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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

L.L.,

Defendant and Appellant.

A145341

(San Francisco County  
Super. Ct. No. JW126395)

Appellant L.L., a minor, appeals from a juvenile court order placing him on probation. Specifically, appellant challenges two of the mandatory conditions attached to his probationary term.

The first such condition requires appellant to submit to warrantless searches of his electronic devices, “including phones, iPads, computers, laptops . . . .” He challenges this condition on two grounds, first, that it violates the limits placed upon a trial court’s sentencing discretion by the California Supreme Court in *People v. Lent* (1975) 15 Cal.3d 481<sup>1</sup> and, second, that it is unconstitutionally overbroad in that it is not narrowly tailored to limit the impact on his privacy rights. For reasons set forth below, we conclude that,

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<sup>1</sup> The subsidiary holding in *People v. Lent, supra*, 15 Cal.3d 481, concerning the use of misdemeanors for impeachment was superseded by Proposition 8 in 1982. (See *People v. Wheeler* (1992) 4 Cal.4th 284, 290-291.)

although the condition authorizing warrantless searches of appellant's electronic devices does not run afoul of *People v. Lent*, it is nonetheless constitutionally overbroad. We thus uphold this condition in a modified form as set forth below.

The second challenged condition forbids appellant from possessing any weapons, "anything that could be used as a weapon," or "anything that can be considered by someone else to be a weapon." Appellant challenges this condition as unconstitutionally overbroad and vague because it fails to provide "fair warning" regarding the conduct it purports to proscribe, and because it does not include an express knowledge requirement to prevent its accidental violation. We again agree with appellant in this regard and, for reasons set forth below, uphold this condition subject to certain modifications.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On November 13, 2012, a juvenile wardship petition was filed pursuant to section 602, subdivision (a) in the San Francisco County Superior Court, charging appellant with violating Penal Code section 626.10, subdivision (a) (possession of a knife in a public school). On February 6, 2013, a second juvenile wardship petition was filed, charging appellant with felony violations of Health and Safety Code sections 11359 (possession of marijuana for sale) and 11351, subdivision (a) (possession of codeine tablets for sale). On March 8, 2013, an amended juvenile wardship petition was subsequently filed, charging appellant with violations of Penal Code sections 422 (criminal threats), 245, subdivision (a)(1) (assault with a deadly weapon), and 136.1, subdivision (b)(1) (dissuading a witness). This petition (to wit, the operative petition) further alleged the special allegation of personal use of a deadly weapon within the meaning of Penal Code section 12022, subdivision (b), as to both the assault and criminal threat counts.

A psychological assessment ordered by the San Francisco Juvenile Court was conducted on February 22, 2013. This assessment noted, among other things, that appellant used his father's information to fraudulently apply for and obtain credit cards. Appellant used these credit cards to purchase music from iTunes and skateboards. According to the report, despite scolding from his father, appellant continued to steal his father's identity to buy various items. As such, in the treatment recommendation section

of the report, the assessing doctor expressed concern about appellant's unsupervised use of computers and recommended that his parents be advised on how to set appropriate limits on his computer use.

On April 7, 2015, appellant admitted one felony count of criminal threats (Pen. Code, § 422), and the remaining counts and enhancements were dismissed.

A report filed by appellant's probation officer in anticipation of the dispositional hearing noted, among other things, that, during the knife possession incident on October 30, 2012 at Roosevelt Middle School (to wit, the offense alleged in the November 13, 2012 petition), appellant had stolen a teacher's cell phone. This report also referred to appellant's "numerous arrests for knives, narcotics and threats," including the February 27, 2013 incident at Lincoln Park Golf Course that involved his use of a deadly weapon.

At the dispositional hearing on May 19, 2015, wardship was declared and appellant was placed in the home of his mother under probation supervision. Appellant's counsel moved for a reduction of the sustained charge to a misdemeanor and objected to several conditions of his probation, including the conditions authorizing warrantless searches of his electronic devices and barring his use and possession of weapons. The court denied the motion to reduce appellant's offense to a misdemeanor, but ordered the probation conditions modified in most of the ways appellant requested, with two notable exceptions. First, the court imposed the warrantless search condition over appellant's objection that extended to electronic devices, "including phones, iPads, computers, laptops . . . ." Second, the court declined appellant's request to modify the no-weapons condition to allow appellant to use sharp model-making tools at home, although the court did approve his use of such tools at school. A timely notice of appeal was filed on June 4, 2015.

