup>

On June 19, 2014, defendant pled no contest to one misdemeanor count of possessing an assault weapon. On June 24, 2014, the court placed defendant on probation for three years on conditions including that he stay away from the D.'s.<sup>3</sup> Defendant objected to the restraining order.

## II. DISCUSSION

Defendant contends that the trial court abused its discretion in restraining him from any contact with the D.'s because the condition has no relation to the crime to which he pled. He asserts that the condition fails to meet the three-prong test of *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*).

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<sup>2</sup> The court did not hold defendant to answer on the charges in the complaint relating to A.D.'s allegations that defendant brandished a weapon at him, and that he violated the restraining order, finding that A.D. lacked credibility.

<sup>3</sup> The record indicates that on September 2, 2013, Judge Coleman issued a criminal restraining order prohibiting defendant from contact with E.D. pending resolution of the charges in this case.

“Generally, ‘[a] condition of probation will not be held invalid unless it “(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .’ [Citation.]” (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*), quoting *Lent, supra*, 15 Cal.3d at p. 486.) “[E]ven if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long as the condition is reasonably related to preventing future criminality.” (*Id.* at p. 380.) We review the trial court’s imposition of conditions of probation for abuse of discretion. (*Id.* at p. 379.)

Here, there is substantial evidence in the record to support imposition of the condition restraining defendant from having contact with the D.’s.<sup>4</sup> Not only were restraining orders already in effect against defendant at the time the court made the stay-away orders a condition of probation, the present case included a charge that defendant violated a restraining order. A.D. appeared at the sentencing hearing and stated that defendant made threatening comments toward him and that the current civil restraining order against defendant was ineffective. A.D. explained that the police had told him that a criminal restraining order would carry more weight. A.D. simply requested that the current criminal restraining order protecting E.D., which was to expire upon resolution of the case, be extended and that it include him. The court ordered the restraining order over defendant’s objection that the court lacked jurisdiction to do so. The court reasoned

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<sup>4</sup> The condition requires defendant to stay at least 100 yards away from the D.’s until June 26, 2017, and prohibits defendant from harassing, striking, threatening, assaulting, following, stalking, molesting, destroying or damaging personal or real property, disturbing the peace, keeping under surveillance, or blocking the D.’s movements. Defendant “must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to law enforcement. [He] must take no action to obtain the address or locations of the protected persons or their family members. [¶] [He] must have no personal electronic, telephonic, or written contact with the protected persons [or] contact with them through a third party except an attorney of record.”

that defendant was charged with violating a restraining order and that it had authority to issue an order to protect A.D.

The trial court did not abuse its discretion in ordering the restraining order. The record reflects that defendant harbored significant animosity toward A.D. At the sentencing hearing, defendant sought to place A.D. in a bad light, suggesting that he was fearful of A.D. Defendant, however, was the one against whom a restraining order, protecting A.D., had been in place since March 2012, and defendant admitted the present offense of possessing an assault weapon. The offense was discovered in the course of investigating allegations by A.D. that defendant violated the restraining order. In light of these facts, the court could reasonably find that the restraining order was related to preventing future criminality. (*Lent, supra*, 15 Cal.3d at p. 486; *Olguin, supra*, 45 Cal.4th at p. 380.)

Contrary to defendant's argument, the probation condition does not impermissibly infringe on his rights to intrastate travel, freedom of expression, and freedom of association. Because probation is a privilege and not a right (*People v. Bravo* (1987) 43 Cal.3d 600, 608), "a probationer is not entitled to the same degree of constitutional protection as other citizens." (*People v. Peck* (1996) 52 Cal.App.4th 351, 362.) "[E]ven a probation condition which infringes a constitutional right is permissible where it is "necessary to serve the dual purpose of rehabilitation and public safety." ' ' (*Ibid.*)

Here, the probation condition ordering defendant to stay away from the D.'s is necessary to protect them. Given the animosity between defendant and the D.'s, and the allegations about defendant's failure to abide by the prior civil restraining order, the court understandably found it was reasonable to issue an order in this case. We discern no abuse of discretion.

### **III. DISPOSITION**

The judgment is affirmed.

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Rivera, J.

We concur:

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Ruvolo, P.J.

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Streeter, J.