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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD VAUGHN,

Defendant and Appellant.

D059093

(Super. Ct. No. SCN270195)

APPEAL from a judgment of the Superior Court of San Diego County, Aaron H. Katz, Judge. Affirmed.

Richard Vaughn¹ pleaded guilty to assault by means of force likely to produce great bodily injury and other offenses, and was granted probation. On appeal, he challenges two of his probation conditions: (1) a condition prohibiting contact with his two codefendants, and (2) a condition prohibiting illegal drug use or possession and

¹ The record variously refers to defendant as Vaughn and Vaughan. We adopt the spelling used in the caption of his guilty plea.

allowing drug testing. We reject his challenges to these conditions, and affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND²

On the evening of November 29, 2009, victim Marion Kyle and several others were at a party at her house in Oceanside. While outside on a balcony, Kyle's friends heard what sounded like beer bottles breaking. When they looked over the balcony, they saw three males, later identified as defendant and codefendants Tyler Mackin and Brandin Evinger. One of Kyle's friends said to the three males, "Don't mess up Oceanside." Defendant and Mackin started screaming obscenities at them, saying, "Fuck you white bitches living in your two story condo. You ruined Oceanside for us." The males appeared to be drunk; they were "loud and rowdy and weaving and just screaming"

Kyle went outside and told the males to leave. The males started yelling at her, saying she had ruined Oceanside by building a two-story building; she should "go back to where [she] came from"; and she "was a black loving bitch" who needed to stay out of Oceanside. Evinger reached over a gate in front of Kyle's residence, grabbed her arm, and started tapping her on her chest. Kyle pushed Evinger away. Mackin and defendant started kicking the two gates in front of her property to break them open. They were "calling every one faggots" and "big pussy boys" who were "not going to do anything."

² Our summary of the facts of the offense is based on the preliminary hearing testimony.

Kyle yelled for someone to call 911. Defendant said he was going to shoot all of them, acted like he had a gun in his clothing, and then said he was going to get a gun.

After Mackin broke through one of the gates, he and defendant entered Kyle's yard. They dragged her by her arms to a grassy area outside her yard and started attacking her. Defendant kicked her in the knee and stomped on her foot. Mackin kicked her in the stomach and punched her near her eye with his fist, breaking her glasses. Mackin continued to hold onto her arm, and she fell to the ground. She then felt herself being repeatedly kicked in the back, and she was hit in the head either from a kick or hit or from falling.

Several individuals came to Kyle's rescue and intervened in the attack. When the police arrived, defendant and codefendants resisted the efforts to detain them. Defendant tried to walk away from the scene; ignored an officer's order to stop and get on the ground; tried to break away when the officer grabbed him; and continually tried to get up from the ground as the officer was trying to hold him down.

As a result of the attack, Kyle sustained an injury to her back and suffered bruising, swelling, and/or contusions on her head, face, hands, wrists, arms, stomach, knee, leg, and foot.

Guilty Plea and Probation Grant

Defendant was charged with false imprisonment by violence, assault by means of force likely to produce great bodily injury, making a criminal threat, vandalism, and misdemeanor resisting an officer. He pleaded guilty to assault by means of force likely to produce great bodily injury (as a nonstrike offense) and resisting an officer. In exchange,

the prosecution promised to move for dismissal of the remaining charges, and promised not to oppose local time consisting of 365 custody days served in a work furlough program if eligible.

The probation report reflects that defendant, age 24, has no criminal history. When interviewed by a probation officer, defendant stated he and his friends had been drinking at a bar before the altercation at Kyle's home. He told the probation officer that codefendants are friends he has known from childhood; they are not drug users; and they have no criminal history apart from the current offense. He stated he started drinking alcohol at age 14 occasionally with friends; he did not drink to excess; and he was a social drinker. He also said that he tried marijuana in high school but did not use it on a regular basis; he last used it about two or three years ago; he never experimented with any other illegal drugs; and he did not have a substance abuse problem.

At sentencing, the trial court granted defendant three years' formal probation, with 365 custody days that could be served in a work furlough program. The probation order included the standard condition that defendant "[o]bey all laws." Further, the order included the conditions that defendant (1) have no contact with codefendants; (2) not use or possess alcohol, and submit to alcohol testing; and (3) not use or possess any controlled substance without a prescription, and submit to controlled substance testing.

When evaluating the case for sentencing, the trial court stated that defendant's and codefendants' behavior was "atrocious" and it was hard to understand what prompted it. The court deduced that "[p]rimarily it looks like alcohol played a role in this, and things just spun out of control from there."

Defendant objected to the probation condition prohibiting contact with codefendants, arguing that codefendants were his "lifelong friends" and noting he had no criminal record and was employed. He also objected to the drug prohibition and testing requirement because there were no controlled substances involved in the case other than alcohol.

The court ruled that it would keep the no-contact order in place, but that after 12 months of probation it would consider removing the condition. The court reasoned: "I would like the three of them to be separated for now, because it appears that the three of them together was not a good combination. It certainly may have played a role in this event." The court also retained the drug prohibition and testing condition. The court reiterated that "alcohol certainly played a role in this terrible event" and told defendant "[a]gain, do not consume alcohol."

DISCUSSION

I. *General Principles Governing Probation Conditions*

A trial court has broad discretion to select probation conditions. (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) Generally, a probation condition that regulates noncriminal conduct is not an abuse of discretion if it is reasonably related to (1) the crime of which the defendant was convicted or (2) the goal of preventing future criminality. (*Id.* at pp. 379-380; *People v. Balestra* (1999) 76 Cal.App.4th 57, 65.) To avoid unconstitutional overbreadth, a " 'probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition'" (*People*

v. Olguin, supra, 45 Cal.4th at p. 384.) Further, all probation conditions are subject to a general requirement of reasonableness. (See *People v. Welch* (1993) 5 Cal.4th 228, 233.)

