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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re A.T., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

A.T.,

Defendant and Appellant.

A131996

(Alameda County
Super. Ct. No. SJ08010432)

Andrew T., a minor, appeals from a dispositional order after the juvenile court sustained an allegation that he possessed a knife on school grounds. He contends the court should have suppressed the knife found in his pocket during a consensual search because his consent was the product of a prior illegal search and detention. He also argues that certain conditions of his probation are unconstitutionally vague. We conclude the court correctly denied Andrew’s suppression motion, but we agree that the probation conditions are impermissibly vague. We therefore order the probation conditions modified and, as modified, affirm the judgment.

BACKGROUND

I. Jurisdiction and Suppression Hearing

Fremont Police Officer Robin Berlin was summoned to Holly Falck’s classroom at Washington High School to help locate a stolen cell phone. Officer Berlin was the school’s full-time resource officer. She arrived at the classroom to find it in a state of

pandemonium. Kathy Fetz, the school security supervisor, was also there. Falck told them she had confiscated a cell phone from a disruptive student, D.D., and placed it on the edge of a dry erase board at the front of the room. D.D. and Andrew then briefly walked out of the classroom, and passed by where Falck had put the phone. Right after they returned to class, Falck discovered the phone was missing.

Officer Berlin and Fetz divided the students into two groups and conducted a cursory search of their pockets and bags, the standard procedure for trying to recover a phone that was stolen or missing during a class period. The search failed to turn up the phone, so Officer Berlin and Fetz took Andrew and D.D. to the school office for further investigation. Officer Berlin focused on Andrew because he was the only other student who left the classroom while D.D. was gone. The boys were separated and Andrew was taken to the assistant principal's office, where he was questioned by Officer Berlin. Andrew was asked if he knew what had happened to D.D.'s phone and whether D.D. had taken it. Andrew responded "I don't have the phone. Do you want to search me?"

Pursuant to her usual procedure, Officer Berlin asked Andrew whether he had "anything you're not to have on you or anything sharp that will hurt me?" He responded that he did not. Berlin then searched Andrew's pockets and felt a hard object about three or four inches long in his right rear pocket. She thought it was the missing phone. When she asked Andrew what it was, he said "Oh." The object turned out to be a folding knife.

The juvenile court denied Andrew's suppression motion. It rejected his argument that Officer Berlin's testimony was not credible and observed there was no evidence that his consent to the search was coerced. After further testimony and argument, the court found the knife possession allegation was proven.

II. Dispositional Hearing

The dispositional hearing addressed both the knife possession and a felony vandalism finding on a subsequent petition. Andrew was adjudged a ward of the juvenile court and placed on formal probation with various conditions, including that he "be of good behavior and perform well" at school or work and "be of good citizenship and good conduct." Andrew filed a timely appeal.

DISCUSSION

I. Officer Berlin Conducted a Consensual Search of Andrew's Pockets

Andrew contends his consent to the search in the school office was invalid because it was the product of an invalid prior search in the classroom. We disagree.

When we review the denial of a motion to suppress we defer to the trial court's factual findings. (*People v. Snead* (1991) 1 Cal.App.4th 380, 384.) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court and all presumptions favor its findings. (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597; *People v. James* (1977) 19 Cal.3d 99, 107.) We review the court's legal conclusions de novo and apply our independent judgment to measure the facts determined by the trial court against the constitutional standard of reasonableness. (*People v. Glaser* (1995) 11 Cal.4th 354, 362; *People v. Leyba, supra*, at p. 597.) In cases like this one, "whether the consent was voluntarily given or whether it was granted in submission to an express or implied assertion of authority [is] a question of fact to be resolved by the trial court." (*People v. Linke* (1968) 265 Cal.App.2d 297, 314.)

Andrew maintains the initial search in the classroom conducted jointly by Officer Berlin and Fetz was neither supported by probable cause nor the lesser "objectively reasonable suspicion" required for searches by school officials. Therefore, he says, his subsequent consent to be searched in the school office was "invalid because it was the product of an illegal search." Neither premise nor conclusion is sound.

