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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re P.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

P.M.,

Defendant and Appellant.

A133843

(Solano County
Super. Ct. No. J40688)

Defendant P.M. appeals from a dispositional order made after the juvenile court sustained a charge of possessing metal knuckles in violation of former Penal Code section 12020, subdivision (a)(1) (now § 21810).¹ Defendant challenges the sufficiency of the evidence to support the charge. He also takes issue with a condition of his probation, namely that he not be in “areas known by [him] for gang-related activity.” With one modification to the gang condition, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On July 9, 2011, Vacaville Police Officer Lisa Sampson encountered defendant during a traffic stop. Defendant was sitting in the front passenger seat, and Sampson asked him if he was on probation. After defendant said he was, Sampson asked if he had

¹ All further statutory references are to the Penal Code unless otherwise indicated.

anything illegal in his possession. Defendant replied he had a belt buckle “that he wasn’t sure of.” Sampson then observed a green, metal buckle on defendant’s belt. The buckle had a quick release button, allowing its removal from the belt with a simple snap. The buckle also had four holes that fit a person’s fingers. Sampson could slip her fingers through the buckle’s holes so the buckle sat just beyond the first set of knuckles from her fingertips. Although some metal knuckles sit somewhat further down a person’s fingers, defendant’s buckle, according to the officer, went “to the point where you could fight with [it].”

On July 11, 2011, the district attorney filed a juvenile wardship petition under Welfare and Institutions Code section 602, subdivision (a), alleging defendant had possessed metal knuckles, a misdemeanor in violation of former section 12020, subdivision (a)(1) (now § 21810). At a brief contested hearing on August 1, 2011, the juvenile court found the charge true beyond a reasonable doubt and sustained it.

The dispositional hearing occurred on November 7, 2011. At that time, the court retained defendant as its ward and ordered him placed on probation. One of the conditions of probation (“gang” condition No. 4) requires defendant to avoid “any . . . areas known by the Minor for gang-related activity” or any area specified in writing by the probation officer, or a parent, as involving gang activity. Defendant filed a timely notice of appeal on November 16, 2011.

DISCUSSION

Sufficiency of Evidence That Buckle Was “Metal Knuckle”

“The same standard governs review of the sufficiency of evidence in adult criminal cases and juvenile cases: we review the whole record in the light most favorable to the judgment to decide whether substantial evidence supports the conviction, so that a reasonable fact finder could find guilt beyond a reasonable doubt.” (*In re Matthew A.* (2008) 165 Cal.App.4th 537, 540.) However, what a statute requires is purely a question

of law and is therefore subject to our independent consideration on appeal. (*People v. Mgebrov* (2008) 166 Cal.App.4th 579, 585.)

It is unlawful to “possess[] any metal knuckles.” (§ 21810; former § 12020, subd. (a)(1).) A “metal knuckle” is “any device or instrument made wholly or partially of metal that is worn for purposes of offense or defense in or on the hand and that either protects the wearer’s hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.” (§ 16920; former § 12020, subd. (c)(7).)

Defendant contends his belt buckle does not come within this definition because it cannot be “worn . . . in or on the hand.” However, the representation in his opening brief that Officer Sampson’s “fingers could not fit through the holes” of the buckle grossly mischaracterizes the record. Sampson demonstrated at the contested hearing she could indeed wear the buckle on her hand—past her first set of knuckles—by sliding her fingers through the buckle’s four holes. “The statutory language is flexible, and implements that are fitted to the hand,” such as defendant’s belt buckle, “may qualify as metal knuckles.” (*In re David V.* (2010) 48 Cal.4th 23, 27 (*David V.*))

The buckle in this case is therefore unlike the bicycle footrest in *David V.*, which could only be grasped, not worn. (*David V.*, *supra*, 48 Cal.4th at p. 30 [“Metal knuckles of the usual sort, which are fitted to the hand, *generally with holes for the fingers*, are ‘worn . . . in or on the hand.’ But a metal cylinder like the footrest in this case is not, in ordinary usage, said to be ‘worn’ when held in the hand.”], italics added.)

