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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A. Z.,

Defendant and Appellant.

A140730

(Alameda County  
Super. Ct. No. SJ13021754-01)

**INTRODUCTION**

The juvenile court sustained allegations that minor A.Z. possessed a firearm in a school zone and resisted arrest based on circumstantial evidence that he ran from police officers along a grassy path adjacent to a school where a pistol was found moments after his detention nearby. The minor appeals, arguing the findings are not supported by substantial evidence. He also challenges several probation conditions and the designation of a maximum term, and requests correction of factual errors in the juvenile detention disposition report. We will strike one probation condition, and the maximum term designation. We will also remand to the juvenile court for modification of two more probation conditions and correction of the errors in the juvenile detention disposition report. As modified, we affirm the judgment.

## STATEMENT OF THE CASE

An amended wardship petition (Welf. & Inst. Code, § 602) filed in Alameda County alleged that on October 15, 2013, the minor, A.Z., possessed a firearm in a school zone (count one, a felony), carried a concealed weapon (count two, a misdemeanor), resisted arrest (count three, a misdemeanor) and was a minor in possession of a concealable firearm (count four, a felony). (Pen. Code, §§ 626.9, subd. (b), 25400, subd. (a)(2), 148, subd. (a), 29610.)<sup>1</sup>

The juvenile court sustained the allegations of the petition following a contested jurisdictional hearing. The court set the maximum term at five years two months.

At the disposition hearing, the court set aside its findings as to counts two and four and dismissed them in the interest of justice pursuant to section 654. The court adjudged the minor a ward of the court and placed him in his mother's home under the supervision of the probation department, on various terms and conditions of probation. The minor filed a timely notice of appeal.

## STATEMENT OF FACTS

### *Petitioner's Case.*

On October 15, 2013, Oakland police officer Elton Morris was assigned to Frick Middle School, at 2845 64th Avenue in Oakland, as a resource officer. Frick Middle School is located on the corner of 64th Avenue and Foothill Boulevard, between Foothill and Brann.

Morris was in his patrol vehicle facing west (towards downtown) on Foothill Boulevard at the intersection of 64th Avenue, talking to a security guard, when he heard four or five gunshots in rapid succession at 3:22 p.m. The shots were coming from the east, which was behind him.<sup>2</sup> He immediately looked in his rear view mirror and then turned around. Morris saw someone running eastbound on Foothill Boulevard, towards

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<sup>1</sup> Unless otherwise indicated, all unspecified statutory references are to the Penal Code.

<sup>2</sup> All the maps used at trial (Petitioner's Exhibits 1, 2, 3 and Minor's Exhibit A) were oriented with north at the top of the map, south at the bottom, east on the right, and west on the left.

the next intersection of Foothill and Havenscourt, about 80 or 90 yards away. Morris could not describe what this person looked like, and did not know if he was a witness, a victim or a suspect, but he was wearing all black and running down the middle of the street. Morris made a U-turn, losing sight of the runner, and followed the sound of the shots to see if there were any victims. The only witnesses were passersby, and none were willing to identify themselves or provide information. He then heard on his radio that other units were in pursuit of an Hispanic male on 64th Avenue. When he arrived at that location, an Hispanic male juvenile suspect was being detained in the midblock of 64th Avenue between Camden and Brann Streets, which is northwest (towards the hills and downtown) of Havenscourt and Foothill.

At 3:26 p.m. Oakland Police Officer Scott Seder was driving westbound on Foothill Boulevard approaching Havenscourt when he heard a dispatch regarding gunshots in the area of Havenscourt and Foothill. He recalled the description given was of two Hispanic males approximately 20 years old, one wearing a white shirt and black pants and the other wearing all dark clothing.<sup>3</sup> He then heard the suspects were running as they turned left off Foothill before going into the cemetery at Havenscourt. The cemetery is located between Camden and Brann.<sup>4</sup> Camden curves westbound through the cemetery towards 64th Avenue. The suspect turned left before the cemetery. The dispatch warned that one of the two suspects was armed.

Officer Seder came to the intersection of 64th Avenue and Camden, where there were several cars waiting to go through the intersection. While he was waiting at the stop sign there, he saw another Oakland police car driving through the intersection ahead of

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<sup>3</sup> The CAD purge record of the incident was introduced into evidence. This is a timed and dated printout of all the information the dispatcher inputs into the computer-aided dispatch system during the incident as it occurs. The CAD shows that at 3:26 p.m. there was an incident involving a gun at Foothill and Havenscourt Boulevards. Two Hispanic males, one in a black hat and a white shirt, and one in all dark clothing, in their mid-20's, were seen running towards the cemetery. They made a left turn "before they got to the cemetery."