Andrew correctly observes that both the United States and California Supreme Courts have left open the standard of suspicion that applies to searches conducted by school officials in conjunction with or at the behest of law enforcement agencies. (*New Jersey v. T.L.O.* (1985) 469 U.S. 325, 341, fn. 7 (*T.L.O.*); *In re William G.* (1985) 40 Cal.3d 550, 562, fn. 12; see also *In re Randy G.* (2001) 26 Cal.4th 556, 568-569 & fn. 3; *In re K.S.* (2010) 183 Cal.App.4th 72, 78.) This court, however, has held that the reasonable suspicion standard applicable to school officials applies also to police officers working, like Officer Berlin, as school resource officers. As we explained, "[t]he fulfillment of the school's duty should not be dependent on whether the school district or

the city employs the security officer.” (*In re William V.* (2003) 111 Cal.App.4th 1464, 1471; accord, *Wilson ex rel. Adams v. Chahokia School Dist. No. 187* (S.D.Ill. 2007) 470 F.Supp.2d 897, 910 [“the weight of authority holds, and the Court agrees, that a search of a student on school grounds by a school resource officer at the request of school officials should be deemed a search by a school employee for Fourth Amendment purposes and thus is subject to the reasonableness standard, not the probable cause standard”].)

Assessed under this standard, the initial search in the classroom was valid. To be permissible under the Fourth Amendment, a school search must be justified at its inception and reasonably related in scope to the circumstances. (*T.L.O.*, *supra*, 469 U.S. at p. 341.) “Under ordinary circumstances, a search of a student by a teacher or other school official will be ‘justified at its inception’ when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.” (*Id.* at pp. 341-342; *In re William G.*, *supra*, 40 Cal.3d at p. 564; *In re K.S.*, *supra*, 183 Cal.App.4th at p. 78.)

The decision to conduct a preliminary search of the students in the classroom was based on Falck’s report that a cell phone was stolen during class. Since the class was still in session, albeit in “pandemonium,” Fetz and Berlin had reason to believe the phone was in the possession of one of the students in the classroom. They had even stronger reason to suspect that the phone might have been taken by either Andrew or D.D., since it had been confiscated from D.D. and he and Andrew were the only students who left the classroom, passing where Falck had placed it, around the time it disappeared. There was thus ample reason to suspect it would be found on one of the two students or they would know where it was.

As to the second prong of the two-fold reasonableness inquiry, Officer Berlin testified without contradiction that the classroom search was “cursory” and restricted to the students’ pockets and the bags of those students who opened them up for inspection.

The trial court could reasonably find from this that the search was reasonably related to finding the missing phone and not excessively intrusive, and Andrew has referred us to no case authority that suggests otherwise.

Andrew also seems to argue his consent was invalid because it was the product of an invalid detention, even if the initial classroom search was justified. He contends that, since the phone belonged to D.D., there was no “legitimate *law* enforcement purpose” for detaining Andrew to ask whether D.D. had merely “tak[en] his own property back.” The contention is meritless. The majority in *T.L.O.* took pains to point out that the reasonable suspicion standard applies not only to the investigation of legal infractions, but also and equally to the enforcement of school rules. “The maintenance of discipline in the schools requires not only that students be restrained from assaulting one another, abusing drugs and alcohol, and committing other crimes, *but also that students conform themselves to the standards of conduct prescribed by school authorities.* We have ‘repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.’ [Citation.] The promulgation of a rule forbidding specified conduct presumably reflects a judgment on the part of school officials that such conduct is destructive of school order or of a proper educational environment. Absent any suggestion that the rule violates some substantive constitutional guarantee, the courts should, as a general matter, defer to that judgment and refrain from attempting to distinguish between rules that are important to the preservation of order in the schools and rules that are not.” (*T.L.O.*, *supra*, 469 U.S. at p. 342, fn. 9, italics added.) Here, the teacher confiscated D.D.’s cell phone because he was using it during class in violation of school rules, and had disobeyed her instruction to turn it off. The phone then disappeared. Whether it was taken by D.D. or another student, it should be (but apparently is not) beyond dispute that the school had a legitimate reason to investigate its disappearance.

