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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

A.G.,

Defendant and Appellant.

G044949

(Super. Ct. No. DL032455)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Affirmed as modified.

David L. Annicchiarico, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, William M. Wood and Gary W. Brozio, Deputy Attorneys General, for Plaintiff and Respondent.

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The district attorney simultaneously filed two petitions against then 16-year-old A.G. (minor). One petition alleged he committed acts amounting to vandalism and possessing graffiti tools, while the second alleged he engaged in conduct constituting a robbery. After a trial on the latter petition, the juvenile court found the robbery allegation true. Minor waived his constitutional rights and admitted the first petition's allegations. At the dispositional hearing on both petitions, the juvenile court declared minor a ward of the court and imposed probation.

On appeal, minor asserts numerous grounds for reversal. He challenges the sufficiency of the evidence supporting the true finding on the robbery petition. Minor also attacks several evidentiary rulings at the jurisdictional hearing on that petition: The juvenile court's denial of his motion to suppress evidence, allowing a police detective to testify as a rebuttal witness, and the admission of statements minor made during police questioning. Next, minor argues the juvenile court abused its discretion in refusing to allow discovery of the robbery victim's criminal history. Finally, he challenges the constitutionality of several probation conditions imposed on him. We shall modify two of the probationary conditions to insert an express scienter requirement, but otherwise affirm the judgment.

## FACTS

C.L. testified he met minor at high school. Initially friends, the two had a falling out after minor accused C.L. of stealing from him. That accusation resulted in a fight at school during which minor beat up C.L. in front of other students.

According to C.L., one afternoon in early November, he was riding his bicycle along Euclid when he saw minor and a second male approaching him riding a tandem bicycle. Sensing there was going to be trouble, C.L. claimed he dropped his

bicycle and ran across the street to a gas station. Minor and his companion followed. C.L. testified they confronted him and began hitting him, during which time they demanded he give them everything in his pockets. The assailants took C.L.'s hat, shoes, and music player. As they left, C.L. claimed, they also took his bicycle. C.L. called his mother and then dialed 911.

On cross-examination, C.L. admitted the beating minor had previously exacted anger and embarrassed him and he exaggerated the details of the robbery when reporting it to the police. He acknowledged minor and his companion used only their fists and did not display any weapons. In its case-in-chief, the defense introduced a transcript of C.L.'s 911 call to the police during which he claimed minor threatened him with a knife. Recalled to the stand by the defense and confronted with the contents of the 911 transcript, C.L. then testified he thought minor had a knife.

The defense also presented the testimony of its investigator who interviewed C.L. The investigator testified C.L. told her that he initially fled to the parking lot of a health clinic located over 100 yards from the previously mentioned gas station. In addition, she claimed C.L. said he tried to climb into a truck and asked the driver to call 911, but minor and his companion pulled C.L. out of the vehicle.

Next, the defense presented testimony from the police officer who interviewed C.L. at the gas station after the 911 call. The officer testified C.L. wore only socks on his feet and did not have a hat or bicycle. According to the officer, C.L. claimed minor and his companion, riding separate bicycles, approached him at the gas station and began yelling. They hit him and, as C.L. tried to block the blows, took things from his pockets. The assailants demanded C.L. remove his shoes and then rode away taking his bicycle with them. The officer testified C.L. said he recognized minor as one of his attackers and provided minor's first name and a partially correct home address.

When recalled to the witness stand, C.L. acknowledged the incident began as another fight and, after minor and his companion beat him up, they took his property. However, C.L. denied telling the defense investigator that he attempted to enter a truck or ask the truck driver to help him.

Over a defense objection, the juvenile court allowed the prosecution to call Detective James Rodriguez as a rebuttal witness. A week after the altercation, Rodriguez visited minor's home and, after advising minor of and obtaining a waiver of his *Miranda* rights (*Miranda v. Arizona* (1966) 384 U.S. 436 [86 S.Ct. 1602, 16 L.Ed.2d 694]), questioned him. Minor corroborated C.L.'s description of their prior relationship. He denied seeing C.L. the day of the altercation, claiming he went to Disneyland. Told by Rodriguez that witnesses had seen him, minor dropped his head, then acknowledged seeing C.L., but said it was on Brookhurst Street. He continued to deny stealing from C.L. Minor also initially said he was alone that day, but later admitted being with a friend named Rob. When the interview ended Rodriguez arrested minor.

## DISCUSSION

### *1. Sufficiency of the Evidence*

Citing the defense's "extensive impeachment[ of] C.L.'s testimony," the only percipient witness to the robbery, minor argues C.L. "was shown to be inherently incredible." He contends "[i]n light of the[] facts" that "C.L. admitted falsehoods[,] his story was implausible[,] [C.L.] had a motive to get [him] in trouble[,] and [he] was not found in possession of any of the allegedly stolen property," "no rational trier of fact could have found, beyond a reasonable doubt[ he] robbed C.L." We disagree.

