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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re JUSTIN L., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,  
Plaintiff and Respondent,  
v.  
JUSTIN L.,  
Defendant and Appellant.

A132684  
  
(Alameda County  
Super. Ct. No. SJ11017039)

Justin L. appeals from orders declaring him a ward of the juvenile court and placing him on probation. He challenges a condition of probation requiring him to obtain the permission of his probation officer before leaving Alameda County, arguing that it must be stricken or, at least, modified to require the permission of his parent *or* his probation officer. We agree with the latter contention. Accordingly, we will modify the probation condition and, as modified, affirm the orders.

**STATEMENT OF THE CASE**

On May 27, 2011, the Alameda County District Attorney filed an original delinquency petition (Welf. & Inst. Code, § 602, subd. (a)) alleging that appellant committed the felony offenses of robbery (Pen. Code, § 211) and receiving stolen property (Pen. Code, § 496). Appellant was detained at Juvenile Justice Center.

The robbery allegation was sustained on June 27, 2011, at the conclusion of a contested jurisdictional hearing. At the disposition hearing on July 12, appellant was adjudged a ward of the court and placed in the home of his mother on electronic monitoring. Among the terms of probation, appellant was prohibited from leaving Alameda County without prior permission from both his probation officer and his parents.

Appellant filed a timely notice of appeal on July 19, 2011.

### **STATEMENT OF FACTS**

At about 6:30 p.m. on May 25, 2011, Vanessa Guillory was walking on Joaquin Avenue in a residential neighborhood of San Leandro. It was quiet and Guillory did not see anyone else walking. Suddenly, she heard what sounded like running behind her and a “split second” later, before she had time to react, felt a pull on the strap of the tote bag she was carrying on her left shoulder. She instinctively pulled back for a few seconds, turning around in the process, and saw four young men: the person pulling her bag and someone standing next to him were about three feet away from her, with two others one or two feet behind the first two. The person grabbing her bag said words to the effect of “ ‘Bitch, give it up. Bitch, I want it all.’ ” Guillory was scared and confused. After a second or two of struggling with the bag, she let it go because she did not know whether the other three young men were going to “jump in” or whether they were armed. When she let go of the bag, the four ran away laughing. Guillory started screaming, trying to attract someone’s attention, and ran after the four young men, but lost sight of them after they turned a corner. A woman who was driving by stopped and called the police, who arrived in 10 to 15 minutes.

Guillory described the young men to the police as well as she could remember. After a period of time, an officer told her they had four individuals who might or might not have been involved and would bring them one by one to see if she recognized any of them. The police brought four people, one by one, out of an apartment building, and Guillory felt about 75 percent certain they were the ones involved in the incident, although she could not specifically identify the one who grabbed her bag. An officer

asked about the appearance and contents of her bag, then a little while later brought out a bag she recognized as hers. Several items were missing from the bag: her ATM card, a couple of credit cards, a Starbucks card, a BART ticket, pieces of her phone including the SD card, her charger, and about \$15 cash. She never got back the missing property. In court, Guillory identified appellant, Tyrone P. and James D. as among those she identified at the scene and testified that she was about 50 percent certain they were the people involved in the incident. She was not sure whether the person who grabbed her bag was in the courtroom. She testified that the incident happened so quickly that she recalled “faces as having been there” but it was “hard to say who did what.”

Police officers searched the area and, aided by a neighbor’s report, went to Apartment No. 6 in a nearby building. Sergeant Young knocked on the door several times and announced the police presence, then contacted dispatch to obtain a phone number related to the apartment. He made a call, knocked again, made another call, and a couple of minutes later James D. came to the door. Sergeant Young asked if anyone else was inside and James D. said no. Officer Fischer detained James D. in the hallway, while Sergeants Young and Clark and Officer Marchetti entered the apartment. They subsequently brought appellant, Tyrone P. and an adult (Bradley Gentry, Jr.) out of the apartment. Fischer contacted Guillory and instructed her about the field show-up, then stood with her while the four individuals were brought out one by one. Fischer testified that Guillory positively identified all four. He did not ask her to identify the person who had grabbed her bag.

After the four individuals were placed into patrol cars, Fischer, Young and Marchetti searched the apartment. In the back right bedroom, on the floor just outside the closet and near a table, Fischer found a bag that Guillory identified as hers. None of the items Guillory said were missing from the bag were found in the apartment or in the possession of the three minors.

Officer Olivera interviewed the three juveniles at the jail. Appellant acknowledged being in the area at the time of the robbery, but said “I don’t know” when asked who he was with. He denied seeing anyone steal a purse and said, “I just got back

from hoop practice around 4:00 or 5:00 p.m.” and “I don’t know what happened.” He also said he did not know who he thought the black purse at the apartment belonged to. Asked why he did not answer the apartment door when the police knocked, appellant responded, “Ain’t my house. I don’t want to say anything else.”