<sup>4</sup> According to Seder, the streets that cross Foothill Boulevard at that point are Havenscourt to the south of Foothill and Camden to the north of Foothill.

him. He also saw an Hispanic male, approximately 18 years old, in black pants and a black hooded sweatshirt with a white T-shirt sticking out underneath, holding a black and white bundle of clothing in his arms, on the southwest corner of 64th Avenue and Camden, on the opposite side of the intersection from Seder, near the Spectrum School.<sup>5</sup> It was 3:30 p.m. In his experience and training, a number of suspects have concealed contraband of various types within bundles of clothing.

The subject was walking in the same direction Seder was travelling (westbound). After a few seconds, the other police car passed the subject, who immediately made an about face and began walking eastbound, towards Seder. The police car made a three-point turn as if to contact the fellow. At this point, Seder was much closer to the stop sign. The subject nearly made eye contact with him and broke into a run. He ran southbound through a grassy area on the Spectrum School grounds, which he entered at the southwest corner of 64th Avenue and Camden. There is a hedge separating the grassy area from the sidewalk that goes around the southwest corner of 64th Avenue and Camden and runs the length of the school down 64th Avenue.

The subject entered the grassy area between the school building and the hedge and ran on the grassy area for the length of the hedge. Meanwhile, Seder paralleled him in his car on 64th Avenue. He had activated his lights as soon as he made the southbound turn from Camden onto 64th Avenue. Seder's view was partially obstructed by the hedge; only the subject's head, neck and part of his shoulder were visible. There were children and female adult pedestrians in the area. At the end of the grassy area, the hedge opens up and there is a chain link fence. The subject came out from behind the hedge onto the sidewalk between the chain link fence and the end of the hedgerow. He continued to run southbound on the west sidewalk of 64th Avenue. No one else was running on the grassy area.

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<sup>5</sup> Officer Seder was impeached with his police report, which did not mention a white T-shirt and stated defendant was wearing all black clothing. He was also impeached with a recorded statement he made that defendant was wearing a black T-shirt.

Seder drove past the subject and pulled onto the sidewalk to block the subject's further southbound travel. The subject ran onto a path that goes into a park that adjoins the school grounds. Seder got out of his car, drew his pistol, pointed it at the subject and said, "Stop. Police." From a distance of 10 or 12 yards, Seder commanded the subject to put his hands up as he walked towards him, issuing more commands. The subject was verbally uncooperative, asking, "Why are you stopping me? I didn't do anything wrong," and things of that nature. Seder had to order the subject four to six times to drop the bundle, put his hands up and turn around before he complied. Seder ordered him to get on the ground and another officer arrived 30 seconds later. Another officer searched the subject while Officer Seder retraced the minor's flight path. The bundle consisted of a black and gray baseball hat, a black hooded sweatshirt, and a white T-shirt.

Seder discovered a revolver on the grassy path at the base of the hedge on a surface of dirt and grass. It was located approximately one-third of the way down the length of the hedge, starting from the beginning of the hedge on Camden and 64th Avenue where the minor entered the grassy area. The hedge was four to four and one-half feet tall where the gun was found. This location was 30 yards from where the minor was detained, and 80 yards from Frick Middle School. The entire grassy area was heavily saturated with standing water and puddles; the sprinkler wells were full of water. The gun was clean on the upper side and had a small amount of debris on the bottom side but was not wet on the side that was touching the ground.

The gun was a small black revolver with a short barrel and white grips. It was four to five inches in length, and the barrel was less than 16 inches long. The gun had six expended shell casings inside it. From the odor, Seder opined the gun could have been fired within the last two hours. Officer Seder never saw the minor hold the gun or throw it, never saw him make strange movements, and never checked the gun for fingerprints.