"Since the standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials, the principles of appellate review in

criminal trials . . . are applicable to the appellate courts in considering sufficiency of the evidence admitted in the juvenile proceeding.” (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) Thus, we decide “whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. The court must view the entire record in the light most favorable to the judgment (order) to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the minor guilty beyond a reasonable doubt.” [Citation.]” (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 577.)

Minor focuses solely on what he describes as C.L.’s lack of credibility. But that claim cannot support reversing the juvenile court’s decision. “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.” [Citation.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Elliott* (2012) 53 Cal.4th 535, 585.)

Numerous criminal cases have rejected efforts to overturn a conviction based on the lack of a witness’s credibility. In *People v. Ennis* (2010) 190 Cal.App.4th 721, we ruled “[t]he inherently improbable standard addresses the basic content of the testimony itself—i.e., could that have happened?—rather than the apparent credibility of the person testifying. . . . The only question is: Does it seem *possible* that what the witness claimed to have happened actually happened? [Citations.]” (*Id.* at p. 729; see also *People v. Lee* (2011) 51 Cal.4th 620, 635 [“[i]t was for the jury to decide whether the[] witnesses were credible, either in whole or in part” and thus “of no consequence that [one eyewitness’s] testimony differed in some respects from [a second eyewitness’s testimony], or that the testimony of each differed to a certain extent from

what he had told police, or that [one eyewitness] was impeached on a minor matter with his preliminary examination testimony”]; *People v. Thompson* (2010) 49 Cal.4th 79, 124-125 [claims that “the angle of the bullet wounds in [the victim’s] body” and discovery of the body “in the water, although [the witness] testified . . . he did not see the body fall into the water” did not render testimony inherently incredible since witness “did not recount facts that were physically impossible, nor did [the testimony] exhibit falsity on its face”]; *People v. Hovarter* (2008) 44 Cal.4th 983, 995, 997 [jailhouse informant’s “dubious background, his obvious motive to fabricate evidence for his own benefit, and the inconsistency of his statements” not grounds to reject testimony “[b]ecause a rational trier of fact could have found [him] credible”].)

The events testified to by C.L. at trial were not physically impossible nor can it be said his testimony was false ““without resorting to inferences or deductions.”” [Citations.]” (*People v. Ennis, supra*, 190 Cal.App.4th at pp. 728-729.) Minor’s attack on the sufficiency of the evidence fails.

## 2. *Detective Rodriguez’s Testimony*

At the commencement of the jurisdictional hearing, defense counsel asked to file a motion to suppress evidence of minor’s identity and his statements to the police under Welfare and Institutions Code section 700.1, claiming Rodriguez learned his full name and address through a warrantless search of school records. The prosecution waived the failure to timely file the motion and the juvenile court agreed to rule on it in conjunction with the jurisdictional hearing. The court ultimately denied the motion.

Before Rodriguez took the stand, defense counsel objected to his testimony on two additional grounds. First, he argued Rodriguez was not a proper rebuttal witness. The juvenile court overruled the objection. Second, during Rodriguez’s testimony, the defense objected to him testifying to minor’s responses to Rodriguez’s questioning on the

ground they were involuntary. The juvenile court overruled this objection as well.

On appeal, minor repeats each of the foregoing claims as grounds for reversing the juvenile court's decision. We conclude each contention lacks merit.

*a. Fourth Amendment Claim*

Rodriguez testified he learned from the investigating officer's report that minor and C.L. attended a certain high school. Without obtaining a warrant or court order, he went to the school's campus and spoke with a vice-principal who provided him with minor's full name and address.

In the juvenile court, minor claimed Education Code sections 49076 and 49076.5 "prohibit[] police officers from obtaining protected information in school records," and these statutes gave him "a reasonable expectation of privacy in his own . . . school records." Thus, he argued Rodriguez violated his Fourth Amendment rights by "conduct[ing] a warrantless search of [his] school records" and the juvenile court should have suppressed evidence of his identity and subsequent statements to the police. On appeal, minor challenges only the admission of his statements. Now relying primarily on Education Code section 49073, he contends "[t]he vice[-]principal was only allowed to release [his] directory information . . . , without a court order, if permitted to do so by the school district's policy." These claims are meritless.

The rule excluding evidence obtained by the police in violation of a criminal defendant's Fourth Amendment rights applies in juvenile delinquency proceedings. (*In re Lisa G.* (2005) 125 Cal.App.4th 801, 808; Welf. & Inst. Code, § 700.1.) "The threshold question in any Fourth Amendment analysis is whether the person challenging the allegedly unlawful search had a constitutionally protected reasonable expectation of privacy with respect to the area or item searched. [Citation.] . . . [¶] The reasonableness of a claimed expectation of privacy depends on the

totality of circumstances presented in each case. [Citations.] The burden is on the defendant to prove that he or she had a protectible expectation of privacy in the area or item searched.” (*In re Baraka H.* (1992) 6 Cal.App.4th 1039, 1044.)