II. Andrew's Probation Conditions Must Be Modified

The conditions of Andrew's probation included that he "be of good behavior and perform well" and "be of good citizenship and good conduct."¹ Andrew contends these probation conditions are impermissibly vague. We agree.

A probation condition is unconstitutionally vague if it is not " "sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated." ' [Citation.] A restriction failing this test does not give adequate notice – 'fair warning' – of the conduct proscribed. [Citations.]" (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) " 'In deciding the adequacy of any notice afforded those bound by a legal restriction, we are guided by the principles that "abstract legal commands must be applied in a specific *context*," and that, although not admitting of "mathematical certainty," the language used must have " 'reasonable specificity.' " ' [Citation.]" (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1144.) Andrew's challenge to his probation conditions as facially vague presents a pure question of law appropriate for de novo review. (*In re Sheena K* (2007) 40 Cal.4th 875, 888-889; *People v. Cromer* (2001) 24 Cal.4th 889, 894.)

Here, the probation conditions requiring Andrew to "be of good behavior and perform well" in school or work and "be of good citizenship and good conduct" are vague and must be modified. (See *People v. Turner* (2007) 155 Cal.App.4th 1432, 1436 ["We have the power to modify a probation condition to render the condition constitutional"].) As expressed, these conditions are too imprecise and subjective to inform Andrew precisely what is required of him. *In re Angel J.* (1992) 9 Cal.App.4th 1096 (*Angel J.*) is instructive. The minor there argued a probation condition requiring him to maintain "satisfactory grades" was unconstitutionally vague because it was "inherently subjective and he cannot know where the line will be drawn, leaving him

¹ We agree with the Attorney General that the requirement that Andrew "go to school every day, on time; all of your classes" is sufficiently precise. However, Andrew's vagueness challenge is not addressed to the timely and regular school attendance condition.

uncertain of what grades will result in violation of probation.” (*Id.* at p. 1102.) The court upheld the condition, but to resolve the constitutional issue it defined “satisfactory grades” as “passing grades in each graded subject,” i.e., “not failing, such as D or above in an A through F grading system.” (*Id.* at p. 1102, & fn. 7.) The remedy here is not so evident, because the requirement that Andrew “perform well” in school is considerably vaguer than a requirement that he maintain “satisfactory” or passing grades. Does it mean he must do better than obtain merely passing grades? If so, how good must his grades be? Does it require a particular standard of remedial or extracurricular effort? The answers to these questions are not apparent from the wording of the probation conditions. Moreover, this requirement is even less informative as applied to Andrew’s performance in any employment, which presumably would lack even the certainty of an academic grading system. Following the lead of *Angel J.*, therefore, we will construe this probation condition to mean that Andrew is required to obtain passing grades in each graded subject at school, and strike the reference to “at work.”

The probation conditions requiring Andrew to “be of good behavior,” “good citizenship,” and “good conduct” plainly suffer the same, if not greater, lack of specificity. The Attorney General maintains the good citizenship and conduct requirements are “akin to the standard requirement to obey all laws,” which Andrew has not challenged, and thus are sufficiently precise that no clarification is needed. But Andrew is explicitly required in another condition to “obey all laws.” Moreover, other probation conditions require him to obey his parents or guardians, cooperate with the probation officer, not use or possess illegal drugs or weapons, stay away from anyone he knows who has, uses or deals illegal drugs, and abide by a curfew. It is unclear what the directives that he “be of good behavior,” “good citizenship” and “good conduct” add to these requirements. As reasonable minds can differ widely as to what these terms mean, they do not set a meaningful standard adequate to guide either the court or the probationer. Accordingly, they must be stricken.

DISPOSITION

The judgment is modified by striking the probation conditions that Andrew “be of good behavior,” “good citizenship” and “good conduct,” and that he “perform well” in work. The phrase “perform well” in school shall be defined to require Andrew to earn passing grades in each graded subject, as defined in this opinion. As so modified, the judgment is affirmed.

Siggins, J.

We concur:

Pollak, Acting P.J.

Jenkins, J.