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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re O.J., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

O.J.,

Defendant and Appellant.

A142356

(San Mateo County  
Super. Ct. No. 82148)

Following a contested jurisdictional hearing, the juvenile court found appellant committed misdemeanor obstructing a police officer. (Pen. Code, § 148, subd. (a)(1).) Appellant was declared a ward of the court, placed on probation, and released to his mother's home. As part of his conditions of probation, the court imposed gang-related terms. He was prohibited from being a gang member, from participating in gang-related activity, and from obtaining tattoos or piercings with gang connotations. Appellant does not challenge those probation conditions. He does contest, however, probation conditions prohibiting him from associating with known gang members and wearing gang colors or items associated with gangs. We find imposition of the challenged gang conditions, under the evidence presented, was justified.

**I. STATEMENT OF FACTS**

South San Francisco Police Officer John Bower received a dispatch on December 13, 2013, about 9:50 p.m., of a potential domestic violence incident. He drove

to the street of the reported incident, exited his patrol vehicle, walked down the street, and proceeded down the driveway of the apartment building “where the caller said they had heard an argument.” As Bower, who was in full uniform, approached an SUV parked in the driveway, he saw at least three doors of the vehicle open and three individuals, two males and one female, jump out and start running across the driveway and down an alleyway.

Over the radio, he reported to other officers he believed he had interrupted a vehicle burglary or attempted vehicle theft, and provided a “minimal” clothing description of the three individuals and a direction of travel. When the threesome ran from the SUV, Bower stated, “Stop, police,” but none of them heeded the order. As Bower chased the three persons down an alley, he again, at least twice, commanded them to stop. None of them complied.

When Bower came out of the alley, he heard somebody walk up behind him. He quickly turned around and observed a male minor, not appellant, who he recognized from previous contacts. After detaining the minor, Bower handcuffed him. The minor told Bower he and the three others were in the vehicle “hanging out,” drinking alcohol. Someone had marijuana. Bower “guess[ed] they saw [him] walking down the driveway and became scared [and] ran.” Once he detained this minor, Bower abandoned any further chase of the other occupants of the SUV.

South San Francisco Police Officer Rebecca Dabney responded to the original domestic disturbance dispatch by driving to the area of the reported incident. She was a “K-9 officer” and was accompanied in her marked patrol car by her dog. As she was patrolling the area, Dabney observed two males “sprinting” across the street “which made [Dabney] think that they were either chasing each other or someone else or they were being chased and trying to evade capture.” Because she saw the two males enter a carport of an apartment complex, she made a U-turn. As she did so, she heard Bower radio he believed he “had interrupted a vehicle burglary or a stolen vehicle in progress” and the suspects were running away from him. After pulling into a driveway alongside

the apartment complex, Dabney got out of her car and observed a figure run across an opening of a cyclone fence adjacent to a field.

Taking into account her visual observations, coupled with the information she received from Bower, Dabney believed the two males she had previously observed were the persons involved in the incident described by Bower. She then took her dog, Ares, out of her vehicle, and made a loud announcement to the effect of, “[S]top running, police, stop or I’ll send my dog and he’ll find you and bite you.” According to Dabney, she specifically announced she was a police officer.

Once Dabney entered the field, she saw two figures running away from her. She was concerned because when the subject individuals crossed into the carport, she could see one of them had an object in his hands, and she believed it could have been a weapon. Following her second, similar announcement, made in the field, and the two subjects’ failure to comply, Dabney released Ares. Ares ran up a hill and made a left turn behind a bush. At that point, Dabney heard yelling and thought the dog had bitten somebody. She ran in the direction of the commotion eventually observing Ares biting appellant on the arm. She ordered appellant to get on the ground, and he complied.

After appellant was read his *Miranda*<sup>1</sup> rights, he admitted running from the police and hearing both Bower’s announcement he was a police officer and to stop running and Dabney’s announcement she would release the dog.

## II. DISCUSSION

The juvenile court, as noted above, imposed several gang conditions. Though appellant does not contest all of these conditions, he does challenge the probation conditions instructing him not to associate with any person known by him to be a gang member and not to wear or display gang colors or items associated with gangs. He maintains the juvenile court abused its discretion because those terms “bear no relationship to the sustained charge of obstructing an officer and forbid conduct not reasonably related to deterring future criminality.”

