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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

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

THE PEOPLE,

Plaintiff and Respondent,

v.

IVAN G.,

Defendant and Appellant.

G050896

(Super. Ct. No. DL048327)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Deborah C. Servino, Judge. Affirmed.

James R. Bostwick, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Anthony Da Silva and Peter Quon, Jr., Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Ivan G. contends there is insufficient evidence to support the juvenile court's finding he violated his probation. We disagree and affirm the court's ruling.

#### FACTUAL AND PROCEDURAL BACKGROUND

In November 2013, appellant was placed on probation for committing felony vandalism for the benefit of a Tustin gang known as Altadena Street (A.S.). As a condition of his probation, appellant was ordered to obey all laws and not use any illegal drugs or alcohol. He was also ordered not to knowingly be in any area where gang members – specifically A.S. members – congregate. At the time these conditions were imposed, appellant was living in A.S. territory, but he subsequently moved.

Appellant's initial performance on probation was not good. In fact, within a few months, he violated probation by being drunk in public, possessing drugs, resisting arrest and frequenting known gang areas. The juvenile court reinstated appellant's probation on the same terms and conditions.

On September 11, 2014, appellant was again charged with violating his probation. Specifically, it was alleged appellant had used marijuana and been in A.S. territory on several occasions. The evidence at the probation revocation hearing revealed that on July 2, 2014, probation officer Arturo Lopez "reindoctrinated" appellant to the terms of his probation. Specifically, Lopez informed appellant he was not allowed to use illegal drugs or alcohol, and he was not allowed to be in any area where A.S. members were known to gather, including the area around Myrtle Street in Tustin. However, during an office visit with Lopez on August 6, 2014, appellant admitted he had smoked marijuana two days earlier.

In addition, on August 17, 2014, Tustin Police Sergeant Manuel Arzate saw appellant and Clarence Phillips standing in an alley near Myrtle Street in A.S. territory. Arzate was familiar with both subjects; he knew appellant was a probationer who no longer lived in that area, and he had arrested Phillips two days earlier for writing A.S.

graffiti in that area. When appellant saw Arzate's patrol car, he took off running. He tried to hide in an alcove off Myrtle Street, but Arzate found and detained him. In talking with Arzate, appellant said he knew he was violating his probation by being in that area.

Despite this, appellant was seen in A.S. territory again the following month, on September 9, 2014. That day, Tustin Police Officer Brian Polling spotted appellant in front of an abandoned house on Myrtle Street. Polling knew appellant did not live in that area. Having contacted appellant there in the past, Polling had repeatedly informed appellant he was not supposed to hang around there.

Testifying on his own behalf, appellant said the only reason he was in A.S. territory on the above dates was to see his girlfriend, who lives on Myrtle Street. He said they have been dating for years, and no one had ever told him he could not visit her. But appellant admitted knowing that visiting his girlfriend in A.S. territory was a violation of his probation.

Defense counsel argued the probation condition prohibiting appellant from going into areas where gang members were known to congregate was overly broad and unduly vague. He also asserted it was fundamentally unfair to punish appellant for going to see his girlfriend. However, the juvenile court found appellant violated his probation by going into A.S. territory on August 17 and September 9, 2014. The court also found appellant violated probation by smoking marijuana.

At the disposition hearing, the juvenile court ordered appellant to spend seven days in juvenile hall with credit for time served. In addition, the court removed appellant from his parents' custody and placed him in the custody of his adult sister. The court also ordered all prior terms and conditions of appellant's probation to remain in effect. Speaking to the condition prohibiting appellant from going into areas where gang members were known to congregate, the court said there was nothing wrong per se with appellant going into A.S. territory to visit his girlfriend at her house. However, appellant was not allowed to hang out with her outside her home in any area where A.S. members

were known to hang out. In so ruling, the court further noted A.S.'s territory is rather small, so it would not be difficult for appellant to visit his girlfriend in other places.<sup>1</sup>

## DISCUSSION

In challenging the juvenile court's finding he violated his probation, appellant reiterates his claim the condition requiring him to stay away from places where gang members are known to congregate is vague and overbroad. He also claims there is insufficient evidence to prove that any gang members had ever congregated at the particular locations where he was stopped in this case. Neither claim is persuasive.