Tyrone P. said in his statement that he saw Bradley steal the purse and knew beforehand that he was going to do this because Bradley had said he was going to steal something when Tyrone talked to him on the phone “on [his] way over there.” Tyrone P. said he was also with appellant and James D. at the time and that he was about 10 feet behind Bradley when the robbery occurred. He did not answer the door when the police knocked because he thought that if he did not take the purse he would not get in trouble for it, and his friends told him not to answer the door. James D. said he was with appellant, Tyrone and Bradley. Asked if he saw anyone steal a purse, James said, “Yea, we all did.” After the robbery, they ran around the block, then went to James’s apartment because “we thought we were going to get away.” He did not feel obliged to answer the door when the police knocked because they did not have a warrant. As for what happened to the purse, James said, “We stashed it in the closet.”

Appellant, 16 years old, testified that after basketball practice in Berkeley on May 25, he took BART to San Leandro and met James and Tyrone at James’s apartment. Later, the three went out to walk Tyrone to the bus stop. They were joined by Tyrone’s friend Bradley, who was over 18 years old and whom appellant had not previously met. Bradley said he wanted some money and was going to rob “the first person I see.” Appellant did not take Bradley seriously; he did not want to be part of a robbery and neither James nor Tyrone indicated they thought it was a good idea. As they continued walking, they saw Guillory, and Bradley ran to her side and took her purse. Appellant immediately started “backpedaling,” or jogging backwards, and Tyrone and James started running in the same direction appellant was going. Appellant denied that he was standing next to Bradley when Bradley grabbed the purse; he testified that he, Tyrone and James were together, about 25 or 35 feet away from Bradley at the point Bradley took the bag. He did not hear any laughter after the purse was taken.

Appellant was going to run home, about six blocks away, but remembered he had left his backpack at James's apartment so went back there. When he arrived, James and Tyrone were there; Bradley arrived shortly thereafter, with Guillory's purse. Appellant and the others told Bradley to go and give it back, or to "get out," and Bradley said, "After I get what I need." Tyrone looked out the window to see if Guillory was still there so the purse could be returned, and saw the police. Appellant looked out and saw two police officers with two German Shepards sniffing around. Afraid of German Shepards, appellant ran to hide in the closet in James's mother's room.<sup>1</sup> When the police knocked, Bradley hid under the desk in the same room, while James and Tyrone went to answer the door. Appellant denied ever having the purse in his possession. He came out of the closet when the police came into the room and said, "Get out or we'll taze you." When questioned by the police, appellant said he did not know who he had been with, had not seen anyone steal a purse, and did not know who he thought the black purse belonged to, because he did not want to be called a snitch. He lied to the police because he did not want retaliation.

Appellant's attorney argued that appellant did not have the intent to commit a robbery or aid and abet the robber, as evidenced by his testimony that at first he did not believe Bradley intended to rob someone, and as soon as it became clear he really was doing so, appellant took immediate steps to distance himself by "backpedaling." Counsel stated that appellant made two mistakes: Not going right home after basketball practice, and making "misstatements" to the police.

At the conclusion of the hearing, the court found appellant, Tyrone and James all guilty of robbery as alleged in the first count of the petition. The court made no finding that any of the three juveniles actually took the purse, stating that its finding was based on an aider and abettor theory. The court specifically noted that it found appellant's testimony was not credible.

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<sup>1</sup> Officer Fischer testified that his dog, which had initially been part of the search for suspects, was in his patrol car when the officers went to the apartment.

The disposition report related that appellant and his mother lived in a two bedroom apartment in San Leandro. Appellant's mother was a student majoring in criminal justice and employed as an independent living assistant; she had worked as a probation intern in the Community Probation Unit from 2006 to 2009 and was familiar with the court and probation process. Her older son, Bruce Jones, who was 27 years old and living independently outside California, had been on juvenile probation in Alameda County for auto theft and burglary, and was eventually committed to a placement and later to Camp Wilmont Sweeney. Appellant's mother did not list Bruce Jones on an information sheet and did not want to speak about him because he was "no longer in [appellant]'s life." The probation officer reported that the mother "apparently did not want her older son's activities to impact the decision in this matter," but that the probation officer had explained that as appellant's older sibling, his record could not be ignored.