““On appeal from the denial of a suppression motion, the court reviews the evidence in a light favorable to the trial court’s ruling. [Citation.] We must uphold those express or implied findings of fact by the trial court which are supported by substantial evidence and independently determine whether the facts support the court’s legal conclusions.’ [Citation.]” (*In re William V.* (2003) 111 Cal.App.4th 1464, 1468.) In this case, since there is no evidentiary conflict concerning how Rodriguez discovered minor’s identity and home address, we must decide de novo whether the juvenile properly found no violation of minor’s Fourth Amendment rights in this case.

Nonetheless, the juvenile court properly denied minor’s suppression motion. “This Court has held repeatedly that the Fourth Amendment does not prohibit the obtaining of information revealed to a third party and conveyed by him to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed. [Citations.]” (*United States v. Miller* (1976) 425 U.S. 435, 443 [96 S.Ct. 1619, 48 L.Ed.2d 71], fn. omitted.)

In *Miller*, the government convicted the defendant of operating an unregistered still and failing to pay alcohol taxes based, in part, on records subpoenaed from banks where the defendant maintained accounts. In “examin[ing] the nature of the particular documents sought to be protected in order to determine whether there is a legitimate ‘expectation of privacy’ concerning their contents” (*United States v. Miller, supra*, 425 U.S. at p. 442), the court held “we perceive no legitimate ‘expectation of privacy’ in their contents. . . . All of the documents obtained, including financial statements and deposit slips, contain only information voluntarily conveyed to the banks

and exposed to their employees in the ordinary course of business.” (*Ibid.*) California cases have followed *Miller* and held no Fourth Amendment violation occurs when police obtain a suspect’s name and address from the post office (*People v. Pearson* (1985) 169 Cal.App.3d 319, 322-325) or the telephone company even where the subscriber has an unlisted number (*People v. Bencomo* (1985) 171 Cal.App.3d 1005, 1014-1015).

“[B]ecause the user voluntarily conveys this information to a third party[,] . . . the telephone company,” “the individual user assumes the risk that the third party will in turn disclose it to the police upon request. [Citations.]” (*Ibid.*)

Minor fails to present any cognizable ground for reaching a different result in this case. Education Code section 49076 declares, with certain exceptions not applicable here, “[a] school district is not authorized to permit access to pupil records to a person without written parental consent or under judicial order . . . .” (Ed. Code, § 49076, subd. (a).) But “pupil records” means “any item of information directly related to an identifiable pupil, *other than directory information . . . .*” (Ed. Code, § 49061, subd. (b), italics added.) ““Directory information”” includes a “pupil’s name[ or] address.” (Ed. Code, § 49061, subd. (c).) The vice-principal’s disclosure of minor’s name and address did not violate this statute.

Education Code section 49076.5 creates an exception to Education Code section 49076 that *allows* the release of a “pupil’s identity and location” under certain circumstances. Subdivision (a) provides, “Notwithstanding Section 49076, each school district shall release any information it has specific to a particular pupil’s identity and location that relates to the transfer of that pupil’s records to another school district within this state or any other state or to a private school in this state to a designated peace officer, upon his or her request, when a proper police purpose exists for the use of that information.” Subdivision (b) of the statute details the requirements necessary for a disclosure under subdivision (a), which include the existence of “probable cause . . . that

the pupil has been kidnapped and that his or her abductor may have enrolled the pupil in a school . . . .” This statute, while it applies only to potentially kidnapped students, does not expressly prohibit a school district from otherwise releasing a student’s directory information to law enforcement for other reasons. Nothing in either statute supports a conclusion the warrantless disclosure of minor’s name and address violated a societally recognized reasonable expectation of privacy.

As noted, on appeal minor now cites to Education Code section 49073 to support his argument. It declares, in relevant part, “School districts shall adopt a policy identifying those categories of directory information . . . that may be released. The district shall determine which individuals, officials, or organizations may receive directory information. . . . [¶] Directory information may be released according to local policy as to any pupil or former pupil.”

First, minor failed to cite this statute to support his suppression motion in the juvenile court and is now barred from relying on it. (*People v. Rios* (2011) 193 Cal.App.4th 584, 591; *People v. Scott* (1993) 17 Cal.App.4th 405, 410-411.) “[D]efendants must do more than merely assert that the search or seizure was without a warrant” (*People v. Williams* (1999) 20 Cal.4th 119, 129), and while “the requisite specificity is generally satisfied, *in the first instance*, if defendants simply assert the absence of a warrant and make a prima facie showing to support that assertion” (*id.* at p. 130), where “defendants have a specific argument *other than the lack of a warrant* as to why a warrantless search or seizure was unreasonable, they must specify that argument as part of their motion to suppress and give the prosecution an opportunity to offer evidence on the point” (*id.* at p. 130). “Moreover, once the prosecution has offered a justification for a warrantless search or seizure, defendants must present any arguments as to why that justification is inadequate” and “if defendants detect a critical gap in the prosecution’s proof or a flaw in its legal analysis, they must object on that basis to

admission of the evidence or risk forfeiting the issue on appeal.” (*Ibid.*) Minor did not merely claim the police obtained his identity and address without a warrant, but rather argued the disclosure violated certain provisions of the Education Code governing pupil records. Thus, he waived any reliance on Education Code section 49073 in this case.

