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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

IN RE D.G., a Person Coming Under the
Juvenile Court Law.

H037973
(Santa Clara County
Super. Ct. No. JV38750)

THE PEOPLE,

Plaintiff and Respondent,

v.

D.G.,

Defendant and Appellant.

The minor, D.G., appeals from the juvenile court's dispositional order imposing probation. The juvenile court sustained a Welfare and Institutions Code section 602 petition, finding that the minor committed two counts of assault with a deadly weapon or by means of force likely to produce great bodily injury (counts 1 and 2; former Pen. Code, § 245, subd. (a)(1)¹) and one count of petty theft (count 3; §§ 484/488). With respect to the assault counts, the juvenile court found true allegations that the minor personally used a deadly weapon. (§§ 667, 1192.7.)

¹ All further statutory references are to the Penal Code unless otherwise indicated.

On appeal, the minor contends there is insufficient evidence that she used a deadly weapon or force likely to produce great bodily injury. She also contends the matter must be remanded so the juvenile court can specify whether her assault offenses are felonies or misdemeanors. Additionally, she challenges a condition of probation that prohibits her from being adjacent to any school campus.

For reasons that we will explain, we will modify the probation condition concerning school campuses. As so modified, we will affirm the juvenile court's dispositional order.

BACKGROUND

A. Prosecution's Case

Connie and Leon Nguyen² worked at a nail salon owned by their family. Their normal practice was to do a customer's nails, then take payment from the customer. The minor had been to the salon several times. Connie considered her a difficult client, because she had previously been picky and rude.

On November 16, 2011, at around 7 p.m., the minor entered the salon with her boyfriend, Maximino Alcaraz. When the minor came in, Connie was working on another customer's nails. She told Leon to have the minor pay before doing her nails. However, Leon, who had no prior experience with the minor, did the minor's nails before asking for payment.

The minor wanted a particular airbrush design and showed Leon a picture of what she wanted. Leon did it exactly as depicted. However, when the minor showed Alcaraz her nails, he expressed that he did not like them. The minor then told Leon to "take it off." Leon told the minor she would still have to pay, and the minor agreed, but insisted

² Since Connie and Leon Nguyen share the same last name, we will refer to them by their first names for purposes of clarity and not out of disrespect.

he take off the design and do something different. Leon told her she would have to pay for both designs, but said he would only charge her \$12 instead of \$15.

When Leon asked the minor to pay him, she said she had to go get money from the car. Leon asked her to leave something “for insurance,” or for the minor or Alcaraz to remain in the salon. The minor refused and walked out with Alcaraz.

Leon followed the minor and Alcaraz out to the parking lot. As he followed them, the minor was cursing at him. Rather than walk straight to her car, the minor zigzagged and dragged her feet.

Connie went out to the parking lot after hearing people screaming. She took a metal curtain rod with her. The curtain rod was between 31 and 32 inches long and three-quarters of an inch thick. It was hollow. Connie carried the rod at her side.

When Connie first approached, the minor was on the phone. Connie heard her say, “[D]ad, dad, come up here.” Leon heard the minor tell her father, “Bring the shit.” The minor continued to curse at Leon, then attacked him by scratching his face with her nails and ripping his shirt. Alcaraz then punched Leon in the head, causing Leon to go down to the ground. Alcaraz was on top of Leon, punching him, while the minor was kicking Leon.

Connie raised the curtain rod and told the minor to get Alcaraz off of Leon. The minor responded by asking, “What? What, bitch? What the fuck are you going to do?” The minor hit Connie’s phone, causing her to drop it. The minor then hit Connie on the side of the head, causing her to fall backwards. The blow also caused Connie to release the curtain rod, and the minor grabbed it.

The minor next hit Connie with the curtain rod. Connie blocked the initial blows with her hand, but the minor managed to hit her on the side of the head and in the ribs. The minor went over to Leon and hit him with the curtain rod. She mostly struck him in the arm because he shielded his face from the blows. The minor had both hands on the rod as she hit Leon with it.