The probation officer also stated that in telephone contacts with appellant's mother she reported that she had brought appellant several homework assignments so he could complete his work for the spring term and receive passing grades, and that she wanted the password to appellant's Facebook page to delete messages from his friends calling for his " 'freedom,' " but that appellant had barely completed one of the homework assignments and had refused to give her his Facebook password. His mother did not consider Tyrone and James to be appellant's closest friends and she had never heard of Bradley. She believed appellant when he said he thought Bradley was joking and felt appellant had " 'no part' in the incident" and " 'no control' over the co-participants' actions."

Appellant described his role in the incident to the probation officer as that of a spectator. He did not think he did anything wrong except for making two bad decisions—not going straight home after basketball practice and hiding in the closet. He admitted lying to the police because he feared retribution from Bradley, and stated that if faced with a similar situation in the future he would "leave the situation and walk the other way." The probation officer asked what consequences appellant believed he should face and appellant replied, " 'I did my time.' "

Appellant reported that he liked to play basketball and planned to hang out with a new group of peers he had met rather than Tyrone and James, whom he had known since elementary school. He planned to go to college and major in mechanical engineering. He was in 11th grade at Berkeley Technology Academy and had earned 113.5 credits of 188.5 attempted, with a grade point average of 1.39. His transcript showed that his grades were “average” in the 2008-2009 school year when he attended ASA Academy, a private school, then deteriorated the following year when he enrolled at Berkeley High School. He had made some “slight improvements” in the past school year and appeared “capable of doing much better in school.” He was scheduled to participate in the City of Berkeley’s Junior Sports Officials Corps, a summer program for 16- to 18-year-olds that would provide training in officiating sports events as well as “general life skills training in the areas of time management, resume writing, interview techniques, conflict resolution, goal setting, diversity training, civic responsibility and team building.”

Appellant reported that he had experimented with prescription cough syrup (codeine) on two occasions, most recently in April, and denied using any other illegal substances, alcohol or tobacco. He had been assessed with an actuarial measure of risk for recidivism that placed him in the “Low Category for re-offender [*sic*] within the next year.”

The probation officer noted that appellant made a series of poor decisions on the day of the robbery: not returning home as requested by his mother, being present when the robbery occurred, going with his co-participants to one of their homes, hiding in the closet from the police, and giving a false statement to the police. The probation officer also noted that appellant’s mother was familiar with the probation process and did not want to divulge any negative information that could impact his case, and stated that the “obvious issues” in appellant’s life were his poor school performance and poor judgment.

## **DISCUSSION**

Appellant contends the court abused its discretion in imposing the probation condition that he not leave Alameda County without the permission of his parents *and* his probation officer. Urging that the condition is unreasonable and overbroad in that it is

unrelated to the offense or future criminality and unnecessarily restricts his constitutional right to travel, he seeks to have the condition stricken or modified to require only permission from his mother.<sup>2</sup>

“ ‘The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents’ (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941 (*Antonio R.*)), thereby occupying a ‘unique role . . . in caring for the minor’s well-being.’ (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500 (*Laylah K.*)). In keeping with this role, [Welfare and Institutions Code] section 730, subdivision (b), provides that the court may impose ‘any and all reasonable [probation] conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.’

“The permissible scope of discretion in formulating terms of juvenile probation is even greater than that allowed for adults. ‘[E]ven where there is an invasion of protected freedoms “the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . . .” ’ (*Ginsberg v. New York* (1968) 390 U.S. 629, 638.) This is because juveniles are deemed to be ‘more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed.’ (*Antonio R., supra*, 78 Cal.App.4th at p. 941.) Thus, ‘ “ ‘a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’ ” ’ (*Sheena K., supra*, 40 Cal.4th 875, 889 . . . ; see also *In re R.V.* (2009) 171 Cal.App.4th

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<sup>2</sup> Appellant did not object at the hearing to the imposition of this condition. Recognizing that this failure would normally forfeit the claim (*In re Sheena K.* (2007) 40 Cal.4th 875, 885 (*Sheena K.*)), appellant asks us to exercise our discretion to entertain it because it involves a substantial right—his right to travel outside Alameda County. (See *In re Luis F.* (2009) 177 Cal.App.4th 176, 183-184.) Alternatively, appellant argues he was denied effective assistance of counsel by his attorney’s failure to object. Since this contention would require us to consider, at least to some extent, the merits of appellant’s challenge to the probation condition, we find it more expeditious to address that challenge directly.

239, 247; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242-1243 [rule derives from court's role as *parens patriae*.])” (*In re Victor L.* (2010) 182 Cal.App.4th 902, 909-910.)