Second, even if minor preserved this argument he could not prevail. For one thing, there has been no showing the vice-principal’s disclosure of minor’s name and address to Rodriguez violated the school district’s policy. Moreover, minor cannot show this statute was intended to protect his privacy. Education Code section 49060 states the chapter governing pupil records was enacted “to resolve potential conflicts between California law and the provisions of [Family Educational Rights and Privacy Act of 1974 (FERPA; 20 U.S.C. § 1232g)] . . . in order to insure the continuance of federal education funds to public educational institutions within the state, and to revise generally and update the law relating to such records.” In *Gonzaga University v. Doe* (2002) 536 U.S. 273 [122 S.Ct. 2268, 153 L.Ed.2d 309], the Supreme Court held FERPA did not support a private right of action under section 1983 of Title 42 United States Code because FERPA’s “provisions entirely lack the sort of ‘rights-creating’ language critical to showing the requisite congressional intent to create new rights” (*id.* at p. 287), and its “nondisclosure provisions . . . speak only in terms of institutional policy and practice, not individual instances of disclosure” [citations] (*id.* at p. 288; see also *Ronson v. Commissioner of Correction of State of New York* (S.D.N.Y. 1982) 551 F.Supp. 450, 460 [state prisoner’s claim that state illegally possessed “his dental college records” did not amount to a constitutional violation]). Since the statutes governing pupil records and directory information do not create individual rights, minor’s reliance on them to establish he had a reasonable expectation of privacy is unpersuasive.

*b. Rodriguez Testifying as a Rebuttal Witness*

When the prosecution called Rodriguez to testify defense counsel objected, arguing he was not a proper rebuttal witness because the defense “presented nothing but impeachment witnesses” and did not “introduce[] new evidence or ma[k]e assertions that were not implicit in [minor’s] denial of guilt.” While agreeing “Rodriguez[’s testimony] could have been presented in the [People’s] case-in-chief,” the juvenile court judge concluded it was not “necessary.” Further, the court found “fortification of [C.L.’s] testimony is appropriate in light of th[e] massive attack both on credibility and on the actual fundamental points made by [C.L.]”

On appeal, minor repeats his claim Rodriguez was not a proper rebuttal witness. He argues his “statements to the detective did not serve to rebut the points on which C.L. was impeached, namely C.L.’s changed story with regard to the man in the truck and . . . as to where the alleged robbery took place.” We conclude minor’s contention lacks merit because it narrowly focuses on only a single aspect of the case.

Penal Code section 1093, subdivision (d) provides that, after each party has presented evidence in favor of its case, they “may then respectively offer rebutting testimony only, unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon their original case.” In *People v. Carter* (1957) 48 Cal.2d 737, the Supreme Court explained this limitation is “to assure an orderly presentation of evidence so that the trier of fact will not be confused; to prevent a party from unduly magnifying certain evidence by dramatically introducing it late in the trial; and to avoid any unfair surprise that may result when a party who thinks he has met his opponent’s case is suddenly confronted at the end of trial with an additional piece of crucial evidence.” (*Id.* at p. 753.) “Thus proper rebuttal evidence . . . is restricted to evidence made necessary by the defendant’s case in the sense that he has introduced new evidence or made assertions

that were not implicit in his denial of guilt,” and “does not include a material part of the case in the prosecution’s possession that tends to establish the defendant’s commission of the crime.” (*Id.* at pp. 753-754.)

However, the Supreme Court has recognized one circumstance where rebuttal evidence is permissible is “[t]estimony that repeats or fortifies a part of the prosecution’s case that has been impeached by defense evidence . . . .” (*People v. Young* (2005) 34 Cal.4th 1149, 1199.) Furthermore, “[t]he decision to admit rebuttal evidence rests largely within the discretion of the trial court and will not be disturbed on appeal in the absence of demonstrated abuse of that discretion. [Citations.]” (*Ibid.*)

Contrary to minor’s argument, his defense did not limit its impeachment of C.L. as to where the robbery occurred or whether he sought assistance from a passing motorist. Rather, the defense sought to impeach C.L. on almost every point: Whether minor and C.L. saw each other the day of the robbery; whether minor and his confederate were riding a tandem bicycle or separate bicycles; whether minor displayed a knife; how the assailants acquired possession of C.L.’s personal effects; as well as where the altercation occurred and whether C.L. sought help during the encounter. The reason for this extensive impeachment was to support a defense that the robbery never occurred and C.L. lied about the entire incident in an effort to avenge minor’s earlier beating. Rodriguez’s testimony minor initially denied either seeing C.L. or being with another person on the day the crime allegedly occurred and later recanted these statements tended to fortify C.L.’s credibility. Thus, we conclude the juvenile court properly exercised its discretion in allowing Rodriguez to testify as a rebuttal witness in this case.

*c. The Voluntariness of Minor’s Statements*

Rodriguez testified he and his partner visited minor’s home twice. The first time, minor was not at home. The officers left a business card with his sister. Later, Rodriguez spoke to minor’s mother by telephone and explained the purpose of the visit.