Oakland police officer Qiana Johnson was walking out of Frick Middle School at the end her shift as a mentor officer there on October 15, 2013 at 3:26 p.m. when she heard a dispatch of a person with a gun in the area of Havenscourt behind an automotive shop. The suspects were described as two Hispanic males, one in a white T-shirt and one

wearing all dark clothing. She went to her car, which was parked at 64th Avenue and Brann. As she headed east on Brann towards Havenscourt,<sup>6</sup> she saw no suspects but did see Officer Seder heading northbound on Havenscourt. She turned onto Havenscourt/Camden and proceeded to the corner of 64th Avenue and Camden, where she saw an Hispanic male in an all-black outfit carrying a white object under his right armpit. He was walking northbound on 64th Avenue and turned left, continuing to walk westbound on Camden. She was in her police car at the stop sign at 64th and Camden and went through the intersection. She crossed the double yellow line into the eastbound lane of traffic on Camden to get to the curb line closest to the subject. Her car was still pointing westbound. From three to four feet away she gave a command to stop. The subject looked at her, instantly turned and ran in the opposite direction, eastbound on Camden to southbound 64th Avenue. She made a U-turn to follow him. She could see that Officer Seder was also following him. After turning southbound on 64th Avenue, she saw that Officer Seder was parked in front of the pathway to the park and the subject was on the pathway 30 yards from where the minor was detained, and 80 yards from Frick Middle School.

The corner of Foothill Boulevard and Havenscourt is one block from the corner of 64th Avenue and Camden. Five minutes passed between the broadcast at 3:26 p.m. and Officer Johnson's sighting of defendant at 64th Avenue and Camden.

### ***The Minor's Case.***

Officer Meeks searched the minor's right front pants pocket after his arrest and found "a little bundle of what we suspected to be marijuana" wadded up in a piece of paper.

After the minor had been in the police car for about 20 minutes, the minor began to complain of pain in his knee and right groin/hip area. Medical personnel were called to the substation, where paramedics pulled the minor's pants down revealing a tennis ball

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<sup>6</sup> According to Officer Johnson, Havenscourt turns into Camden north of Brann, at the corner of 64th Avenue.

sized patch of blood on his underwear, in the upper hip or inner groin area. Officer Meeks examined the minor's jeans and found no puncture hole on them. However, inside the jeans the minor was wearing basketball shorts, and these had little slashes on the right and left sides in the upper groin area of the shorts.

Officer Meeks talked directly with the primary doctor after a CAT scan and another test were done. "[T]hey said they did not find like a bullet inside of him, any casings or anything like that in him. They couldn't really determine where it came from. It was like maybe it came from the bushes or something because I believe that's where he was found by other officers hiding or something. So, it was, they determined maybe it was like a puncture wound from a branch."

The minor testified on his own behalf. He went to his grandmother's house at 64th and Foothill around 1:00 p.m. He was there one and one-half hours. He left after smoking weed and talking to his girlfriend. He was going to the NL bus stop at Camden and Seminary to catch a bus to San Francisco, where his girlfriend lived. He was still on the porch of his grandmother's house when he heard screaming, then gunshots coming from the store between his grandmother's house and the corner of Havenscourt and Foothill, one-half block away. He did not react; gunshots are normal in Oakland.

The minor went on his way, walking westbound on Foothill, right on 64th Avenue, then left at Camden. He saw the police car pull over and panicked because he had been smoking weed and had some on him. He turned back around and ran on the grassy path. He did not hear the first officer say stop. Later he heard, "Stop or I'll shoot." He stopped, got on the ground, and tried to comply with the officer's orders because he knew someone who had gotten shot by police for not stopping. He did not argue with the police; he was just asking why he was getting arrested and why he had to get on the ground if he did not do anything. When the police car pulled up in front of him, he thought he was being stopped because he looked high on marijuana. He did not know why he was being arrested; he thought it was because he admitted he had smoked a little weed, and had some in his pocket.

The minor was not asked and did not explain why he was carrying a bundle of clothes on the Transbay bus to visit his girlfriend. Asked how he got the cut in his leg, the minor responded, “I don’t know, I was high, I forgot.” He denied ever touching the gun, having it in his possession, or discarding it.

The minor’s mother testified he was at her house that morning and said he was going to his grandmother’s house before taking the NL bus to see his girlfriend in San Francisco. The minor’s grandmother testified she lived at 6414 Foothill Boulevard on the corner of Foothill and 64th Avenue. The minor left her house at 3:00 or 3:30 p.m. to go to San Francisco.

## **DISCUSSION**

### ***Substantial Evidence Supports the Juvenile Court’s Finding of Gun Possession.***

The minor argues there is insufficient evidence to support the juvenile court’s finding he possessed the gun found on the grassy path at the foot of the hedge.