Connie tried to pull the minor away from Leon. The minor fought with her and pulled her hair. Connie then grabbed some of the minor's hair. Meanwhile, a bystander had pulled Alcaraz off of Leon. Leon then got the minor away from Connie.

The minor's father pulled up in an SUV and asked, "Who hit my daughter?" Leon ran, and the minor's father chased him into a store. The police soon arrived.

As a result of the incident, Connie suffered headaches. A lot of her hair was pulled out. She had some bruises on her arm, shoulder, and rib area. She also had a bruise near her eye, which twitched a lot. She took over the counter pills and could not do her regular work for three or four days. Leon suffered bruises in the back of his head and on the side of his head near his eye. His face, elbow, and back were all scratched.

Neither the minor nor Alcaraz had any visible injuries. The minor had no money on her at the time of her arrest, and no money was found in her car. Alcaraz had \$62 on his person.

B. Defense Case

The minor testified that she asked Leon to take off the airbrush on her fingernails because he had done it in a sloppy manner. When Leon told her she still needed to pay him, she agreed. She checked her bra, where she usually kept money, but had none. She told Leon she would go out to get money from her car, where she had \$20. Leon accused her of intending to leave without paying. He did not ask her to leave a cell phone or her identification.

The minor denied that she zigzagged when walking to her car. She claimed that Leon ran in front of her and Alcaraz, yelling at them. She called her father after Alcaraz pointed out Connie, who had approached with the metal rod.

According to the minor, Leon started the altercation by pushing her and hitting her. When Alcaraz said, "Don't touch her," Leon went to hit him while Connie struck the minor with the curtain rod. The minor struggled to get the rod from Connie. After grabbing it, she swung it at Connie but missed, then threw the rod away. Connie then

grabbed the minor's hair and started hitting her. At the same time, Leon was grabbing Alcaraz's hair. The minor pushed Connie away, then went to help Alcaraz. Connie came back at her from behind, grabbing her hair again and punching her. At that point, the minor returned the punches in order to fend Connie off. Alcaraz helped break up their fight after a bystander broke up his fight with Leon.

The minor denied hitting Leon with the rod or kicking him. She denied saying, "Bring your shit" when talking to her father on the phone. She admitted that the rod was capable of injuring someone "pretty seriously."

The minor's father, Abdul Ziyad, also testified. The minor had called him while he was working in his backyard. The minor told him that a guy was not letting her leave. He went to help and saw a bunch of people around the minor and Alcaraz. The minor told him that Leon had hit her, and he chased Leon into a store. He denied that the minor told him to "bring your shit."

C. Charges, Findings, and Disposition

Based on the above incident, the District Attorney filed a second amended Welfare and Institutions Code section 602 petition alleging that the minor committed two counts of assault with a deadly weapon or by means of force likely to produce great bodily injury (counts 1 and 2; former § 245, subd. (a)(1)) and one count of second degree burglary (count 3; §§ 459/460, subd. (b)). In counts 1 and 2, the petition alleged that the minor personally used a deadly weapon. (§§ 667, 1192.7.)

A contested jurisdictional hearing was held on December 9 and 12, 2011. The juvenile court sustained the assault allegations in counts 1 and 2 (former § 245, subd. (a)(1)) as well as the associated allegations that the minor personally used a deadly weapon (§§ 667, 1192.7). In count 3, the juvenile court found that the minor committed petty theft. (§§ 484/488.)

At the dispositional hearing on December 23, 2011, the juvenile court placed the minor on probation, with 90 days on the electronic monitoring program. One of the

conditions of probation was that the minor “not be on or adjacent to any school campus unless enrolled or with prior administrative approval.”