Nevertheless, “the juvenile court’s discretion in formulating probation conditions is not unlimited.” (*In re D.G.* (2010) 187 Cal.App.4th 47, 52.) “[J]uvenile probation conditions must be judged by the same three-part standard applied to adult probation conditions under [*People v.*] *Lent* [(1975)] 15 Cal.3d 481: ‘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.] Conversely, a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.’ (*Id.* at p. 486, fn. omitted; see, e.g., *In re Luis F.*, *supra*,] 177 Cal.App.4th [at p.] 188; *Alex O. v. Superior Court* (2009) 174 Cal.App.4th 1176, 1180; *In re G.V.* (2008) 167 Cal.App.4th 1244, 1250; *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1034 [all holding the *Lent* factors are applicable in evaluating juvenile probation conditions].)” (*In re D.G.*, at pp. 52-53.) Additionally, juvenile probation conditions “are permissible only if ‘ “ ‘tailored specifically to meet the needs of the juvenile.’ ” ’ ” (*Id.* at p. 53, quoting *In re Tyrell J.* (1994) 8 Cal.4th 68, 82.)

Appellant urges that there is no relationship between the challenged condition and his offense or future criminality because his offense was committed within Alameda County and there is no evidence he has engaged in any misconduct outside the county or is adversely influenced by peers who reside outside the county. On this basis, he distinguishes *Antonio R.*, *supra*, 78 Cal.App.4th 937, in which a minor who was restricted from traveling to Los Angeles County had a history of criminal activity and gang association in that county and, in any event, was required only to obtain the permission of his parents or his probation officer. He similarly distinguishes *In re Ramon M.* (2009) 178 Cal.App.4th 665, in which a minor with a history of gang-related crimes was prohibited from being present in known gang territory. Appellant further argues that the travel restriction will make it more difficult for him to participate in one of the most

positive activities in his life, playing competitive basketball, which will almost certainly require travel to nearby counties for games.

The contested probation condition, like several others appellant does not challenge, was imposed not because of the facts underlying his offense, but because of his particular situation and need for supervision. At the outset of the dispositional hearing, the court stated that it was “concerned about the level of denial suggested” in the probation report. The court explained, “We want to do what we can to make sure that none of these individuals, [appellant] in particular, get involved in any kind of trouble like this again. What is concerning . . . is the level of denial that suggests that [appellant] would get into this kind of trouble again because he doesn’t recognize that he did anything wrong, and that is a significant problem.” The court admonished appellant to avoid situations such as this in the future by leaving and calling the police if criminal conduct is about to take place, and by not running away and hiding or lying to the police. The court further told appellant he had “huge, huge, huge potential, which is why we’re talking so seriously about this now. We don’t want you getting into any kind of trouble like this again.”

Accordingly, the court imposed the travel restriction recommended by the probation department, as well as other conditions including a 7:00 p.m. curfew and an order not to stay away from home overnight without prior permission of his parents and probation officer. None of these conditions were factually related to the offense, which occurred in Alameda County at about 6:30 p.m. All, however, logically relate to future criminality in that appellant, because of his denial of responsibility in the present case, was in need of supervision to ensure he did not engage in similar conduct in the future. Contrary to appellant’s argument that this reasoning “could be used to justify the imposition of this condition indiscriminately on every juvenile probationer” and therefore “is hardly tailored to the needs of appellant” (*In re D.G.*, *supra*, 187 Cal.App.4th at p. 56), in this case the travel restriction served the court’s stated purpose of addressing the concern that appellant required close supervision because his denial of responsibility left him at risk of reoffending.

The requirement that appellant obtain permission to leave the county from both his mother *and* his probation officer, however, is problematic. This condition would require appellant to contact his probation officer and obtain permission before participating in any number of legitimate and positive activities that might take place outside Alameda County, such as basketball games or family outings. The only justification offered for requiring this high degree of intrusion into appellant's family functioning—that is, for requiring permission from the probation officer *in addition* to permission from his mother—is the probation officer's apparent distrust of appellant's mother due to her failure to provide information about the juvenile offense history of her adult son, who lived outside California and was not part of appellant's life, and her belief that appellant did not play a role in the robbery. But nothing in the record suggests that appellant's mother would not take seriously her responsibility to supervise appellant on probation. On the contrary, the probation report suggests appellant's mother was intent on supervising him and willing to share negative information with the probation department: It was appellant's mother who brought to the probation officer's attention that appellant was not doing the homework she brought to him and that appellant refused to give her the password to his Facebook account.

Requiring appellant to have the permission of his parent *or* his probation officer before leaving the county serves the juvenile court's goal of ensuring close supervision. Requiring permission of the probation officer *in addition* to the parent for any trip outside the county, absent justification, goes too far.

Accordingly, the probation condition shall be modified to require that appellant not leave Alameda County without the permission of his parent *or* his probation officer. As so modified, the judgment is affirmed.

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Kline, P.J.

We concur:

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Haerle, J.

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Richman, J.