As defendant notes, the metal knuckles statute does not outlaw possession of an everyday, wearable metallic object, such as a ring. (*David V.*, *supra*, 48 Cal.4th at pp. 29-30, citing Assem. Com. on Criminal Law and Public Safety, Analysis of Sen. Bill No. 2248 (1983–1984 Reg. Sess.) for hearing June 27, 1984, p. 1.) Nevertheless, even a

“ ‘sometimes-useful object’ ” may become unlawful “when the attendant circumstances, including . . . the alteration of the object from standard form . . . indicate[] that the possessor would use the object for a dangerous, not harmless, purpose.” (*David V.*, at p. 28). Here, the evidence showed defendant’s belt buckle was not a mere buckle, but one designed to double as metal knuckles. (Cf. *In re Martin Alonzo L.* (2006) 142 Cal.App.4th 93, 96 [“Needless to say, a true wallet is not designed to aid a person in a fistfight.”].) Evidence of defendant’s behavior in front of Officer Sampson only corroborated the buckle’s dual nature. Defendant himself questioned the legality of the buckle, and no reasonable person would have done so had the buckle simply been an ordinary clasp to cinch pants. (See *People v. Rubalcava* (2000) 23 Cal.4th 322, 329 [“surrounding circumstances of possession” are relevant to whether an item is a prohibited weapon].)

Defendant’s reliance on *People v. Deane* (1968) 259 Cal.App.2d 82, 89, is misplaced. In that case, the Court of Appeal held that when potential metal knuckles have a lawful purpose, the state must produce “evidence tending to show that, at the time and place of the alleged illegal possession, the possessor contemplated the unlawful and not the lawful use.” Not only is *Deane* factually distinguishable—it involved a putative toolbox handle unaltered from its “standard form,” not a buckle designed with finger holes (*id.* at pp. 86, 89)—our Supreme Court has noted the decision predates the 1984 enactment that fashioned a statutory, as opposed to common law, definition of the term “metal knuckle” (*David V.*, *supra*, 48 Cal.4th at pp. 26-27). The statutory definition “focuses on . . . physical characteristics without reference to the possessor’s ‘intent to do a further act or achieve a future consequence.’ ” (*In re Martin Alonzo L.*, *supra*, 142 Cal.App.4th at p. 96.) Under this definition, “there is no requirement that prosecution show the possessor intended to use the object in a violent manner.” (*Ibid.*)

In sum, sufficient evidence supports the juvenile court’s finding that defendant’s belt buckle meets the statutory definition of “metal knuckle.”

Gang Condition

A juvenile court placing a ward on probation “may impose and require any and all reasonable 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.” (Welf. & Inst. Code, § 730, subd. (b); see *In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*.) The juvenile court stands in the shoes of the parents, and is allowed greater discretion in formulating the terms of probation than in adult cases. (*In re Victor L.* (2010) 182 Cal.App.4th 902, 909-910 (*Victor L.*.) Because juveniles are more in need of guidance and supervision than adults, and because their constitutional rights are more circumscribed in general, a probation condition that would be unconstitutional if imposed on an adult may be permissible in a juvenile case. (*Id.* at p. 910.)

Despite the broader discretion afforded in juvenile cases, probation conditions must still be judged by the three-part standard formulated in *People v. Lent* (1975) 15 Cal.3d 481, 486. (*In re D.G.* (2010) 187 Cal.App.4th 47, 52.) Under this standard, “ ‘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 pp. 52-53.) We apply the deferential abuse of discretion standard when reviewing a claim that a probation condition is unreasonable under *Lent*. (See *People v. Olguin* (2008) 45 Cal.4th 375, 379; *People v. Lopez* (1998) 66 Cal.App.4th 615, 624.)

Further, “[a] probation condition ‘must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness.” (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.)