DISCUSSION

A. Assault Counts – Sufficiency of the Evidence

The minor contends that the juvenile court erred by sustaining the two allegations of assault with a deadly weapon or by means of force likely to produce great bodily injury. (Former § 245, subd. (a)(1).)³ She contends the curtain rod was not a deadly weapon as a matter of law and that it was not used in a manner capable of inflicting great bodily injury.⁴ She also contends that the assault allegations cannot be sustained on the ground that she used force likely to produce great bodily injury.

1. Standard of Review

“ ‘The standard of proof in juvenile proceedings involving criminal acts is the same as the standard in adult criminal trials.’ [Citation.]” (*In re Cesar V.* (2011) 192 Cal.App.4th 989, 994.) “ ‘ “This court must view the evidence in a light most favorable to respondent and presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] If the circumstances reasonably justify the trial court’s findings, reversal is not warranted merely because the circumstances might also be reasonably reconciled with a contrary finding. [Citations.] The test on appeal is whether there is substantial evidence to support the conclusion of the trier of fact.” ’ ” (*Id.* at p. 995.)

³ Section 245, subdivision (a) now differentiates between assault with a deadly weapon (§ 245, subd. (a)(1)) and assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)).

⁴ The minor does not argue that the evidence was also insufficient to sustain the juvenile court’s finding that she personally used a deadly weapon within the meaning of section 1192.7, subdivision (c)(23).

2. Analysis

“As used in [former] section 245, subdivision (a)(1), a ‘deadly weapon’ is ‘any object, instrument, or weapon which is used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.’ [Citation.] Some few objects, such as dirks and blackjacks, have been held to be deadly weapons as a matter of law; the ordinary use for which they are designed establishes their character as such. [Citation.] Other objects, while not deadly per se, may be used, under certain circumstances, in a manner likely to produce death or great bodily injury. In determining whether an object not inherently deadly or dangerous is used as such, the trier of fact may consider the nature of the object, the manner in which it is used, and all other facts relevant to the issue. [Citations.]” (*People v. Aguilar* (1997) 16 Cal.4th 1023, 1028-1029 (*Aguilar*).

The minor argues that the curtain rod was not “ ‘used in such a manner as to be capable of producing and likely to produce, death or great bodily injury.’ ” (*Aguilar, supra*, 16 Cal.4th at pp. 1028-1029.) The minor relies on *People v. Beasley* (2003) 105 Cal.App.4th 1078 (*Beasley*), where the appellate court reversed two counts of assault with a deadly weapon: one in which the defendant used a broomstick to strike the victim, and one in which the defendant used a vacuum cleaner attachment to strike the victim.

In *Beasley*, the conviction reversals were based on the prosecution’s failure to present evidence concerning the nature of the broomstick and vacuum cleaner attachment. The prosecution had not introduced the actual weapons into evidence, nor photographs of the weapons. (*Beasley, supra*, 105 Cal.App.4th at pp. 1087-1088.) The victim’s testimony regarding those weapons and the force used was “cursory,” establishing only that she suffered pain and bruising on her arms and shoulders. (*Id.* at p. 1087.) The record did not reflect whether the broomstick was made of wood or plastic, whether it was hollow, or anything else regarding its “composition, weight, and rigidity.” (*Id.* at pp. 1087-1088.) “The jury therefore had before it no facts from which it could

assess the severity of the impact between the stick and [the victim's] body.” (*Id.* at p. 1088.) As for the vacuum cleaner attachment, the victim's testimony established that it was made of plastic and hollow, but was otherwise “vague” as to its size and shape. (*Ibid.*) The *Beasley* court found the evidence of bruising “insufficient to show that Beasley used the attachment as a deadly weapon” and held that “[s]triking an adult's shoulder and back with a hollow plastic instrument is not likely to produce significant or substantial injury.” (*Ibid.*)