## **DISCUSSION**

Appellant raises three arguments on appeal. First, appellant contends the probation condition authorizing warrantless searches of his computers and electronic devices (hereinafter, electronic search condition) is invalid as it "requires or forbids conduct

which is [not] reasonably related . . . to future criminality.” (*People v. Lent*, *supra*, 15 Cal.3d 481.) Second, appellant contends the electronic search condition is also unconstitutionally overbroad as it is not narrowly tailored to limit the impact on his privacy rights. Finally, appellant contends the probation condition relating to his use or possession of weapons (hereinafter, weapons condition) is unconstitutionally overbroad and vague in that it does not provide him with “fair warning” regarding the prohibited conduct and does not include an express knowledge requirement to prevent accidental violation of his probation. We address each argument in turn below.

**I. Electronic Search Condition: The *People v. Lent* Standard.**

When the juvenile court exercises jurisdiction over a minor, it “stands in the shoes” of the parents, thereby occupying a “unique role . . . in caring for the minor’s well being.” (*In re Erica R.*, (2015) 240 Cal.App.4th 907, 912.) Thus, when a minor is made a ward of the juvenile court and is placed on probation, the 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.” (Welf. & Inst. Code, § 730, subd. (b); see also *id.*, § 202, subd. (b).) “ ‘In fashioning the conditions of probation, the . . . court should consider the minor’s entire social history in addition to the circumstances of the crime.’ ” (*In re R.V.* (2009) 171 Cal.App.4th 239, 246.)

Further, the juvenile court has “broad discretion to fashion conditions of probation.” (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5.) In particular, “every juvenile probation condition must be made to fit the circumstances and the minor.” (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203.) However, a juvenile court’s discretion to impose probation conditions does have limits. (*In re D.G.* (2010) 187 Cal.App.4th 47, 52.) On appeal, we review the imposition of a probation condition for an abuse of discretion (*People v. Olguin* (2008) 45 Cal.4th 375, 379), taking into account “the sentencing court’s stated purpose in imposing it.” (*People v. Fritchey* (1992) 2 Cal.App.4th 829, 837.) At the same time, constitutional challenges to a juvenile probation condition are reviewed de novo. (*In re Malik J.* (2015) 240 Cal.App.4th 896, 901.)

Appellant's first challenge is to the electronic search condition, which provides: "You, your property, your possessions, anything under your custody and control, including phones, iPads, computers, laptops, your residence, may be searched at any time of the day or night, by any peace or probation officer, with or without a warrant, or with or without reasonable or probable cause. [¶] The court finds that this order is sufficiently narrowly tailored in terms of the devices mentioned, and the devices are the ones in his possession or under his control."

In imposing this condition, the court offered the following: "Obviously if the police overstretch and just grab a phone from somewhere in the house that this minor has no custody or control over, that's what the Court is here for, and we'll take the appropriate steps if law enforcement oversteps their bounds. But the Court does think it is narrowly tailored and it is appropriate. [¶] The Court also incorporates its prior comments regarding . . . people putting incriminating evidence on their phones. It is a new day in age, and if you're going to take photos of your AK-47 or knives or guns that you're not allowed to possess and keep photos of it on your phone to show off, you have to be aware. So, the warrantless search condition, including the electronic devices, are ordered."

Appellant contends this condition runs afoul of the standard set forth in *People v. Lent*. There, the California Supreme Court held that a probation condition is "invalid [if] 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, supra*, 15 Cal.3d at p. 486.) These so-called *Lent* factors are equally applicable to juvenile and adult probationers and create a conjunctive test for which all three must be satisfied in order to invalidate a probation condition. (*In re R.V., supra*, 171 Cal.App.4th at pp. 246-247.)

Here, there is no genuine dispute that the challenged condition meets the first two *Lent* factors. With respect to the first factor, the challenged electronic search condition has no relationship to the crime of criminal threats that appellant admitted committing given the lack of any evidence in the record that he used a computer or other

electronic device to facilitate this offense. (See *In re J.B.* (2015) 242 Cal.App.4th 749, 754, 755 [mere speculation that the internet could have been used to facilitate the offense does not suffice to justify an electronic search condition in the absence of actual evidence of a connection between the minor’s current offense and his use of any electronic device or social media].) With respect to the second factor, clearly, use of electronic devices is not, in and of itself, criminal conduct.