Specifically, the minor argues the court was not entitled to infer minor’s groin injury was gun-related because “the medical professionals ruled out a gun-related cause for the bloody spot” on the minor’s underwear and the minor was not running before he was seen by the police. Additionally, since the minor testified he started bleeding when he got into the police car, and Officer Meeks testified she first saw the bloody underwear 30 minutes after the detention, it was “sheer speculation” to infer the minor was bleeding 40 minutes earlier. Finally, the fact the minor was not wearing a belt, and that the basketball shorts were punctured on both left and right sides, undercut the court’s conclusion the tear on the right side was due to the gun’s placement on that side.

The minor also argues the evidence relied on by the court to establish a connection between the minor and the suspects in the shooting was faulty because the information relayed to police by dispatch was that the suspects appeared to be in their “mid-twenties,” while the minor turned out to be 16, and one suspect was described as wearing “all dark” rather than “all black” clothing. The minor reargues other facts which were pointed out to the court: he was walking, not running when first observed by police; his later flight from the police was merely suspicious and did not “provide a sufficient basis for an

inference of fact.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.) “Due to the missing links in the circumstantial evidence chain, no rational trier of fact could have found appellant guilty beyond a reasonable doubt based on the evidence.” We disagree.

In reviewing a claim of insufficiency of the evidence on appeal, “ ‘the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (*People v. Johnson* (1980) 26 Cal.3d 557, 576, quoting *Jackson v. Virginia* (1979) 443 U.S. 307, 318–319.) “This court must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] If the circumstances reasonably justify the trial court’s findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.] The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.] [¶] Before the judgment of the trial court can be set aside for insufficiency of the evidence . . . , it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it. [Citation.] Evidence which merely raises a strong suspicion of the defendant’s guilt is not sufficient to support a conviction. Suspicion is not evidence; it merely raises a possibility, and this is not a sufficient basis for an inference of fact. [Citations.]” (*People v. Redmond, supra*, 71 Cal.2d at p. 755.)

A trier of fact may rely on inferences to support a conviction only if those inferences are “of such substantiality that a reasonable trier of fact could determine beyond a reasonable doubt” that the inferred facts are true. (*People v. Raley* (1992) 2 Cal.4th 870, 891.) “An appellate court must accept logical inferences that the jury might have drawn from the circumstantial evidence.” (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

“Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury

to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.” (*People v. Huston* (1943) 21 Cal.2d 690, 693, overruled on other grounds in *People v. Burton* (1961) 55 Cal.2d 328, 352.)

The minor’s argument essentially asks us to focus on discrete bits of evidence to the exclusion of other evidence and the inferences therefrom. We understand that “ ‘[n]ot every surface conflict of evidence remains substantial in the light of other facts.’ ” (*People v. Bassett* (1968) 69 Cal.2d 122, 138.) Yet, our task is to resolve the issue in the light of the *whole record*—and “not limit our appraisal to isolated bits of evidence selected by the respondent”—or the appellant. (*Ibid.*; see *People v. Johnson, supra*, 26 Cal.3d at p. 577.) Viewed in this light, the evidence is sufficient to support the conclusion this minor possessed the gun in question and ditched it in the hedge as he ran away from the police.

The gunshots reported to police were heard coming from Havenscourt and Foothill between 3:22 p.m., by Officer Morris’s estimate, and 3:26 p.m., when dispatch first broadcast the incident. About five minutes after Morris heard the shots, Officer Johnson saw the minor walking on 64th Avenue towards Camden, a location which, according to the maps referenced at trial, was one diagonal block through backyards or the cemetery from the location of the gunshots, and easily reachable in that short amount of time, without running all the way. At 3:30 p.m., according to the dispatch, an officer was “giving commands,” and by 3:31 p.m. the minor was detained.

The minor was wearing clothing that could reasonably be described as the “dark clothing” broadcast by dispatch. The difference between dark clothing, as described in the dispatch broadcast, and black clothing, as worn by the minor, does not undermine the inference that the minor was wearing clothing that matched the description. Furthermore, he was carrying a bundle of clothes that included both black and white clothing, which matched the black and white clothing of the second suspect. Likewise, the difference between “mid-20’s” and 18—the age Officer Seder estimated—is not so large an age discrepancy that it undermines the conclusion the minor fit the age described in the dispatch. The trial court was entitled to conclude that both age estimates are well within

the descriptive parameters of a youthful adult. The fact the minor turned out to be 16 does not undermine the reasonableness of this conclusion. The trial court had the minor before him, which we do not, and evidently concluded from its observation the minor's appearance fell within those parameters, despite his actual age. We have no basis to overturn that finding.