In this case, in contrast to *Beasley*, there was more than “cursory” evidence regarding the curtain rod's composition and the severity of the blows that the minor struck with it. (*Beasley, supra*, 105 Cal.App.4th at p. 1087.) A photograph of the curtain rod was introduced into evidence, and testimony established that it was made of metal, hollow, between 31 and 32 inches long, and three-quarters of an inch thick. Connie described how the minor had tried to hit her in the head and face multiple times. Although Connie blocked most of the blows, the minor did manage to hit her on the side of the head at least once. This blow caused her to have bruising near her eye as well as headaches and eye twitches. The bruising near her eye lasted at least two days. Leon described how the minor held the rod with both hands when swinging it.⁵

Respondent cites *People v. Montes* (1999) 74 Cal.App.4th 1050 (*Montes*) in arguing that the evidence was sufficient to sustain the juvenile court's findings on the assault allegations. In *Montes*, the weapon was “a three-foot chain, which [the victim] described as ‘kind of thick’ and bigger than a wallet chain.” (*Id.* at p. 1053.) The defendant had struck the victim on the shoulder with the chain, which he had doubled

⁵ At trial, the minor herself admitted that the curtain rod was capable of injuring someone “[p]retty seriously,” and trial counsel initially argued that it was “capable of causing very serious injury.” When the minor asked the juvenile court to reconsider the deadly weapon finding, the juvenile court rejected the argument that it was not a deadly weapon “based on the testimony of the witnesses that were present and the proof that was prepared, although photographic in nature and not the actual weapon.”

over. Although the prosecution apparently failed to introduce either the chain or a photograph of it into evidence, the appellate court upheld the defendant's conviction of assault with a deadly weapon based on the victim's description of the chain and the manner in which the defendant had used it. Since the defendant had doubled the chain over when using it, it was apparent "he was attempting to inflict maximum harm." (*Id.* at p. 1054.) "Used in this manner, the chain was capable of producing and likely to produce great bodily injury. The jury was therefore entitled to find it constituted a deadly weapon." (*Ibid.*)

In this case, as in *Montes*, the juvenile court could determine that a three-foot long metal curtain rod was being used in a manner capable of inflicting great bodily injury when the minor held it with both hands and swung it at the victim's heads. The injuries suffered by Connie further support the juvenile court's finding that the minor used the curtain rod as a deadly weapon. (See *People v. Jaramillo* (1979) 98 Cal.App.3d 830, 837 [trial court could find that a one-inch diameter wooden dowel had been used as a deadly weapon where victim had contusions, abrasions, and swelling one day after defendant struck her with it].) Thus, the juvenile court heard and saw evidence from which it could reasonably conclude that the metal curtain rod was capable of inflicting great bodily injury and that the minor had used it in such a manner. (*Aguilar, supra*, 16 Cal.4th at pp. 1028-1029.)

We conclude that substantial evidence supports the juvenile court's findings that the minor committed two counts of assault with a deadly weapon.⁶

B. Assault Counts – Failure to Declare as Felonies or Misdemeanors

Assault with a deadly weapon is punishable either as a misdemeanor or as a felony. (Former § 245, subd. (a)(1).) Here, the minor claims that the juvenile court erred

⁶ We need not reach the minor's alternative argument that there was no substantial evidence she committed assault by means of force likely to produce great bodily injury.

by failing to make an explicit declaration whether her assaults were felonies or misdemeanors, and that remand is therefore required in accordance with *In re Manzy W.* (1997) 14 Cal.4th 1199, 1204 (*Manzy W.*).

1. Proceedings Below

In counts 1 and 2 of the second amended Welfare and Institutions Code section 602 petition, the District Attorney alleged that the minor committed assault with a deadly weapon or by means of force likely to produce great bodily injury, “a Felony,” and that in the commission of each assault, the minor “personally used a dangerous and deadly weapon, a(n) metal pole, within the meaning of Penal Code sections 667 and 1192.7.”

At the end of the jurisdictional hearing, the juvenile court sustained the petition and found “the allegations true and to have been proven with respect to count 1 and count 2 ...”