Thus, we turn to the real issue in this case: Whether the challenged electronic search condition is reasonably related to future criminal activity by appellant. Taking into account the circumstances of the crime, as well as appellant’s social history, we conclude the electronic search condition is indeed reasonably related to his future criminality. For example, the court-ordered psychological assessment expressly noted that appellant had a history of stealing his father’s identity to apply for credit cards online, and to then use these cards to purchase items on the internet. In addition, appellant’s criminal history reflects that electronic devices have played a role in his criminal and devious behavior. Most notably, during the knife possession incident on October 30, 2012 at Roosevelt Middle School (the offense alleged in the November 13, 2012 petition), appellant used this weapon to steal a teacher’s cell phone. And, finally, the court-ordered assessment noted in its “Treatment Recommendation” that appellant’s unsupervised use of computers is of concern and ultimately recommended that his parents be advised on how to set limits on appellant’s computer use. In light of these circumstances, we agree with the trial court’s decision to subject appellant to an electronic search condition for the duration of his probation. (*In re Malik J.*, *supra*, 240 Cal.App.4th at pp. 904-905 [the minor’s previous theft of a cell phone justified the search of any cell phones or electronic devices in his possession to determine if he was the lawful owner of such]; cf. *In re Erica R.*, *supra*, 240 Cal.App.4th at p. 913 [“Because there is nothing in [Erica’s] past or current offenses or [her] personal history that demonstrates a predisposition” to use electronic devices or social media in connection with criminal activity, “there is no reason to believe the current restriction will serve the rehabilitative function of precluding [Erica] from any future criminal acts”].)

Thus, because the third prong of this conjunctive standard is not satisfied, the electronic search condition of minor's probation survives under *People v. Lent*. The question remains, however, whether this condition is sufficiently tailored to the circumstances of this case, such that it comports with constitutional principles. To this question, we now turn.

## **II. Electronic Search Condition: Overbreadth.**

According to appellant, even assuming, as we have just held, that the electronic search probation condition is valid under the *Lent* standard, the condition nonetheless must be stricken as unconstitutionally overbroad because it infringes upon his privacy rights and is not narrowly tailored to either the underlying offense or his own circumstances.

Relevant to this contention, the Supreme Court of the United States in *Riley v. California* (2014) 573 U.S. \_\_[134 S.Ct. 2473], recently made clear in a case involving the warrantless search of the defendant's cell phone incident to arrest that cell phone data differs from other physical objects or records in both a qualitative and quantitative sense because cell phones represent an important privacy interest of the holder. (*Id.* at pp. 2489-2490.) In particular, cell phones contain a digital record of nearly every aspect of the carrier's lives. (*Id.* at p. 2490.) One's internet browsing history can reveal the holder's most private interests and concerns, such as medical issues, political affiliation, and religious views. (*Ibid.*) Moreover, the privacy interest of a carrier's cell phone is magnified by the immense storage capacity. (*Id.* at p. 2489.) However, "the fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founder's fought." (*Id.* at p. 2495.)

As this discussion reflects, the gravity of appellant's constitutionally-grounded privacy interest in his use of electronics is substantial. According to appellant, the electronic search condition is overbroad to such an extent that it impermissibly infringes upon this right to privacy. The relevant law for purposes of his argument is not in dispute. When a probation condition imposes limitations on a person's constitutional

rights, it “ ‘must closely tailor those limitations to the purpose of the condition’ ” — that is, the probationer’s reformation and rehabilitation—“ ‘to avoid being invalidated as unconstitutionally overbroad.’ ” (*People v. Olguin, supra*, 45 Cal.4th at p. 384; *In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the [probationer]’s constitutional rights — bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) “ ‘Even conditions which infringe on constitutional rights may not be invalid [as long as they are] tailored specifically to meet the needs of the juvenile.’ ” ” (*In re Tyrell J.* (1994) 8 Cal.4th 68, 82, disapproved on other grounds in *In re Jaime P.* (2006) 40 Cal.4th 128, 130; *In re D.G., supra*, 187 Cal.App.4th at p. 52.)