The minor dismisses flight as a merely suspicious circumstance, but when combined with all the other circumstances here it gives rise to an inference of consciousness of guilt. From the photographs introduced at trial, it is clear the minor could have run on the sidewalk open to view but instead jogged from the sidewalk into the grassy pathway alongside a four-and-a-half-foot hedge on school property that hid his arms and legs from street view. The minor's testimony—that he was only feeling guilty about the marijuana in his pocket—was evidently disbelieved by the court, a credibility determination we cannot ignore.

The gun was located not far from where the minor entered the pathway, and 30 yards from where he was detained. Officer Seder's testimony, if believed, established the gun could have been fired within a two-hour time frame that included the 10 to 15 or so minutes after Officer Morris heard the gunshots a block away at 3:22 p.m. It is true the grassy path was *accessible* to all and therefore another person could have dropped the gun in that location during the two-hour window. However, the grassy path was located on school property, between the exterior wall of the school building and a hedge that insulated the path from the public street. It strains credulity to entertain the likelihood that another person ditched the gun in that place two hours earlier when, so far as this record shows, no gunshots were reported during the relevant two-hour time frame other than those heard at 3:22 p.m.

The minor argues it was not reasonable for the court to infer the wound to his groin was caused by having the gun in his underwear. He notes the medical evidence admitted at trial through Officer Meeks established the wound to the minor's groin was not caused by a bullet. However, it did not establish the wound was unrelated to carrying a gun in one's underwear. The minor's outer pants were not damaged, which would be

expected if the wound were caused by branches puncturing the skin. On the other hand, the minor's basketball shorts, which he wore underneath his outer pants, were punctured at the groin. The minor argues the fact that there were punctures on the left and right undermines the inference he carried the gun in his underwear. However, the two puncture holes do not dispel the possibility that a gun placed in the underwear could move from side to side.

Moreover, the minor's evasive answer about how he was injured—he did not know, he was high, he forgot—was not credited by the trial court. The lie did not prove the minor *did* hide the gun in his underwear, but the consciousness of guilt implied by the lie supported the inference drawn by the court. In any event, assuming *arguendo* the chain of circumstantial evidence was too weak to support an inference the minor hid the gun in his underwear, that weakness does not undermine the overall strength of the numerous other inferences leading to the conclusion the minor was in possession of the gun before discarding it. In our view, a rational trier of fact could have found beyond a reasonable doubt the minor ditched the gun in the bushes as he ran passed them. Therefore, the juvenile court's finding is supported by substantial evidence.

***Substantial Evidence Supports the Court's Finding the Minor Violated Section 148.***

The minor contends the court's finding he violated section 148 is not supported by substantial evidence because (1) his detention was unlawful, therefore his flight after Officer Johnson commanded him to stop did not violate the statute; and (2) the evidence showed he complied with Officer Seder's commands in a timely fashion. The Attorney General responds that Officer Johnson's attempt to detain the minor by telling him to stop was lawful, and defendant's "lengthy flight from the police . . . itself sufficiently established the conduct required under section 148." Furthermore, the minor's failure to "immediately abide by Officer Seder's commands . . . was sufficient to establish a violation of section 148, subdivision (a)."

A person violates section 148, subdivision (a)(1) when he or she (1) willfully resists, delays, or obstructs a peace officer, (2) when the officer is engaged in the performance of his or her duties, and (3) the person knows or reasonably should know

that the other person is a peace officer engaged in the performance of his or her duties. (*Yount v. City of Sacramento* (2008) 43 Cal.4th 885, 894–895.) “However, ‘it is no crime in this state to nonviolently resist the unlawful action of police officers.’ [Citation.] Thus, ‘[b]efore a person can be convicted of [a violation of section 148, subdivision (a)] there must be proof beyond a reasonable doubt that the officer was acting lawfully at the time the offense against him was committed.’ [Citation.] . . . ‘Under California law, an officer is not lawfully performing her duties when she *detains an individual without reasonable suspicion* or arrests an individual without probable cause.’ [Citation.]” (*Garcia v. Superior Court* (2009) 177 Cal.App.4th 803, 818–819.)