At the dispositional hearing, trial counsel noted that the juvenile court’s “ultimate holding was that [the minor] was responsible for assault with a deadly weapon and personal use of a deadly weapon.” Trial counsel asked that the juvenile court “reconsider” its finding that the rod was “in fact, a deadly weapon” and instead “simply find [the minor] responsible for a [section] 245, force likely to create bodily injury as opposed to personal use of a deadly weapon.” The juvenile court declined to “alter the findings.”

2. Applicable Law

Welfare and Institutions Code section 702 provides that in a juvenile proceeding, “[i]f the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court *shall declare* the offense to be a misdemeanor or felony.” (Italics added.)

The California Supreme Court has explained that Welfare and Institutions Code section 702 “requires an explicit declaration by the juvenile court whether an offense

would be a felony or misdemeanor in the case of an adult. [Citations.]” (*Manzy W., supra*, 14 Cal.4th at p. 1204; see also Cal. Rules of Court, rules 5.780(e)(5), 5.790(a)(1), 5.795(a).) “[T]he requirement that the juvenile court declare whether a so-called ‘wobbler’ offense [is] a misdemeanor or felony ... serves the purpose of ensuring that the juvenile court is aware of, and actually exercises, its discretion under Welfare and Institutions Code section 702.” (*Manzy W., supra*, at p. 1207.) “[N]either the pleading, the minute order, nor the setting of a felony-level period of physical confinement may substitute for a declaration by the juvenile court as to whether an offense is a misdemeanor or felony. [Citation.]” (*Id.* at p. 1208.)

However, remand is not required in every case when the juvenile court fails to make a formal declaration under Welfare and Institutions Code section 702. “[S]peaking generally, the record in a given case may show that the juvenile court, despite its failure to comply with the statute, was aware of, and exercised its discretion to determine the felony or misdemeanor nature of a wobbler. In such case, when remand would be merely redundant, failure to comply with the statute would amount to harmless error.” (*Manzy W., supra*, 14 Cal.4th at p. 1209.)

In response to our request for supplemental briefing, the Attorney General argues the juvenile court did not have discretion to declare the assaults to be misdemeanors. The Attorney General points out that the juvenile court sustained the allegations of personal deadly weapon use, necessarily rendering the assaults serious felonies under section 667, subdivision (d)(1) and section 1192.7, subdivision (c)(23).

As noted above, at the end of the jurisdictional hearing, the juvenile court sustained the petition and found “the allegations true and to have been proven with respect to count 1 and count 2 ...” Although the juvenile court did not make express findings regarding the personal deadly weapon use allegations, it was not required to do so. “There is no statutory requirement that, upon resolving a factual allegation, the court make a specific statutory reference within its factual finding.” (*In re Billy M.*

(1983) 139 Cal.App.3d 973, 981; see also *In re Sergio R.* (1991) 228 Cal.App.3d 588, 598 [“there is no express requirement that the court make particular findings as to each enhancement allegation in a juvenile petition”].) By sustaining the petition as alleged, the juvenile court “made the requisite findings to justify the imposition of the enhancements.” (*In re Sergio R., supra*, at p. 598.)

Any doubt about whether the juvenile court found true the personal deadly weapon use allegations was eliminated at the dispositional hearing. Trial counsel noted that the juvenile court had found true the “personal use of a deadly weapon” allegation and asked that the deadly weapon findings be reconsidered. The juvenile court declined to “alter the findings.” Dismissal of those allegations was the only way that counts 1 and 2 could have been treated as misdemeanors. Thus, we agree with the Attorney General that the juvenile court did not have discretion to declare counts 1 and 2 to be misdemeanors rather than felonies. (See *In re Andrew I.* (1991) 230 Cal.App.3d 572, 582 [residential burglary, a felony, could not have been declared a misdemeanor].)