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<sup>1</sup> *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

The probation report, filed April 1, 2014, noted appellant denied any gang involvement, but he admitted in a previous report that he wore red on occasion. When contacted by a probation officer, appellant's mother (Mother) stated while appellant is not in a gang, he does associate with "kids who are in a gang." In 2012, Mother reported, appellant was " 'jumped' " because he was wearing red and " 'on his way to get high.' "

Additionally, appellant's social history, detailed in the probation report, discloses numerous behavioral problems from 2011 through 2013. At school, in 2011, he was found in possession of marijuana, and in 2012, school officials found in his backpack and coat a marijuana pipe and a "blunt cutter." Appellant was declared a ward of the court in May 2012, after the court sustained a violation of Penal Code section 594.2, subdivision (a), misdemeanor possession of a drill with intent to vandalize. After appellant was allowed to live in Oregon, Mother explained to a probation officer her brother was going "to kick [appellant] out of the house" due to defiant behavior. In March 2013, appellant was suspended from school in South San Francisco for three days for "defying the authority of the campus security officer and using profanity against him." According to appellant's drug and alcohol counselor, appellant was not taking drug and alcohol counseling seriously. And by May 2013, his probation officer reported appellant was failing to stay in contact with the officer and was unavailable for a chemical test. Several months later, appellant appeared before the court on a probation violation notice alleging he admitted to using marijuana.

Imposition of probation conditions upon a juvenile is governed by Welfare and Institutions Code section 730, which provides in pertinent part, that "[t]he court 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." (*Id.*, subd. (d).) The juvenile court has broad discretion in fashioning the conditions which attach to dispositional orders in wardship cases. (*In re Bernardino S.* (1992) 4 Cal.App.4th 613, 622; *In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1153.)

A probation condition "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 . . . .” (*People v. Lent* (1975) 15 Cal.3d 481, 486, superseded by statute on other grounds as stated in *People v. Wheeler* (1992) 4 Cal.4th 284, 290–292, fn. omitted; *In re Binh L.* (1992) 5 Cal.App.4th 194, 203.) “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.” (*People v. Lent*, at p. 486; *People v. Zaring* (1992) 8 Cal.App.4th 362, 370.) “Numerous decisions of our Supreme Court and this district have upheld the ‘broad discretion’ granted to the trial courts in ‘routinely imposing’ standard conditions of probation, where the conditions imposed, objectively viewed, bear a reasonable relationship to the crime or the rehabilitation of the offender.” (*People v. Torres* (1997) 52 Cal.App.4th 771, 776.)

The discretionary authority of the juvenile court to set probation conditions is even broader than that of the criminal court. (*In re Binh L.*, *supra*, 5 Cal.App.4th at p. 203.) “ ‘Because of its rehabilitative function, the juvenile court has broad discretion when formulating conditions of probation. “A condition of probation which is impermissible for an adult criminal defendant is not necessarily unreasonable for a juvenile receiving guidance and supervision from the juvenile court.” [Citation.] “[I]n planning the conditions of appellant’s supervision, the juvenile court must consider not only the circumstances of the crime but also the minor’s entire social history.” ’ ” (*Ibid.*) And, “even a probation condition which infringes a constitutional right is permissible where it is “ ‘necessary to serve the dual purpose of rehabilitation and public safety.’ ” (*People v. Peck* (1996) 52 Cal.App.4th 351, 362.)

Here, we find the imposition of the objected to gang-related conditions was justified by the record. Though appellant correctly observes the evidence fails to demonstrate any connection between the obstructing a police officer offense and gang activity, the probation report refers to his association with gang members. He admitted in a previous report that he wore red “on occasion.” When his mother spoke with his probation officer, she stated although appellant is not a gang member, he does “associate

with kids who are in a gang.” She also reported that in 2012 appellant was “ ‘jumped’ ” because he was wearing red and “ ‘on his way to get high.’ ”

Even though the current offense was not gang-related, appellant’s history of attraction to gang members permitted the juvenile court to impose the complained of conditions of probation. (See *In re Frankie J.*, *supra*, 198 Cal.App.3d at p. 1153.) Associating with gang members is the first step to gang involvement. Thus the propriety of gang terms of probation does not turn on whether a minor is currently involved in a gang. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 625–626.) Separating appellant from his delinquent peers will tend to reduce the likelihood of his participation in future criminal activity. (See, e.g., *In re Josh W.* (1997) 55 Cal.App.4th 1, 6.) As there was evidence of appellant’s association with and interest in gangs in conjunction with his history of defiant behavior, the trial court did not abuse its discretion by imposing all of the gang conditions of probation on this juvenile.

### **III. DISPOSITION**

The judgment is affirmed.

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Margulies, J.

We concur:

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Humes, P.J.

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Banke, J.