Police contacts with people on the street can fall into three broad categories: (1) consensual encounters, which involve no restraint of liberty or seizure and may be initiated with no objective justification; (2) detentions, which are seizures strictly limited in duration, scope and purpose and may be conducted upon an articulable suspicion that a person has committed or is about to commit a crime; and (3) arrests, which are seizures exceeding the permissible limits of a detention involving restraints comparable to a formal arrest and require probable cause to arrest. (*In re James D.* (1987) 43 Cal.3d 903, 911–912, cert. den. *James D. v. California* (1988) 485 U.S. 959.) “A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.” (*People v. Souza* (1994) 9 Cal.4th 224, 231.) “The possibility of an innocent explanation does not deprive the officer of the capacity to entertain a reasonable suspicion of criminal conduct. Indeed, the principal function of [police] investigation is to resolve that very ambiguity and establish whether the activity is in fact legal or illegal . . .” (*In re Tony C.* (1978) 21 Cal.3d 888, 894.)

Here, Officer Johnson testified she was leaving Frick Middle School at Foothill Boulevard and 64th Avenue at 3:26 p.m. when she heard a dispatch about a person with a gun in the area of Havenscourt behind an automotive shop close to her location. She got in her car (a black and white Crown Victoria with a light bar on top and the Oakland

Police Department logo on both sides), which was parked at 64th Avenue and Brann Street, and drove eastbound on Brann Street towards Havenscourt. Based on the broadcast description, she was looking for two Hispanic males, one in a white T-shirt and one wearing all dark clothing. She saw no one matching those descriptions on Brann. However, at the intersection of Brann and Havenscourt, where it turns into Camden, she saw an individual walking at a normal pace on 64th Avenue and turning left on Camden whose appearance was consistent with the broadcast description: he was male, Hispanic and he was wearing all black clothing. She also noticed he had a white object under his right armpit. She drove through the intersection of 64th and Camden, travelling westbound, and crossed the double yellow line into the eastbound traffic to get closer to the curb line where the Hispanic male was walking. When she was “maybe a car length behind him,” he looked over his right shoulder at her while she was pulling over to the curb line. They made eye contact. The minor stopped, gave her a look “similar [to] a [deer] in headlights” and “instantly turned around and just ran as I gave him the command to stop.”

“While there is nothing preventing a police officer from addressing questions to people on the street [citation], when an officer ‘commands’ a citizen to stop, this constitutes a detention because the citizen is no longer free to leave.” (*People v. Verin* (1990) 220 Cal.App.3d 551, 556, 560 [defendant was detained when police officer said, “ ‘Hold it. Police’ ” or “ ‘Hold on. Police’ ” (*id.* at p. 554.)].) Here, based on the general dispatch description of one of the suspects involved in an shooting incident (Hispanic, male, dark clothing) and the short period of time (less than five minutes) and close proximity (no more than two blocks) between the location of the reported gunshots and the location where Officer Johnson saw the minor, Officer Johnson had every reason initiate a consensual encounter to talk to the minor. When the minor turned and ran, just as Officer Johnson yelled stop, the minor’s conduct added to the justification for his detention to investigate his possible involvement in the gun incident. “[E]ven though a person’s flight from approaching police officers may stem from an innocent desire to avoid police contact, flight from police is a proper consideration—and indeed can be a

key factor—in determining whether in a particular case the police have sufficient cause to detain.” (*People v. Souza, supra*, 9 Cal.4th at p. 235.)

The minor characterizes the attempted detention by Officer Johnson as one solely based on general traits of gender, ethnicity, approximate age, and common clothing style that is “too vague to support a reasonable suspicion” in East Oakland, but we disagree these were the only factors at play. It is important that a person looking reasonably similar to the broadcast description was observed within five minutes of the shooting incident and no more than two blocks from where the shots were fired. In addition, the minor ran from the officer when she attempted to make contact with him. In our view, the attempt to detain, which occurred when Officer Johnson commanded the minor to stop, was lawful. Therefore, substantial evidence supports the juvenile court’s finding that the minor’s flight violated section 148.

In light of our conclusion above, we express no opinion whether the minor’s conduct, when he finally stopped in response to Officer Seder’s commands, also violated section 148.