However, while a probation condition imposed on a juvenile must be narrowly tailored to both the condition’s purposes and the individual’s needs, “ ‘ ‘ ‘a condition . . . that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.’ ” ’ ” (*In re Victor L., supra*, 182 Cal.App.4th at p. 910, quoting *In re Sheena K.* (2007) 40 Cal.4th 875, 889.) “This is because juveniles are deemed to be more in need of guidance and supervision than adults, and because a minor’s constitutional rights are more circumscribed. The state, when it asserts jurisdiction over a minor, stands in the shoes of the parents. And a parent may ‘curtail a child’s exercise of . . . constitutional rights . . . [because a] parent’s own constitutionally protected “liberty” includes the right to “bring up children” [citation] and to “direct the upbringing and education of children.” [Citation.]’ ” (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.)

Thus, where, as here, a constitutional privacy right is implicated, the probation condition must be (1) narrowly tailored to serve the interests of public safety and rehabilitation, and (2) narrowly tailored to the individual probationer. (*In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084; see also Welf. & Inst. Code, § 730, subd. (b).)

Whether a probation condition is unconstitutionally overbroad presents a question of law reviewed on appeal de novo. (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

Appellant relies on *In re White* (1979) 97 Cal.App.3d 141, 147, to support his claim that the electronic search probation condition in his case is overbroad. In *In re White*, a probation condition was imposed upon the defendant who was convicted of soliciting an act of prostitution. (*Id.* at p. 143.) The probation condition was challenged as overly broad in that it forbade her to travel to certain destinations, thereby restricting her constitutional right to travel. The reviewing court agreed, holding that the blanket restriction imposed by the trial court was unconstitutionally overbroad and “unduly harsh and oppressive” because it encompassed wholly legal activities that had no relation to the underlying charge. (*Ibid.*) The court also noted that there were less restrictive alternatives to meet the state’s goal of rehabilitation. (*Id.* at pp. 150-151.)

In our case, for reasons just explained, we find ample evidence to warrant an electronic search condition sufficiently broad to further the government’s public safety concerns, as well as minor’s interest in reformation and rehabilitation, notwithstanding some resulting infringement on his constitutional right to privacy. (See *In re R.V.*, *supra*, 171 Cal.App.4th at p. 246 [upholding a broader condition as not “unduly harsh and oppressive” in light of appellant’s social history and the circumstances of his criminality.]) At the same time, however, we agree with appellant that this condition could be modified in such a way that his use of electronic devices could be effectively monitored without unduly compromising his privacy interests. In other words, we agree with appellant that the electronic search condition, while justified, is too broad when considered in conjunction with his individual needs and circumstances, including his criminal history. (*In re Tyrell J.*, *supra*, 8 Cal.4th at p. 82.)

Thus, in accordance with the constitutional principles set forth in *Riley v. California*, *supra*, 573 U.S. \_\_\_ [134 S.Ct. 2473], we modify the electronic search condition in this case to read: “You, your property, your possessions, anything under your custody and control are subject to search. This is to include phones, tablets, computers or laptops. Searches of these electronic devices are to include an examination

any text messages, email, telephone call history, web-browsing history, voice mail, or other communication programs like Face Time or Skype, and social media accounts. You must provide the peace officer with any passwords necessary to access the information specified. These searches may be conducted at any time of the day or night, by any peace or probation officer, with or without a warrant, or with or without reasonable or probable cause.” (Accord *In re Malik J.*, *supra*, 240 Cal.App.4th at p. 901 [“In an appropriate case, a probation condition that is not sufficiently precise or narrowly drawn may be modified in this court and affirmed as modified”].)

By setting appropriate, yet more limited, boundaries on the devices, data and information subject to retrieval in a warrantless search of appellant’s electronic devices, this modified condition will serve the dual objectives of protecting public safety and rehabilitating appellant so as to prevent his future criminality. As our First Appellate District colleagues have aptly stated: “Officers must be able to determine ownership of any devices in a probationer's custody or within his or her control, and search them if they belong to the probationer or if officers have a good faith belief that he or she is a permissive user. But in performing such searches, officers must show due regard for information that may be beyond a probationer’s custody or control or implicate the privacy rights of the probationer or third parties.” (*In re Malik J.*, *supra*, 240 Cal.App.4th at pp. 903-904.)