On their second visit, the officers found minor at home alone. The officers asked for permission to enter the apartment and minor let them do so. The officers were not in uniform, but did wear badges and carried guns strapped in holsters. Neither officer removed his gun during the time they were in the apartment. Upon entering the apartment, Rodriguez's partner walked through it checking to see if anyone else was present and looking for a bicycle. He did not find a bike.

Rodriguez asked minor if he had any weapons, said "[m]ind if I search you," and conducted a pat-down of him. He then advised minor of his *Miranda* rights. Minor acknowledged he understood each right and agreed to speak with the officers.

Minor now contends his statements to the police were involuntary, citing his age, personal circumstances, lack of contact with family members, plus the presence of armed police officers and the nature of Rodriguez's interrogation. A juvenile can waive his or her *Miranda* rights. (*In re Aven S.* (1991) 1 Cal.App.4th 69, 75.) "[T]he determination whether statements obtained during custodial interrogation are admissible against the accused is to be made upon an inquiry into the totality of the circumstances surrounding the interrogation, to ascertain whether the accused in fact knowingly and voluntarily decided to forgo his rights to remain silent and to have the assistance of counsel. [Citation.]" (*Fare v. Michael C.* (1979) 442 U.S. 707, 724-725 [99 S.Ct. 2560, 61 L.Ed.2d 197].) "When a juvenile's waiver is at issue, consideration must be given to factors such as 'the juvenile's age, experience, education, background, and intelligence, and . . . whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.' [Citations.]" (*People v. Nelson* (2012) 53 Cal.4th 367, 375; see also *People v. Lessie* (2010) 47 Cal.4th 1152, 1167; see also *J.D.B. v. North Carolina* (2011) \_\_\_ U.S. \_\_\_, \_\_\_ [131 S.Ct. 2394, 2408, 180 L.Ed.2d 310] [court may consider child's age in determining whether child is in custody].)

The prosecution has the burden of establishing a defendant's incriminating statements were voluntary. (*People v. Maestas* (1987) 194 Cal.App.3d 1499, 1504.) "On appeal, a reviewing court looks at the evidence independently to determine whether a defendant's confession [or statement] was voluntary, but will uphold the trial court's findings of the circumstances surrounding the confession [or statement] if supported by substantial evidence. [Citations.]" (*People v. Lewis* (2001) 26 Cal.4th 334, 383.)

We conclude minor's argument lacks merit. He cites to the fact the police questioned him while he was alone. But the police conducted the interrogation at minor's home, not the police station. Furthermore, the absence of other family members resulted from mere circumstance. Rodriguez and his partner visited minor's apartment twice, the first time leaving a business card with a family member. Thereafter, Rodriguez spoke to minor's mother by phone, explaining the reason for seeking to contact her son. The police had no way of knowing minor would be alone when they made their second visit to the apartment.

Minor's age and lack of an extensive criminal record are factors to consider. But alone they do not support a conclusion the interrogation was coercive or rendered his responses involuntary. As noted, the interrogation occurred in minor's living room after he voluntarily allowed the police to enter the apartment, and with prior notice to his family that the police wanted to question him. While the officers were armed, they never displayed their guns or threatened to use them. Minor claims Rodriguez patted him down without consent. But the record suggests otherwise. Rodriguez testified he asked minor if he could search him and there is no evidence minor verbally or physically resisted the patdown. Nor does minor present any legal authority or persuasive argument that the search of the apartment before he was informed of his rights, acknowledged he understood them, and agreed to talk rendered the subsequent admissions involuntary.

The claim that minor's admissions resulted from improper deception also lacks merit. "Police deception during a custodial interrogation may but does not necessarily invalidate incriminating statements." (*People v. Mays* (2009) 174 Cal.App.4th 156, 164.) "Cases in California have established the proposition that deception which produces a confession does not preclude admissibility of the confession unless the deception is of such a nature to produce an untrue statement. [Citations.]" (*People v. Watkins* (1970) 6 Cal.App.3d 119, 125.) Thus, "[a] psychological ploy is prohibited only when, in light of all the circumstances, it is so coercive that it tends to result in a statement that is both involuntary and unreliable. [Citations.]" (*People v. Mays, supra*, 174 Cal.App.4th at p. 164.) Here, there is no indication Rodriguez's single lie about eyewitnesses identifying minor rendered the latter's admissions involuntary. In addition, we note that while minor eventually admitted seeing C.L. the day of the robbery and that he was with a friend, he repeatedly denied robbing C.L.

Thus, we conclude the record supports the juvenile court's decision to admit minor's statements.

### *3. Review of C.L.'s Criminal Record*

During the jurisdictional hearing, which began on January 26, 2011 and ended February 3, defense counsel sought to discover the record of C.L.'s criminal history, i.e., rap sheet. The juvenile court judge agreed to conduct an in camera review of it and, after having done so, declined to disclose its contents, stating she did not find anything "that might . . . be pertinent or relevant . . . ." At minor's counsel's request, the record on appeal has been augmented to include a copy of that one-page document.