***The Minor’s Probation Conditions Must Be Modified or Stricken.***

The minor challenges certain conditions of his probation as facially vague or overbroad.<sup>7</sup> 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.’ ” (*Sheena K., supra*, 40 Cal.4th at p. 890.) A probation condition is unconstitutionally overbroad if it imposes limitations on a person’s constitutional rights that are not closely tailored to the purpose of the condition. (*Ibid.*)

One of the minor’s conditions of probation is that he refrain from possessing, owning, or handling “any firearm, *knife, weapon*, fireworks, explosives or chemicals that can produce explosives.” (Italics added). He contends the condition is unconstitutional

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<sup>7</sup> The constitutionality of a probation condition is cognizable on appeal despite the lack of an objection in the lower court. (*In re Sheena K.* (2007) 40 Cal.4th 875, 885 (*Sheena K.*.)

because it fails to adequately identify the objects that may be encompassed within the prohibition, fails to provide specific standards for law enforcement and the court's determination whether a violation has occurred, and fails to include an express knowledge requirement. A condition of probation validly can preclude possession of these items for an improper purpose.

We agree “knife” and “weapon” are terms that may include ordinary objects (butter knives, baseball bats) not otherwise intended to inflict injury. Additionally, even if the object in question is indisputably dangerous or contraband, a person may be unknowingly in constructive possession of it. In order to avoid any ambiguity, we will modify the court's prohibition to make clear the minor is not to possess, own, or handle dangerous or deadly weapons including firearms, knives, fireworks, explosives or chemicals that can produce explosives. (*People v. Moore* (2012) 211 Cal.App.4th 1179, 1186 [weapons modified to “dangerous or deadly weapons”].) We think this modification would lead a reasonable person to believe and understand the probation condition prohibits possession, ownership, or handling of knives and other ordinary objects only to the extent such objects are dangerous or deadly weapons by design or by virtue of the probationer's wrongful intent or use. Items used for eating or recreation, such as knives and baseball bats, under such circumstances would fall outside the modified prohibition.

Moreover, we will modify the probation condition to make clear only knowing possession, ownership or handling of such weapons is prohibited. We are aware there is some disagreement in the Courts of Appeal on the question whether a probation condition requires an explicit scienter requirement where possession of firearms and ammunition is concerned. (*People v. Freitas* (2009) 179 Cal.App.4th 747, 752 (*Freitas*) [express scienter requirement added to probation condition]; *People v. Kim* (2011) 193 Cal.App.4th 836, 846–847 [scienter requirement is implicit in probation condition].) In this case, we follow *Freitas*, to make clear this minor is not strictly liable for unknowing possession of a prohibited object. “[T]he law has no legitimate interest in

punishing an innocent citizen who has no knowledge of the presence of a firearm or ammunition” or a less obviously dangerous object. (*Freitas*, at p. 752.)

Another of the minor’s probation conditions is that he “stay away from Spectrum Center School and Frick Middle School.” In addition, the court orally pronounced, “You’re not to be *anywhere near* those campuses.” (Italics added.) The minor contends, and the Attorney General concedes, the condition is unconstitutionally vague in that it does not provide reasonable guidelines for compliance by either the minor or law enforcement. Rather than recommending a particular distance, such as 50 feet, the parties suggest we remand for the juvenile court to determine an appropriate distance that would not have the effect of prohibiting the minor from visiting his grandmother, who lives in close proximity to both schools, or other relatives.

We agree with the parties. In *People v. Barajas* (2011) 198 Cal.App.4th 748, the appellate court found unconstitutionally vague the probation condition that the defendant “not . . . be adjacent to any school campus.” (*Barajas*, at p. 752.) The *Barajas* court reasoned: “We believe that the meanings of ‘adjacent’ and ‘adjacent to’ are clear enough as an abstract concept. They describe when two objects are relatively close to each other. The difficulty with this phrase in a probation condition is that it is a general concept that is sometimes difficult to apply. At a sufficient distance, most reasonable people would agree that items are no longer adjacent, but where to draw the line in the continuum from adjacent to distant is subject to the interpretation of every individual probation officer charged with enforcing this condition. While a person on the sidewalk outside a school is undeniably adjacent to the school, a person on the sidewalk across the street, or a person in a residence across the street, or two blocks away could also be said to be adjacent. To avoid inviting arbitrary enforcement and to provide fair warning of what locations should be avoided, we conclude that the probation condition requires modification.” (*Id.* at p. 761.)