Condition No. 4 of defendant's "Gang Related Terms and Conditions of Probation" requires "[t]he Minor shall not be in any . . . areas known by the Minor for gang-related activity, or specified by his/her Probation Officer or parent in writing as involving gang-related activity" Defendant contends this condition is impermissibly vague because the term "areas known by the Minor for gang-related activity" leaves him to guess what places to avoid. Defendant asks us to strike the condition or, in the alternative, modify it to "allow probation to specify the areas he must avoid."

Defendant relies primarily on *Victor L.*, *supra*, 182 Cal.App.4th 902, in which another division of this court considered a challenge to a probation condition requiring the minor to stay away from areas " 'known by [him] for gang-related activity.' " (*Id.* at p. 913.) The court concluded the condition as phrased "[was] not sufficiently clear to put [the minor] on notice of the prohibited conduct" (*id.* at p. 916) and did not "provide notice of what areas he may not frequent or what types of activities he must shun" (*id.* at p. 914). Put another way, "[t]he ambiguity of the chosen language conjures up divergent possible definitions of the term 'gang-related activity,' and reasonable minds may differ as to precisely which 'areas' would come within the condition's purview." (*Id.* at p. 916.)

The remedy in *Victor L.* was to modify the challenged probation condition so that the probation officer would have the power to delineate the prohibited areas of gang activity. As modified by the appellate court, the condition provided: " 'The Minor shall not be in any areas where gang members are known by Minor to meet or get together, or areas known by Minor for gang-related activity (*or specified by his probation officer as involving gang-related activity*), nor shall he participate in any gang activity.'" (*Victor L.*, *supra*, 182 Cal.App.4th at pp. 931-932.)

This language is essentially the same as the probation condition defendant now contests. Thus, the decision in *Victor L.* does not support defendant's claim that the condition in his case is unconstitutionally vague as currently written and must be

modified. (See *People v. Barajas* (2011) 198 Cal.App.4th 748, 754-760; *People v. Leon* (2010) 181 Cal.App.4th 943, 952.)

Moreover, we are not persuaded by defendant's claim that he lacks a practical way of identifying the areas to avoid. The challenged probation condition's reference to "areas known . . . for gang-related activity" is reasonably understood as referring to specific sites where gang activity commonly occurs or is actually occurring. Given the apparent purpose of the condition, namely, "to prevent [the defendant] from coming into close contact with gang members, even short of voluntary association or participation in their activities" (*Victor L.*, *supra*, 182 Cal.App.4th at p. 915), the phrase "areas known . . . for gang-related activity" cannot be reasonably construed to include the entire territory claimed by a gang or tagging crew, places where a gang crime has merely occurred in the past, or public places where gang members or taggers happen to be present for an innocent purpose (a grocery store where a gang member happens to be purchasing food, a library where a gang member is checking out a book for school, a municipal pool where a gang member is swimming with his family, a history class attended by a gang member). "[I]n evaluating challenges based on claims of vagueness, . . . '[t]he particular context is all important.'" (*People ex rel. Gallo v. Acuna* (1997) 14 Cal.4th 1090, 1116.)

We do, however, consistent with *People v. Leon*, *supra*, 181 Cal.App.4th at page 952, modify the challenged condition to replace the term "areas" with "specific locations" to enhance the specificity of the condition and further ensure the probation officer's role is adequately circumscribed such that the officer will not designate entire towns or neighborhoods as areas of gang activity.

Thus, as modified, the condition will read in full: "The Minor shall not be in any specific locations where gang members are known by the Minor to meet or gather, or specific locations known by the Minor for gang-related activity, or locations specified by

his/her probation officer or parent in writing as involving gang-related activity, nor shall he/she participate in any gang related activity.”

DISPOSITION

The dispositional order is affirmed, except that “gang” probation condition No. 4 shall be modified to read: “The Minor shall not be in any specific locations where gang members are known by the Minor to meet or gather, or specific locations known by the Minor for gang-related activity, or specified by his/her probation officer or parent in writing as involving gang-related activity, nor shall he/she participate in any gang related activity.” With this modification, the judgment is affirmed.

Banke, J.

We concur:

Margulies, Acting P. J.

Dondero, J.