Citing an "accused's right of discovery" and the procedures developed for judicial review of a peace officer's confidential personnel records, minor argues we must review C.L.'s criminal record to determine whether the juvenile court abused its

discretion in denying to disclose to him any of the information in the rap sheet. The Attorney General argues C.L.'s criminal history record is confidential and thus not subject to disclosure. But Welfare and Institutions Code section 827.9, subdivision (a), declaring "records or information gathered by law enforcement agencies relating to the taking of a minor into custody, temporary custody, or detention (juvenile police records) should be confidential," expressly provides "[t]his section does not govern the release of police records involving a minor who is the witness to or victim of a crime . . . ." (*Ibid.*)

Nonetheless, we conclude the juvenile court followed the proper procedure in this case and our review of the rap sheet supports a conclusion the juvenile court did not err in concluding that, at the time of the jurisdictional hearing, C.L.'s criminal history did not contain any relevant information.

The Supreme Court has recognized "[a] motion for discovery by an accused is addressed to the sound discretion of the trial court, which has inherent power to order discovery in the interests of justice. [Citations.]" (*Hill v. Superior Court* (1974) 10 Cal.3d 812, 816.) Because of "the quasi-criminal character of delinquency proceedings," the Supreme Court has further held "juvenile courts . . . have the same degree of discretion as a court in an ordinary criminal case to permit, upon a proper showing, discovery between the parties." (*Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 801; see also *In re Derrick B.* (2006) 39 Cal.4th 535, 543-544.)

But "[t]he right of an accused to obtain discovery is not absolute." [Citation.] "[The] court retains wide discretion to protect against the disclosure of information which might unduly hamper the prosecution or violate some other legitimate governmental interest." [Citation.] This may be particularly true when the information sought is not directly related to the issue of a defendant's guilt or innocence. [Citation.] [Citation.]" (*People v. Avila* (2006) 38 Cal.4th 491, 606.) In *Pennsylvania v. Ritchie* (1987) 480 U.S. 39 [107 S.Ct. 989, 94 L.Ed.2d 40] the United States Supreme Court

recognized “[a] defendant’s right to discover exculpatory evidence does not include the unsupervised authority to search through the [State’s] files. [Citations.] . . . In the typical case where a defendant makes only a general request for exculpatory material . . . , it is the State that decides which information must be disclosed. . . . Defense counsel has no constitutional right to conduct his own search of the State’s files to argue relevance. [Citation.]” (*Id.* at p. 59.) Thus, “[p]arties who challenge on appeal trial court orders withholding information as privileged or otherwise nondiscoverable “must do the best they can with the information they have, and the appellate court will fill the gap by objectively reviewing the whole record.” [Citation.]’ [Citation.]” (*People v. Avila, supra*, 38 Cal.4th at p. 606.)

Minor acknowledges he was not entitled to disclosure of the rap sheet itself. (*People v. Roberts* (1992) 2 Cal.4th 271, 308.) But cases have recognized that, “[g]enerally, a witness’s felony convictions must be disclosed to the defense even if they are inadmissible. [Citation.]” (*People v. Santos* (1994) 30 Cal.App.4th 169, 177; see also (Pen. Code, § 1054, subd. (d).)

Since C.L. is a minor, his rap sheet likely consists of only juvenile adjudications, and it is well settled that no matter how serious the charge, a juvenile adjudication does not constitute a felony conviction. (*People v. Burton* (1989) 48 Cal.3d 843, 861; *People v. Sanchez* (1985) 170 Cal.App.3d 216, 218 [“Juvenile adjudication is a civil and not a *criminal proceeding*” and “[a] juvenile’s delinquency may consist of felony activity, but an adjudication as such is not a *felony conviction*”].) But *People v. Wheeler* (1992) 4 Cal.4th 284 held the enactment of the Truth-in-Evidence clause (Cal. Const., art. I, § 28, subd. (d)) rendered “admissible, subject to trial court discretion, as ‘relevant’ evidence,” any “past criminal conduct amounting to a misdemeanor [that] has some logical bearing upon the veracity of a witness in a criminal proceeding . . . .” (*People v. Wheeler, supra*, 4 Cal.4th. at p. 295.) In *People v. Lee*

(1994) 28 Cal.App.4th 1724, the court extended *Wheeler*'s holding to conclude "at least in cases which do not fall under Welfare and Institutions Code section 1772 [applying to persons honorably discharged by the Youthful Offender Parole Board], . . . prior conduct evincing moral turpitude even if such conduct was the subject of a juvenile adjudication" is admissible. (*People v. Lee, supra*, 28 Cal.App.4th at p. 1740.)

In *Hill*, the Supreme Court held the trial court "exceeded its discretion in denying discovery of any felony convictions in [a prosecution witness's] 'rap sheet.'" (*Hill v. Superior Court, supra*, 10 Cal.3d at p. 821.) But *Hill* rejected the defendant's claim the trial court also erred by refusing to disclose that witness's record of arrests and detentions. "In view of the minimal showing of the worth of the information sought and the fact that requiring discovery on the basis of such a showing could deter eyewitnesses from reporting crimes, we are satisfied that respondent did not abuse its discretion in denying discovery of those records, if they exist." (*Id.* at p. at p. 822.)