We think the directives to “stay away” from the two schools in question, and not be “anywhere near those campuses” are subject to the same criticism and invite similar arbitrary enforcement. Accordingly, we will remand the matter to the juvenile court for

consideration of an appropriate distance that satisfies the court's safety concerns but also accommodates the minor's need to visit family.

The clerk's minute order from the dispositional hearing includes a probation condition prohibiting the minor from associating with "anyone who uses or possesses dangerous nor deadly weapons nor explosive devices nor remain in any vehicle where such weapons are present." However, this condition was not in the probation department's recommendations or in the disposition report. Nor was it announced by the juvenile court at the dispositional hearing. Therefore, its inclusion in the minute order appears to be a clerical error, which we may correct on our own motion or upon the application of the parties. (*People v. Mitchell* (2001) 26 Cal.4th 181, 186–187.) The parties agree this court should strike the condition, and we concur. The condition is stricken.

***The Imposition of a Maximum Term of Confinement Was Error and Is Stricken.***

The court imposed a maximum term of confinement of five years two months. The parties agree, and we concur, this was error, since the minor was not removed from parental custody. (*In re A.C.* (2014) 224 Cal.App.4th 590 [term stricken]; *In re P.A.* (2012) 211 Cal.App.4th 23 [term not stricken]; *In re Matthew A.* (2008) 165 Cal.App.4th 537 [term stricken], *In re Ali A.* (2006) 139 Cal.App.4th 569 [term not stricken], overruled in *In re A.C.*, *supra*, at p. 592.) Relying on *In re A.C.* and *In re Matthew A.* the minor asks us to remedy the error by striking the term. The Attorney General asks us not to do so, based on *In re Ali A.* and *In re P.A.*

In *In re A.C.*, *supra*, 224 Cal.App.4th 590, the same court that decided *In re Ali A.*, *supra*, 139 Cal.App.4th 569, changed its view of the matter, in light of the continuing "debate on appeal whether 'to strike or not to strike.'" (*In re A.C.*, at p. 592.) The *A.C.* court concluded: "[T]he error of including maximum terms in noncustodial orders continues, unnecessarily depleting the limited resources of the judicial system. To stop this error, and quell the debate over its effect, we now conclude that where a juvenile court's order includes a maximum confinement term for a minor who is not removed

from parental custody, the remedy is to strike the term.” (*Ibid.*) We agree. The maximum confinement term here is stricken.

***The Juvenile Detention Disposition Report Requires Correction.***

The parties note several factual clerical errors in the juvenile detention disposition report (form JUS 8716) dated December 2, 2013. They ask this court to order correction of the errors. We agree corrections are required. We may correct such errors on our own motion or on application of the parties. (*People v. Mitchell, supra*, 26 Cal.4th at pp. 186–187.) The following corrections are ordered:

The “Final Plea” column in section D should be corrected to reflect the minor did not admit the offenses.

The “Dismissal Code” column in section D should be corrected to reflect the dismissal of count four.

The “Date” column in section D should be corrected to reflect all counts were found true on November 6, 2013, and the disposition of all four counts was on November 21, 2013.

The “Finding” column in section D should be corrected to reflect the juvenile court sustained all four allegations.

Section E should be corrected to eliminate references to the minor’s admissions or waiver of rights, since the allegations were sustained after a contested jurisdictional hearing.

**DISPOSITION**

The matter is remanded to the juvenile court for correction of the juvenile detention disposition report (form JUS 8716), and for modification of the probation condition ordering the minor to “stay away from” and “not to be anywhere near” Spectrum Center School and Frick Middle School, in accordance with the views expressed in this opinion.

The maximum confinement term is stricken from the juvenile court’s order.

The probation condition prohibiting the minor from associating with anyone who uses or possesses dangerous or deadly weapons or explosive devices, or from remaining in any vehicle where such weapons are present, is stricken.

The probation condition prohibiting the minor from possessing, owning, or handling any firearm, knife, weapon, fireworks explosives or chemicals that can produce explosives is modified as follows: “The minor is to refrain from knowingly possessing, owning, or handling dangerous or deadly weapons, including firearms, knives, fireworks, explosives or chemicals that can produce explosives.”

As modified, the judgment is affirmed.

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Dondero, J.

We concur:

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Humes, P. J.

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Margulies, J.

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