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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

D.A.,

Defendant and Appellant.

A133055

(Solano County
Super. Ct. No. J40764)

Appellant D.A. appeals from jurisdictional and dispositional orders declaring him a ward of the court and placing him on probation after he admitted that he brought and possessed a knife on school grounds. We reject appellant’s argument that the juvenile court erred by denying his motion to suppress the knife. However, we agree with appellant that the probation condition directing him to stay away from any school in which he is not enrolled must be modified, and we remand the matter to the juvenile court for further proceedings in regard to that issue. We otherwise affirm the jurisdictional and dispositional orders.

FACTUAL AND PROCEDURAL BACKGROUND

A juvenile wardship petition filed pursuant to section 602 of the Welfare and Institutions Code alleged, as amended, that appellant had committed the misdemeanor offense of bringing and possessing a knife on school grounds (Pen. Code, § 626.10,

subdivision (a)). Appellant moved to suppress the knife on the ground that it had been illegally seized during a search of his backpack by school administrators at his high school.

At the suppression hearing, the then vice-principal at appellant's high school testified that on January 20, 2011, she was contacted in person by the mother of a student. The mother reported that the previous day, her son, together with appellant, and two other identified boys, were walking home from school, and were victims in an altercation with a group of about 20 young men. The altercation had occurred off school grounds about "[m]aybe a half-mile" away. According to the mother, "the other three boys who had actually left her son to be beat up had called and told her son that they were going to bring weapons to retaliate." The mother was "adamant" that the boys were going to bring weapons." The vice-principal gave the mother's information to the principal.

The mother had kept her son at home, but the other three boys who had been with him the previous day were called, one at a time, into the principal's office. The school administrators asked appellant and the two other boys to identify their assailants. Some of the assailants attended the school, while others were older friends or siblings of students at the school. The school administrators believed there was a real possibility that something could happen on school grounds.

The school administrators talked to appellant about the "situation" that had occurred the day before, and they asked or said they needed to search him and his backpack. The school administrators did not touch appellant, asking him only to empty his pockets. Appellant was "kind of quiet about what had happened the day before." He "kind of denied anything had happened until" he "figured out [the school administrators] knew what had happened." He emptied his pockets, and also allowed a search of his backpack. The vice-principal found a locking-blade knife in appellant's backpack.

The court denied the suppression motion, explaining: "Under the existing law, . . . school districts are in a different position than a police officer. Persons attending school have a lesser expectation of privacy, and school officials certainly have a duty to investigate circumstances that place other students at risk given that schools are a place of

safety, or should be a place of safety. [¶] Under these circumstances, the school district was exercising its authority to investigate an allegation that weapons had been brought to campus by named individuals from a parent, and it would be unreasonable for the district to ignore such a risk to the minor and other students under those circumstances.”

After the denial of his suppression motion, appellant admitted to committing the misdemeanor offense of bringing and possessing a knife on school grounds. Appellant was adjudged a ward of the court and placed in his parents’ custody under probationary supervision. Appellant timely appeals.

DISCUSSION

I. Denial of Appellant’s Suppression Motion

“The denial of a motion to suppress evidence brought in juvenile proceedings is reviewable on appeal from the final judgment, even if the judgment is predicated upon the minor’s admission of the allegations of the petition. (Welf. & Inst. Code, § 800, subd. (a).)” (*In re Cody S.* (2004) 121 Cal.App.4th 86, 90.) “On appeal from the denial of a suppression motion, [we] review[] the evidence in a light favorable to the [juvenile] court’s ruling. [Citation.] We must uphold those express or implied findings of fact by the [juvenile] court which are supported by substantial evidence and independently determine whether the facts support the court’s legal conclusions. [Citation.]” (*In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1738-1739.)

“In *New Jersey v. T.L.O.* (1985) 469 U.S. 325, the Supreme Court recognized an exception to the warrant and probable cause requirement for searches conducted by public school officials. The Supreme Court balanced the privacy interests of the students against ‘the substantial need of teachers and administrators for freedom to maintain order in the schools’ and concluded a search of a student would be justified at its inception ‘where 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 school.’ [Citation.] The United States Supreme Court further stated: ‘[s]uch 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.’ [Citation.] [¶] The California Supreme Court in *In re William G.* [(1985)] 40 Cal.3d [550,] 564, elaborated the standard necessary to support a search by school officials of a student: [¶] ‘There must be articulable facts supporting that reasonable suspicion [that the student or students to be searched have engaged, or are engaging, in a proscribed activity (that is, a violation of a school rule or regulation, or a criminal statute)]. Neither indiscriminate searches of lockers nor more discreet individual searches of a locker, a purse or a person, here a student, can take place absent the existence of reasonable suspicion. Respect for privacy is the rule—a search is the exception. [¶] ‘In sum, this standard requires articulable facts, together with rational inferences from those facts, warranting an objectively reasonable suspicion that the student or students to be searched are violating or have violated a rule, regulation, or statute. [Citation.] The corollary of this rule is that a search of a student by a public school official is unlawful if predicated on mere curiosity, rumor, or hunch. [Citation.]’ ” (*In re Joseph G., supra*, 32 Cal.App.4th at pp. 1739-1740.)