As modified, the electronic search condition thus stands.

### **III. The Weapons Condition: Overbreadth and Vagueness.**

Appellant finally contends the probation condition imposed by the juvenile court relating to his use of weapons is overbroad, as well as vague in that it does not provide fair notice of the prohibited conduct and lacks a necessary scienter requirement. According to appellant, the weapons condition is so overbroad and vague that “the court

has in effect banned appellant from possessing almost any object imaginable.” The following additional legal principles apply.<sup>2</sup>

While a juvenile court has broad discretion in setting probation conditions, “[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. [Citation.]” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) “A restriction 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.” (*In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153.) “The underpinning of a vagueness challenge is the due process concept of ‘fair warning.’” (*People v. Navarro* (2016) 244 Cal.App.4th 1294, 1300.) “A restriction failing this test does not give adequate notice – ‘fair warning’ – of the conduct proscribed.” (*In re E.O.*, *supra*, 188 Cal.App.4th at p. 1153.)

Here, the court imposed the following condition with regard to appellant’s use and possession of weapons: “You’re not to possess weapons of any kind. You’re not to possess any firearms, knives, scalpels, butterfly knives. You’re not to possess anything that looks like a weapon. You’re not to possess anything that could be used as a weapon. You’re not to possess anything that can be considered by someone else to be a weapon. That includes replicas, toy guns, replica knives, everything.”

To determine whether this condition is overly broad and vague, as appellant contends, we look to a recent decision by our colleagues in the First District, Division Four, *In re Kevin F.* (2015) 239 Cal.App.4th 351. There, challenge was made to a similar weapons condition, to wit, one that barred the minor from possessing “weapons of any kind . . . or something that looks like a weapon,” as well as “anything that [he] could use as a weapon or someone might consider to be a weapon.” (*Id.* at p. 357.)

With respect to the language in this condition prohibiting the minor from “possess[ing] anything that [he] could use as a weapon,” the reviewing court agreed with

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<sup>2</sup> The legal standard relating to an overbreadth challenge to a juvenile probation condition has already been set forth in detail at pages 8-9, *ante*.

the minor that the language was overbroad, noting that the prohibitory language could include any object that could injure someone, even an ordinary household object, regardless of one's intent in possessing it. (*In re Kevin F.*, *supra*, 239 Cal.App.4th at p. 360.) Thus, recognizing that 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, the court modified the condition to bar the minor from possessing any object that he *intends* to use as a weapon. (*Id.* at p. 361.)

We agree with our colleagues' reasoning and conclusion and, thus, adopt them for purposes of this case. Accordingly, we modify the weapons condition imposed against appellant to read: "You are not to knowingly possess weapons of any kind. You are not to possess any firearms, knives, scalpels, butterfly knives or anything that looks like a weapon. That includes replicas, toy guns [and] replica knives . . . . In addition, you are not to knowingly possess anything that you intend to use as a weapon or that you know someone else might consider to be a weapon."

As so modified, we are assured that innocent conduct will not be criminalized and that appellant will be able to "easily understand the type of conduct that is proscribed." (*In re Kevin F.*, *supra*, 239 Cal.App.4th at p. 365.)

### **DISPOSITION**

The following two conditions of appellant's probation, as set forth in the juvenile court's dispositional order of May 19, 2015, are upheld as modified:

(1) The electronic search condition is to read: "You, your property, your possessions, anything under your custody and control are subject to search. This is to include phones, tablets, computers or laptops. Searches of these electronic devices are to include an examination of any text messages, email, telephone call history, web-browsing history, voice mail, or other communication programs like Face Time or Skype, and social media accounts. You must provide the peace officer with any passwords necessary to access the information specified. These searches may be conducted at any time of the day or night, by any peace or probation officer, with or without a warrant, or with or without reasonable or probable cause."

(2) The weapons condition is to read: “You are not to knowingly possess weapons of any kind. You are not to possess any firearms, knives, scalpels, butterfly knives or anything that looks like a weapon. That includes replicas, toy guns and replica knives. In addition, you are not to knowingly possess anything that you intend to use as a weapon or that you know someone else might consider to be a weapon.”

In all other regards, and as so modified, the dispositional order is affirmed.

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Jenkins, J.

We concur:

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McGuinness, P. J.

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Siggins, J.

*In re L.L.*, A145341