Alternatively, as the Attorney General argues, any error was harmless as contemplated by the court in *Manzy W.* Since the juvenile court found that both assaults had been committed with a deadly weapon, and it declined to reconsider the deadly weapon use findings, “remand would be merely redundant.” (*Manzy W., supra*, 14 Cal.4th at p. 1209.) Under the circumstances, the juvenile court’s “failure to comply with the statute ... amount[s] to harmless error.” (*Ibid.*) We therefore need not remand this matter for a determination of whether the assaults in counts 1 and 2 are felonies or misdemeanors.

C. Probation Condition

As a condition of probation, the juvenile court ordered that the minor “not be on or adjacent to any school campus unless enrolled or with prior administrative approval.” The minor challenges this condition on two grounds. First, she contends the probation condition was not reasonably related to her offenses, and that trial counsel was ineffective

for failing to object on that ground. Second, she contends the probation condition is unconstitutionally vague and overbroad.

1. General Legal Principles

“The California Legislature has given trial courts broad discretion to devise appropriate conditions of probation, so long as they are intended to promote the ‘reformation and rehabilitation’ of the probationer. (Pen. Code, § 1203.1, subd. (j).)” (*In re Luis F.* (2009) 177 Cal.App.4th 176, 188 (*Luis F.*)). The juvenile court “may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court.” (Welf. & Inst. Code, § 727, subd. (a).) “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).) In fashioning conditions of probation, the juvenile court considers “ ‘not only the circumstances of the crime but also the minor’s entire social history.’ ” (*In re Laylah K.* (1991) 229 Cal.App.3d 1496, 1500 (*Laylah K.*)), disapproved on other grounds in *In re Sade C.* (1996) 13 Cal.4th 952, 962, fn. 2, 983-984, fn. 13.)

“[Welfare and Institutions Code] [s]ection 730 grants courts broad discretion in establishing conditions of probation in juvenile cases. [Citation.] ‘[T]he power of the juvenile court is even broader than that of a criminal court.’ ” (*In re Christopher M.* (2005) 127 Cal.App.4th 684, 692; see also *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941 [“juvenile conditions may be broader than those pertaining to adult offenders”]). “In distinguishing between the permissible exercise of discretion in probationary sentencing by the juvenile court and that allowed in ‘adult’ court, [our State Supreme Court has] advised that, ‘[a]lthough the goal of both types of probation is the rehabilitation of the offender, “[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment” [¶] In light of this difference, 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.’ ” (*In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*))

“Of course, the juvenile court’s discretion is not boundless.” (*Luis F.*, *supra*, 177 Cal.App.4th at p. 189.) Under the test set forth in *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*), a condition of probation will be held 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....’ [Citation.]” (*Id.* at p. 486; see *Laylah K.*, *supra*, 229 Cal.App.3d at p. 1500 [applying *Lent* factors in a juvenile proceeding].) “This test is conjunctive – all three prongs must be satisfied before a reviewing court will invalidate a probation term. [Citations.] As such, even if a condition of probation has no relationship to the crime of which a defendant was convicted and involves conduct that is not itself criminal, the condition is valid as long the condition is reasonably related to preventing future criminality.” (*People v. Olguin* (2008) 45 Cal.4th 375, 379-380.)

Challenges to a probation condition on the grounds that it is unreasonable or inappropriate because it does not bear a reasonable relationship to the underlying offense and future criminality and purports to regulate conduct that is noncriminal are forfeited on appeal, unless the defendant challenged the ruling in the trial court. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 881-882, 885.) However, even without an objection below, an appellate court may address a constitutional challenge to a probation condition that presents a pure question of law that can be resolved without reference to the sentencing record developed in the trial court. (*Sheena K.*, *supra*, 40 Cal.4th at p. 889; see also *In re H.C.* (2009) 175 Cal.App.4th 1067, 1070.)