Appellant’s challenge to the school administrators’ reliance on the mother’s report is not persuasive. He contends the school administrators should not have acted on the mother’s report because she could not rationally evaluate her son’s statements and her son was likely upset that his friends had abandoned him and he desired to get his classmates in trouble. However, the school administrators could reasonably infer from the mother’s report that the son’s friends were not acting with the assailants, but were themselves victims who likely could not physically defend against the assailants and had to leave the son who was beaten by the assailants, and they intended to retaliate after arming themselves with weapons. Because some of the assailants were identified as students at the school, the school administrators could also reasonably assume the son’s friends might bring their weapons to school the day after the altercation. “The need of schools to keep weapons off campuses is substantial. Guns and knives pose a threat of death or serious injury to students and staff.” (*In re Latasha W.* (1998) 60 Cal.App.4th 1524, 1527.) “[T]he school official[s] had information from an adult who identified herself. Not only was she identified, but she was also [speaking] out of concern for the

safety of . . . other children.” (*In re Joseph G., supra*, 32 Cal.App.4th at p. 1741.) “Further, . . . the [parent] named . . . particular individual[s]. Moreover, the mother here was a ‘citizen-informant,’ i.e., a person whom the law presumes reliably reports crime and whose report should prompt an investigation. [Citations.]” (*Ibid.*) “The fact the mother named . . . particular student[s], apparently identified herself, and was a citizen-informant are all factors which weigh in favor of investigating the truth of her accusation by a minimal intrusion on [appellant’s] privacy of opening his [backpack], particularly when weighed against ‘the gravity of the danger posed by possession of a . . . weapon on campus’ [Citation.]” (*Ibid.*)

Additionally, the search of appellant’s backpack was “reasonably related to the original objective of the search. [Citation.]” (*In re Cody S., supra*, 121 Cal.App.4th at p. 93, fn. omitted.) “A student who carries a [weapon] to school will generally keep the [weapon] in one of three places: (1) a locker, (2) a backpack or purse or (3) on his [or her] person.” (*In re Joseph G., supra*, 32 Cal.App.4th at p. 1741.) We see no merit to appellant’s contention that the school administrators were required to question him about the contents of his backpack before searching it. “Schools have no practical way to monitor students as they dress and prepare for school in the morning, and hence no feasible way to learn that individual students have concealed guns or knives on their persons, save for those students who brandish or display the weapons. And, by the time weapons are displayed, it may well be too late to prevent their use.” (*In re Latasha W., supra*, 60 Cal.App.4th at p. 1527.)

In sum, we conclude the court properly denied appellant’s motion to suppress the knife found in his backpack. The vice-principal’s search of appellant’s backpack was “‘justified at its inception’ ” and “‘reasonably related in scope to the circumstances which justified the interference in the first place. . . .’ ” (*New Jersey v. T.L.O., supra*, 469 U.S. at p. 341.)¹

¹ *In re William G., supra*, 40 Cal.3d at pp. 555, 566, and *In re Lisa G.* (2004) 125 Cal.App.4th 801, 805-807, are factually distinguishable and do not support suppression of the knife in this case.

II. Probation Condition Restricting Appellant's Presence on School Campuses

At the dispositional hearing, and without objection, the court imposed a probation condition that appellant was “not to be on any school campus unless [he was] enrolled in that school or engaged in a school-related activity. Again, remain away from any schools that don't fall under those exceptions.” Using a preprinted form, the court's order of the terms of probation directed appellant to “[s]tay away from any school which minor is not enrolled in.”

Here, the challenged probation condition in the written order is somewhat inconsistent with the court's oral pronouncement. Additionally, there is no requirement that appellant know he is on a school campus, albeit “the locations of most public schools are well marked as required by statutes with speed limit signs (Veh. Code, § 22352, subd. (a)(2)(B)), painted crosswalks labeled ‘SCHOOL XING’ (Veh. Code, § 21368), federal and state flags (Gov. Code, § 431, subd. (d)), and notices of school hours (Ed. Code, § 32211, subd. (e)), as well as their often distinctive combination of buildings, playgrounds, and parking lots.” (*People v. Barajas* (2011) 198 Cal.App.4th 748, 761-762, fn. 10.) Nevertheless, we may “use the record of the proceeding [in the juvenile court] to elucidate the scope of the intended [probation] condition, to the extent it is otherwise ambiguous or overbroad. [Citation.]” (*In re Luis F.* (2009) 177 Cal.App.4th 176, 192.) Appellant's claims of overbreadth or ambiguity can be remedied by modifying the challenged probation condition to read that appellant may not knowingly be on any school campus where he is not enrolled or engaged in a school-related activity. We remand the matter to the juvenile court to make the necessary modification.

Appellant also requests that we more narrowly tailor the challenged probation condition to his specific needs, by limiting the applicable school campuses subject to the restriction, and allowing him to enter school campuses “accompanied by a parent or guardian or responsible adult, or authorized by the permission of school authorities.” However, appellant's argument that the probation condition is not sufficiently tailored to

his needs has been forfeited because it was not raised in the juvenile court. (*In re Sheena K.* (2007) 40 Cal.4th 875, 885 [forfeiture doctrine applies if the objection to an unreasonable probation condition is “premised upon the facts and circumstances of the individual case”].) “ ‘ “Traditional objection and waiver principles encourage development of the record and a proper exercise of discretion in the [juvenile] court.” [Citation.]’ [Citation.]” (*Id.* at p. 889.) Accordingly, we conclude the juvenile court should consider in the first instance the additional modifications suggested by appellant. (See *In re Francis W.* (1974) 42 Cal.App.3d 892, 897 [at any time during the probationary period the juvenile court may change, modify or set aside any order it has previously made]; see Welf. & Inst. Code, §§ 775, 778].)

DISPOSITION

The matter is remanded to the juvenile court for modification, consistent with the views expressed in this opinion, of the challenged probation condition directing D.A. to stay away from school campuses. In all other respects, the jurisdictional and dispositional orders are affirmed.

McGuiness, P.J.

We concur:

Siggins, J.

Jenkins, J.