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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

In re I.T., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.T.,

Defendant and Appellant.

A143420

(Solano County
Super. Ct. No. J42456)

Appellant I.T. appeals the juvenile court’s order continuing him as a ward of the court under Welfare and Institutions Code section 602 and imposing various conditions of probation. Appellant contends a condition prohibiting him from possessing “any weapons or ammunition” (the weapons condition) is unconstitutionally vague. We will direct that the language of the condition be modified.

BACKGROUND

In April 2014, the Solano County District Attorney filed a Welfare and Institutions Code section 602 petition alleging that appellant, born September 1999, committed second degree robbery (Pen. Code, § 211).¹ The petition was subsequently amended to add a charge of battery with injury on a peace officer (§ 243, subd. (c)(2)). In May,

¹ All undesignated statutory references are to the Penal Code.

appellant admitted the robbery allegation and the battery charge was dismissed. The juvenile court adjudged appellant a ward of the court and placed him on probation in the custody of his parents or legal guardians.

In August 2014, the Solano County District Attorney filed another Welfare and Institutions Code section 602 petition, alleging appellant again committed second degree robbery (§ 211). In September, following a contested jurisdictional hearing, the court sustained the allegation.² In October, the court continued appellant's wardship, ordered him considered for an institutional placement with a maximum period of confinement of six years, and imposed terms and conditions of probation.

This appeal followed.

DISCUSSION

Appellant claims the weapons condition (“[d]on’t possess any weapons or ammunition”) is unconstitutionally vague. We agree.

Appellant contends the language of the weapons condition is unconstitutionally vague because it “fails to adequately identify the objects that may be encompassed within the prohibition that appellant must not ‘possess any weapons.’ ” He reasons, “ ‘weapons’ could include many common items the intended purpose of which is legal, thereby prohibiting otherwise lawful activity without being sufficiently tailored to the purposes of juvenile probation.” Appellant also claims the probation condition is unconstitutional because it does not require that he *knowingly* possess the prohibited items. He suggests the condition be modified to state: “ ‘Minor is not to knowingly possess any dangerous or deadly weapons.’ ”

“Under Welfare and Institutions Code section 730, subdivision (b), a juvenile court may impose ‘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.’ In spite of the juvenile court's broad discretion, ‘[a] probation condition “must be sufficiently precise for the probationer to know what is required of him, and for

² The facts of the underlying offense is not relevant to appellant's claims on appeal.

the court to determine whether the condition has been violated,” if it is to withstand a challenge on the ground of vagueness. [Citation.] . . . A defendant may contend for the first time on appeal that a probation condition is unconstitutionally vague . . . when the challenge presents a pure question of law that the appellate court can resolve without reference to the sentencing record. [Citations.]” (*In re Kevin F.* (2015) 239 Cal.App.4th 351, 357.)³

“The prohibition on vagueness is rooted in ‘ ‘ordinary notions of fair play and the settled rules of law,’ and a statute that flouts it ‘violates the first essential of due process.’ ’ [Citation.] This concern for fair warning is aimed at ensuring that a ‘ ‘person of ordinary intelligence [has] a reasonable opportunity to know what is prohibited, so that he may act accordingly.’ ’ [Citation.] The fear is that vague laws will ‘ ‘trap the innocent.’ ’ [Citation.] More broadly, ‘ ‘a law that is ‘void for vagueness’ . . . ‘impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.’ ’ ’ ’ ’ ’ (*In re Kevin F.*, *supra*, 239 Cal.App.4th at pp. 357–358.)

In re R.P. (2009) 176 Cal.App.4th 562, provides some guidance in considering appellant’s claim. There, the minor challenged on vagueness grounds “a probation condition prohibiting [him] from possessing any ‘dangerous or deadly weapon’ ” (*Id.*, at p. 565), which is the same language appellant suggests should be added to the probation condition in the present case. *In re R.P.* concluded “the phrase ‘dangerous or deadly weapon’ is clearly established in the law” and, thus, “sufficiently precise for [the minor] to know what is required of him.” (*Id.*, at p. 568.) In particular, the condition “prohibits [the minor] from possessing any item specifically designed as a weapon” and also “limits

³ Appellant also contends the weapons condition is overbroad. It is unclear what that claim adds in the present case. “Under the overbreadth doctrine, courts test the challenged language for whether it is narrowly enough drawn to its legitimate purposes without unduly infringing constitutional protections.” (*In re Kevin F.*, *supra*, 239 Cal.App.4th at p. 357, fn. 1.) Appellant does not explain what protected conduct is implicated by the purported overbreadth of the weapons condition.