2. Analysis

The minor contends that the probation condition prohibiting her from being “on or adjacent to any school campus unless enrolled or with prior administrative approval” fails the *Lent* test. (See *Lent*, *supra*, 15 Cal.3d at p. 486.) Acknowledging that this challenge

to the probation condition was forfeited by her failure to object below, the minor contends her trial counsel was ineffective. We therefore review the claim indirectly through the prism of the minor's ineffective assistance of counsel claim.

“To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defense. [Citations.] Counsel's performance was deficient if the representation fell below an objective standard of reasonableness under prevailing professional norms. [Citation.] Prejudice exists where there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.” (*People v. Benavides* (2005) 35 Cal.4th 69, 92-93, citing *Strickland v. Washington* (1984) 466 U.S. 668, 687-688, 693-694.)

We proceed to consider whether effective trial counsel would have objected to the school condition on the basis that it was (1) not reasonably related to the underlying offense, (2) not reasonably related to future criminality, or (3) purports to regulate conduct that is not itself criminal. We also consider whether such an objection would have been successful.

A similar probation condition was considered in *In re D.G.* (2010) 187 Cal.App.4th 47 (*D.G.*). The probation condition stated, “ ‘Do not be on any campus or within 150 feet of any campus other than the school in which you are currently enrolled.’ ” (*Id.* at p. 51.) *D.G.*'s crimes were burglary and receiving stolen property, and he had previous arrests and referrals to probation for crimes such as selling marijuana, auto burglary, and trespassing. None of *D.G.*'s crimes were related to schools or students, however. Thus, the probation condition failed the first prong of the *Lent* test. (See *id.* at p. 53.)

The probation condition in *D.G.* also failed the second prong of the *Lent* test, because it did not relate to conduct that was “itself criminal.” (*D.G.*, *supra*, 187 Cal.App.4th at p. 53.) As that court explained, section 627.2 prohibits “ ‘outsiders’ ”

from being on school grounds unless they have first registered with the school principal.⁷ (*Id.* at p. 55.) However, the probation condition in *D.G.* also applied to being within 150 feet of school grounds. Thus, the condition prohibited conduct that was not itself criminal. (*Ibid.*)

In *D.G.*, the probation condition also failed the third prong of the *Lent* test, because it was unrelated to the minor’s future criminality. The *D.G.* court rejected the Attorney General’s argument that the minor’s history of drug use and sales justified the probation condition. The court explained that it was speculative to conclude, based on the record, that the minor had a propensity for committing crimes against students. (*D.G.*, *supra*, 187 Cal.App.4th at p. 56.) Thus, there was “no reason to believe the conditions would actually prevent appellant from committing any future crimes.” (*Ibid.*)

⁷ Section 627.2 provides: “No outsider shall enter or remain on school grounds during school hours without having registered with the principal or designee, except to proceed expeditiously to the office of the principal or designee for the purpose of registering. If signs posted in accordance with Section 627.6 restrict the entrance or route that outsiders may use to reach the office of the principal or designee, an outsider shall comply with such signs.”

Section 627.1, subdivision (a) defines “outsider” as “any person other than: [¶] (1) A student of the school; except that a student who is currently suspended from the school shall be deemed an outsider for purposes of this chapter. [¶] (2) A parent or guardian of a student of the school. [¶] (3) An officer or employee of the school district that maintains the school. [¶] (4) A public employee whose employment requires him or her to be on school grounds, or any person who is on school grounds at the request of the school. [¶] (5) A representative of a school employee organization who is engaged in activities related to the representation of school employees. [¶] (6) An elected public official. [¶] (7) A person who comes within the provisions of Section 1070 of the Evidence Code by virtue of his or her current employment or occupation.”

Section 627.7, subdivision (a)(1) provides that it is a misdemeanor “for an outsider to fail or refuse to leave the school grounds promptly after the principal, designee, or school security officer has requested the outsider to leave or to fail to remain off the school grounds for 7 days after being requested to leave,” if the outsider “[e]nters or remains on school grounds without having registered as required by Section 627.2.”