We have reviewed C.L.'s criminal history record and note, that as of the date of the jurisdictional hearing, it contained only records of two arrests for minor offenses and in each instance the police released him to a parent or guardian. In this case, no reason appears to reach a result different from the decision in *Hill*. Thus, we conclude the juvenile court did not abuse its discretion in refusing to disclose to the defense any information contained in C.L.'s criminal record.

#### 4. *Minor's Probation Conditions*

Finally, minor challenges the validity of several probation conditions the juvenile court imposed on the grounds they are either vague or overbroad.

Welfare and Institutions Code section 730, subdivision (b) provides that "[w]hen a ward . . . is placed under the supervision of the probation officer or committed to the care, custody, and control of the probation officer, 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.” Cases have recognized juvenile courts have broad discretion in selecting and imposing juvenile probation conditions. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889; *In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) “However, a juvenile court’s discretion to impose conditions of probation is not boundless, and a probation condition must not violate a probationer’s inalienable rights.” (*In re R.P.* (2009) 176 Cal.App.4th 562, 566.)

As noted, minor relies on claims the conditions at issue are constitutionally infirm because they are either too vague or overbroad. “[T]he underpinning of a vagueness challenge is the due process concept of ‘fair warning.’ [Citation.] The rule of fair warning consists of ‘the due process concepts of preventing arbitrary law enforcement and providing adequate notice to potential offenders’ [citation] . . . .” (*In re Sheena K., supra*, 40 Cal.4th at p. 890.) “[T]he overbreadth doctrine requires that conditions of probation that impinge on constitutional rights must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation. [Citations.]” (*In re Victor L., supra*, 182 Cal.App.4th at p. 910.) Furthermore, since minor challenges the terms “without reference to the particular sentencing record developed in the trial court” (*In re Sheena K., supra*, 40 Cal.4th at p.887), thus presenting “a facial challenge . . . to the constitutionality of . . . probation condition[s], there [wa]s no need [for him] to preserve the claim by an objection in the juvenile court. [Citation.] Under such circumstances, fairness and efficiency considerations weigh in favor of an appellate court’s de novo review . . . .” (*In re R.P., supra*, 176 Cal.App.4th at p. 566.)

Several conditions declared minor could not “use, possess or be under the influence of any intoxicant,” “use or possess any aerosol container, felt tip marker or any other implement that’s capable of defacing unless under the direct supervision of a parent, lawyer or school official,” “use [ ]or possess any firearms or weapons,” or “wear

or possess any clothing, jewelry or insignia which is indicative of criminal street gang membership or affiliation.” Minor argues these conditions are too vague “because they lack an express knowledge requirement . . . .”

First, with respect to the restrictions on minor’s use or possession of intoxicants and weapons, *People v. Kim* (2011) 193 Cal.App.4th 836 held in the context of adult probation, a firearm prohibition condition that did not contain an explicit knowledge requirement was valid. Noting “[t]he function served by an express knowledge requirement should not be extended beyond its logical limits” (*id.* at p. 847), *Kim* declared “where a probation condition implements statutory provisions that apply to the probationer independent of the condition and does not infringe on a constitutional right, it is not necessary to include in the condition an express scienter requirement which is necessarily implied in the statute” (*id.* at p. 843). This case involves juvenile probation where “[t]he permissible scope of discretion in formulating terms of juvenile probation is even greater than that allowed for adults. ‘[E]ven where there is an invasion of protected freedoms “the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.”’ [Citation.] 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.’ [Citation.] Thus, ““a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.”’ [Citations.]” (*In re Victor L., supra*, 182 Cal.App.4th at p. 910.)

Even minor acknowledges he “has no right to possess contraband, such as illegal drugs, and his right to possess items like alcohol and firearms is restricted because he is a minor.” He provides no explanation why the restriction on his use or possession of these items requires greater protection than that accorded to an adult probationer.

As for minor's possession or use of materials for defacing property and his wearing or possessing gang paraphernalia as the Attorney General recognizes this defect can be corrected by modifying each of the foregoing conditions "to impose an explicit knowledge requirement." (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 892; see *In re Victor L.*, *supra*, 182 Cal.App.4th at pp. 912, 931.) We can implement this change.

Minor also contends these conditions are "overbroad because they infringe upon constitutionally protected conduct[] without being closely tailored to the purposes they seek to serve." Again, insofar as his possession and use of intoxicants and weapons are concerned, minor fails to cite any authority that enforcement of them would violate any of his constitutional rights. Contrary to minor's assertion, the ban on possessing or using an "aerosol container, felt tip marker or any other implement that's capable of defacing" was not total. Rather, the juvenile court allowed minor to possess and use them "under the direct supervision of a parent, lawyer or school official." Minor does not explain why this exclusion cannot validate the restriction on his use of defacing materials in this case.