[the minor's] possession of any item not specifically designed as a weapon—[the minor] is barred from possessing any item belonging to this latter category if he intends to use the item to inflict or threaten to inflict death or great bodily injury.” (*Id.* at p. 570.)

In re Kevin F., *supra*, 239 Cal.App.4th 351, also provides guidance in resolving appellant's claim. There, the minor challenged on vagueness grounds the condition, “ ‘You're not to possess any weapons. You're not to possess any toys that look like weapons.’ ” (*Id.* at p. 357.) The juvenile court also signed printed dispositional findings specifying that the minor was “[n]ot [to] possess weapons of any kind, which means no guns, knives, clubs, brass knuckles, attack dogs, ammunition, or something that looks like a weapon. You are not to possess anything that you could use as a weapon or someone else might consider to be a weapon.” (*Ibid.*) *In re Kevin F.* concluded that the probation condition was not unconstitutionally vague, when the printed language was taken into consideration and modified. (*Id.* at p. 358.) The court reasoned that the printed language specified two categories: (1) “items and instruments that will categorically fall within the [weapons] prohibition” and (2) other items that could be used or perceived as a weapon “depending on the circumstances.” (*Id.* at p. 360.) The court then concluded the probation condition had to be modified to clarify the application of the prohibition to items in the second category: “Because what is and what is not a de facto weapon turns in part on intent to use the item for a dangerous or deadly purpose, we will order the condition modified to prohibit Minor from possessing any object that he intends to use as a weapon.” (*Id.* at p. 361.)

Thus, *In re R.P.*, *supra*, 176 Cal.App.4th 562, upheld as sufficiently clear a prohibition on “deadly and dangerous weapons.” And *In re Kevin F.*, *supra*, 239 Cal.App.4th 351, upheld as sufficiently clear a prohibition on possession of weapons without the “deadly and dangerous” descriptor, where other language in the condition articulates the difference between objects that are necessarily weapons and those that are not, and provides some guidance as to when a minor can be found to be possessing an object as a “de facto weapon.” In the present case, unlike in *In re Kevin F.*, nothing in the weapons condition provides any guidance on when the possession of an instrument

that could be used as a weapon is prohibited. Accordingly, we agree the probation condition should be modified to add the “deadly and dangerous” descriptor, which is sufficiently clear for the reasons articulated in *In re R.P.*

We also agree with appellant’s contention that the weapons condition must be modified to include a scienter requirement. This issue was addressed in great depth in *In re Kevin F., supra*, 239 Cal.App.4th 351, which concluded that, “given the breadth of what might be considered a ‘weapon,’ . . . a requirement of actual knowledge of the character of the weapon is appropriate to avoid criminalizing innocent conduct.” (*Id.* at 365.) The court explained, “the difficulty of defining with perfect clarity every potential item that might be considered a weapon illustrates why more warning is necessary. To provide adequate protection against unwitting violations, the probationer must engage in the proscribed conduct *knowingly* (i.e., with actual intent and understanding that he possesses something constituting a weapon). Particularly since there is a conditional liberty interest at stake, we think the addition of an express knowledge requirement making the scope of the prohibited conduct clear in advance to all who may be involved—to probationers, to law enforcement officers, to probation departments, and to juvenile courts—best comports with due process.” (*Ibid.*)⁴

DISPOSITION

The weapons probation condition is modified to read: “Minor is not to knowingly possess any dangerous or deadly weapons, or ammunition for any such weapon.” As so modified, the judgment is affirmed.

⁴ The issues in the present case appear likely to be addressed by the California Supreme Court in *People v. Hall* (review granted Sept. 9, 2015, S227193), which presents the following issues: “(1) Are probation conditions prohibiting defendant from: (a) ‘owning, possessing or having in his custody or control any handgun, rifle, shotgun or any firearm whatsoever or any weapon that can be concealed on his person’; and (b) ‘using or possessing or having in his custody or control any illegal drugs, narcotics, narcotics paraphernalia without a prescription,’ unconstitutionally vague? (2) Is an explicit knowledge requirement constitutionally mandated?” (California Courts - Appellate Courts Case Information <http://appellatecases.courtinfo.ca.gov/search/case/mainCaseScreen.cfm?dist=0&doc_id=2112268&doc_no=S227193> [as of Nov. 25, 2015].)

SIMONS, J.

We concur.

JONES, P.J.

BRUINIERS, J.