To survive a vagueness challenge, "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[.]'" (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) Additionally, "A probation condition that imposes limitations on a person's constitutional rights must closely tailor those limitations to the purpose of the condition to avoid being invalidated as unconstitutionally overbroad. [Citation.]" (*Ibid.*) However, as compared to adult probationers, juvenile probationers may be subjected to tighter restrictions because they are in greater need of guidance and supervision and they possess more circumscribed rights in general. (*Id.* at p. 889; *In re Tyrell J.* (1994) 8 Cal.4th 68, 81, overruled on other grounds in *In re Jamie P.* (2006) 40 Cal.4th 128.)

We point this out because while appellant was of majority age at the time the hearing in this case took place, he was a minor when his alleged probation violations occurred. More importantly, though, it is readily apparent everyone in this case, including appellant himself, knew the probation condition requiring him to stay away from known gang areas meant he was not allowed to be in A.S. territory. On each of the occasions described above, appellant was fully aware he was violating probation by being

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<sup>1</sup> The evidence revealed A.S.'s claimed territory is bordered by Pasadena, McFadden, Newport and Sycamore streets in Tustin, an area that is less than one square mile.

in A.S. territory, so he has no right to complain he was unaware of what was expected of him.

Appellant's biggest beef with the travel restriction appears to be that, on its face, it prevented him from going into A.S. territory at any time for any reason, even to see his girlfriend. As appellant puts it, banning him from "visiting his girlfriend at all places and times within [A.S.'s territory] was an unreasonable restriction on his freedom of travel." However, the juvenile court made it clear it did not have a problem with appellant going into A.S. territory to visit his girlfriend at her house. Rather, the court simply did not want appellant to hang out in other parts of A.S. territory (which the evidence in this case showed he had been doing) because that could expose him to negative gang influences. In so doing, the court reasonably accommodated appellant's rights of association and travel. (See generally *In re Sheena K.*, *supra*, 40 Cal.4th 875 at p. 891 [probation conditions that appear to be unconstitutional may be rendered valid when the juvenile court offers oral comments clarifying their scope and meaning].) Considering that and the fact the travel restriction only applies to a small, well-defined area, we do not believe it is overbroad or otherwise unlawful. (*In re H.C.* (2009) 175 Cal.App.4th 1067, 1072 [while a probation condition prohibiting a minor from frequenting any place where gang members congregate might be overbroad, a travel condition that is limited to a gang's particular geographic location and makes exceptions for certain types of travel would be permissible].)

Appellant also claims there was "no evidence that [A.S.] members had ever congregated or were at relevant times congregating at the two locations where the officers saw [him]." But Sergeant Arzate testified that when he spotted appellant on August 17, 2014, he was standing in an alley off Myrtle Street with a person Arzate had seen tagging A.S. graffiti in that area just two days earlier. Thus, appellant was in an area where gang activity was known to occur, and his probation was properly revoked on that basis.

Irrespective of the travel restriction, appellant does not challenge the trial court's finding he violated probation by using marijuana. Indeed, he admits that finding is sufficiently supported by the admission he made to his probation officer on August 6, 2014. Therefore, it is immaterial whether appellant's challenge to his other probation violations is valid. (*People v. Arreola* (1994) 7 Cal.4th 1144, 1161 [error in admitting improper evidence to establish one alleged probation violation was harmless because other violations were amply proven].) Given the totality of the evidence, there is no basis for disturbing the juvenile court's ruling.

#### DISPOSITION

The juvenile court's order finding appellant in violation of his probation is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.