As for the prohibition against wearing or possessing gang paraphernalia, in *People v. Leon* (2010) 181 Cal.App.4th 943, the Court of Appeal considered an overbreadth challenge to the following probation condition: "No insignia, tattoos, emblem, button, badge, cap, hat, scarf, bandanna, jacket, or other article of clothing which is evidence of affiliation with or membership in a gang." (*Id.* at pp. 947-948.) Other than amending the condition to include a requirement the defendant "know or that the probation officer informs you is evidence of, affiliation with, or membership in a criminal street gang," the appellate court upheld the condition, noting "reasonable probation conditions may limit constitutional rights provided they are closely tailored to achieve legitimate purposes. [Citations.]" (*Id.* at p. 951.) No reason appears for a different result in this case. Minor's reliance on *Gatto v. County of Sonoma* (2002) 98

Cal.App.4th 744 and *City of Harvard v. Gaut* (1996) 277 Ill.App.3d 1 [660 N.E.2d 259] is unavailing. Neither case involved the validity of a probation condition imposed on a person convicted of a crime.

Finally, minor challenges the condition limiting his right of association. The juvenile court's minute order states: "Minor not to associate with anyone who you know is disapproved by the court, your parent/guardian, or probation officer, or anyone who you know is on probation or parole, or a criminal street or tagging crew or using/selling/possessing, or under the influence of alcohol or controlled substances." (Some capitalization omitted.) At the dispositional hearing, the juvenile court ordered minor "not [to] knowingly associate with anyone that he knows are members of a criminal street gang, tagging crew[,] or on probation or parole[,] and he is prohibited [from] remaining in the presence of anyone that he knows is using, selling, possessing or under the influence of any intoxicant." Minor argues this condition is both too vague and overbroad because "it is not clear to an ordinary person what would constitute associating with a person in one of the prohibited categories or remaining in his or her presence."

Although the associational restriction contained in the minute order and the court's statement of it at the dispositional hearing differ somewhat, "[t]he clerk's minutes and the reporter's transcript are to be harmonized, if possible. [Citation.]" (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1018.) Here, both the minutes and the transcript prohibit minor from knowingly associating with or remaining in the presence of the same classes of individuals.

Several cases have upheld similar juvenile probation conditions so long as they include a knowledge requirement. (*In re Sheena K, supra*, 40 Cal.4th at pp. 889, 892 ["condition forbidding . . . association with 'anyone disapproved of by probation'" upheld by "inserting the qualification that defendant have knowledge of who was disapproved of by her probation officer, . . . thus securing the constitutional validity of

the probation condition”]; *In re Victor L.*, *supra*, 182 Cal.App.4th at pp. 911, 912 [“condition prohibiting [the minor] from associating with ‘anyone [with] whom a parent or Probation Officers prohibits association[.]’” upheld after “modify[ing] it to include a personal knowledge requirement”]; *In re Ramon M.* (2009) 178 Cal.App.4th 665, 676, 678 [condition “[y]ou are not to associate with any member of” the minor’s gang upheld with addition of knowledge requirement]; *In re Byron B.*, *supra*, 119 Cal.App.4th at pp. 1015, 1018 [condition that the minor “must ‘[n]ot have any direct or indirect contact with anyone disapproved by parent, guardian, probation officer or staff’” construed to include knowledge requirement “as stated in the minute order, is not unreasonable, overbroad, or void for vagueness”]; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1237, 1243 [probation condition stating the minor “not associate with anyone disapproved of by his probation officer” upheld as “consistent with the rehabilitative purpose of probation” without “impermissibly burden[ing]” the minor’s “constitutional right of association”].)

Minor seeks a different result, arguing the words “associate” and “remain” are too vague. But he does not cite any legal authority supporting this assertion. He relies on *In re H.C.* (2009) 175 Cal.App.4th 1067, where the appellate court dealt with a condition stating “the minor not frequent any areas of gang related activity and not participate in any gang activity[.]” (*Id.* at p. 1072.) The appellate court reversed the condition and remanded the case to the juvenile court “to allow the trial court to more closely tailor the condition consistent” with the case law. (*Id.* at p. 1073.) While describing the word “frequent” as “a verb form, no longer in common usage [that] would be especially challenging to understand” (*id.* at p. 1072), the appellate court found the “most difficult part of the” condition was defining the geographic area the minor was to be prohibited from being in or visiting (*ibid.*).

Given the dearth of authority concerning the purported vagueness of the terms “associate” and “remain,” plus the extensive authority upholding similar

probationary conditions in juvenile proceedings, we reject minor's vagueness and overbreadth challenges to this condition.

#### DISPOSITION

The probation condition declaring appellant may not "use or possess any aerosol container, felt tip marker or any other implement that's capable of defacing unless under the direct supervision of a parent, lawyer or school official," is modified to state appellant cannot "knowingly use or possess any aerosol container, felt tip marker or any other implement that's capable of defacing unless under the direct supervision of a parent, lawyer or school official." The probation condition declaring appellant cannot "wear or possess any clothing, jewelry or insignia which is indicative of criminal street gang membership or affiliation" is modified to state appellant cannot "wear or possess any clothing, jewelry or insignia which he knows or has reason to know is indicative of criminal street gang membership or affiliation." As modified, the judgment is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

MOORE, J.

ARONSON, J.