II. *Condition Prohibiting Contact with Codefendants*

Defendant argues the condition prohibiting contact with codefendants, which impacts his constitutional right of association, is overbroad. He contends the prohibition on all contact does not take into account his lifelong friendship with codefendants; the likelihood of safe encounters in structured environments "where the possibility of violence would be minimal or non-existent"; and his lack of criminal record. He asserts the condition should be struck or modified to allow contact in structured environments, such as church activities, high school class reunions, or structured sports activities.

A court may permissibly impose a probation condition that limits the right to associate with persons closely tied to the probationer if the condition is reasonably related to rehabilitation and the reduction of future criminality. (*People v. Lopez* (1998) 66 Cal.App.4th 615, 628; *People v. Wardlow* (1991) 227 Cal.App.3d 360, 367; see *Board of Directors of Rotary Internat. v. Rotary Club of Duarte* (1987) 481 U.S. 537, 544-546.) Given the nature of the offense, involving three friends who aided and abetted each other in assaulting the victim, the trial court could reasonably conclude defendant might be prone to engage in criminal conduct if he is in the company of codefendants. With respect to defendant's overbreadth challenge, he has not shown that structured environments like class reunions or athletic activities necessarily provide a level of control and supervision that render an unrestricted no-contact order constitutionally overbroad. The trial court could reasonably consider that violence can erupt at these

types of gatherings, which can involve large groups of people and include persons who perceive themselves as rivals.

Arguably, the possibility of violence during church services attended by defendant and codefendants would be significantly diminished based on the nature of this activity. However, defendant has made no allegation that he and codefendants attend, or plan to attend, the same church. Thus, he has not shown the condition is overbroad in this respect. The reasonableness of the court's no-contact order is further supported by the proviso that defendant may seek relief from this condition after one year.

The trial court's no-contact order was not constitutionally overbroad.

III. *Condition Prohibiting Illegal Drug Use/Possession and Permitting Drug Testing*

Defendant argues the trial court abused its discretion by imposing the condition prohibiting illegal drug use or possession and allowing drug testing. He asserts the condition was improper because drugs played no part in the crimes; there is no showing he has a substance abuse problem; and there is no basis to infer he might commit drug-related crimes in the future.

The probation condition that defendant not use or possess illegal drugs is patently reasonable because it proscribes *unlawful* conduct, and defendant is required to obey all laws as a fundamental condition of his probation grant. (See *People v. Balestra, supra*, 76 Cal.App.4th at p. 69; *People v. Ross* (1985) 165 Cal.App.3d 368, 375 [standard obey-all-laws condition deters future criminality by imposing incarceration upon violation of laws]; see also *People v. Olguin, supra*, 45 Cal.App.4th at pp. 379-380 [condition cannot

be invalid unless it involves conduct that is *not* criminal].) Thus, to the extent defendant can raise a reasonableness challenge to the drug prohibition and testing probation condition, it must turn on the drug-testing component of the condition.

Drug testing constitutes a search under the Fourth Amendment; accordingly, the constitutionality of this intrusion into privacy is determined by balancing the individual's reasonable expectations of privacy with the need to promote legitimate governmental interests. (*In re Kacy S.* (1998) 68 Cal.App.4th 704, 710.) A probationer's expectations of privacy are diminished when the probationer consents to a waiver of Fourth Amendment rights in exchange for the opportunity to avoid incarceration. (*Id.* at p. 711; *People v. Bravo* (1987) 43 Cal.3d 600, 608; see *People v. Reyes* (1998) 19 Cal.4th 743, 753.) Further, the government has a strong interest in ensuring that offenders released into the community not engage in future criminality. (See *In re Kacy S.*, *supra*, 68 Cal.App.4th at p. 711.) Nevertheless, a probationer's waiver of Fourth Amendment rights is subject to the same reasonableness requirement applied to all probation conditions. (See *People v. Bravo*, *supra*, 43 Cal.3d at p. 610; *In re York* (1995) 9 Cal.4th 1133, 1150-1151, & fn. 10.)

Defendant does not dispute that the trial court reasonably imposed the probation condition prohibiting alcohol use or possession and allowing alcohol testing. Because defendant admittedly drank alcohol shortly before engaging in the criminal conduct, the trial court could reasonably infer that the use of any intoxicants, including illegal drugs, could contribute to his future criminality. The fact that there was no showing that drugs were involved in the current offense or that defendant had a substance abuse problem did

not make this an unreasonable inference. The trial court could reasonably deduce that defendant engaged in highly aggressive and injurious conduct because his inhibitions were lowered from alcohol use, and future criminal behavior could be triggered by lowered inhibitions from the use of *any* intoxicant, not just alcohol. (See *People v. Smith* (1983) 145 Cal.App.3d 1032, 1034-1035.) Thus, to enhance his chances of successful rehabilitation, the court could reasonably conclude the probation department should monitor him to ensure that he is not using any illegal controlled substances. (See *People v. Balestra, supra*, 76 Cal.App.4th at pp. 62, 68-69 [trial court could reasonably impose a drug testing condition even though probationer's offense was alcohol, not drug, related].)

The trial court did not abuse its discretion in imposing the drug prohibition and testing condition.

DISPOSITION

The judgment is affirmed.

HALLER, J.

WE CONCUR:

HUFFMAN, Acting P. J.

IRION, J.