The *D.G.* court went on to observe that “[a] probation condition generally consistent with Penal Code section 627.2” would “be justifiable under *Lent* as proscribing otherwise criminal conduct.” (*D.G.*, *supra*, 187 Cal.App.4th at p. 56.) Thus, rather than striking the challenged probation condition entirely, the court modified it to read as follows: “ ‘Do not enter on the campus or grounds of any school unless enrolled, accompanied by a parent or guardian or responsible adult, or authorized by the permission of school authorities.’ ” (*Id.* at p. 57.)

D.G. provides guidance for our evaluation of the probation condition here, which prohibits the minor from being “on or adjacent to any school campus unless enrolled or with prior administrative approval.” As phrased, the probation condition fails the second prong of the *Lent* test, because it purports to regulate conduct that is “ ‘not in itself criminal.’ ” (*Lent*, *supra*, 15 Cal.3d at p. 486.) Specifically, it prohibits the minor from being *adjacent* to a school that she is not enrolled in and has not received prior administrative approval for entering. While section 627.2 prohibits outsiders from entering or remaining “on school grounds during school hours without having registered with the principal or designee,” the minor would not violate state law by being adjacent to a school that she was not enrolled in or lacked prior administrative approval to enter.

Had counsel objected, the juvenile court could have addressed any concerns about the minor’s compliance with the statutes concerning “outsider[s]” on school grounds by imposing “[a] probation condition generally consistent with Penal Code section 627.2.” (*D.G.*, *supra*, 187 Cal.App.4th at p. 56.) If the probation condition had followed the language of section 627.2, it would have been “justifiable under *Lent* as proscribing otherwise criminal conduct.” (*Ibid.*) Thus, we find that effective trial counsel would have objected to the probation condition on the basis that it “ ‘relates to conduct which is not in itself criminal.’ ” (*Lent*, *supra*, 15 Cal.3d at p. 486), since it prohibits conduct in excess of that which is covered by section 627.2. Accordingly, we will order the probation condition modified to follow the language of that statute.

Respondent suggests that we modify the probation condition to include a 50-foot distance specification, as we did in *People v. Barajas* (2011) 198 Cal.App.4th 748 (*Barajas*). In *Barajas*, the probation condition had also prohibited the defendant from being “ ‘adjacent to any school campus.’ ” (*Id.* at p. 751.) This court held that including the phrase “adjacent to” rendered the probation condition vague, since it would be “subject to the interpretation of every individual probation officer charged with enforcing this condition.” (*Id.* at p. 761.) We held that a specific distance restriction would provide the defendant with “sufficient guidance” (*id.* at p. 762), and we ordered the condition modified to state: “ ‘You’re not to knowingly be on or within 50 feet of any school campus during school hours unless you’re enrolled in it or with prior permission of the school administrator or probation officer’ ” (*id.* at p. 763).

In *Barajas*, we did not consider whether the probation condition at issue met the *Lent* test. Here, a probation condition prohibiting the minor from being within 50 feet of any school campus unless enrolled or with prior administrative approval would not relate to conduct that is “itself criminal” and thus would not meet the second prong of the *Lent* test. (*Lent, supra*, 15 Cal.3d at p. 486; *D.G., supra*, 187 Cal.App.4th at p. 55.) Thus, we decline the Attorney General’s suggestion that we replace the phrase “adjacent to” with a specific distance restriction.

The minor also contends, and the Attorney General concedes, that the probation condition should be modified to contain a scienter requirement. (See *People v. Leon* (2010) 181 Cal.App.4th 943, 951 [purpose of scienter requirement is to ensure defendant is not “vulnerable to criminal punishment” for unknowing violations of probation conditions].) We will therefore further modify the condition to include the word “knowingly.”

DISPOSITION

Probation condition No. 7 is modified to state that the minor shall “not knowingly enter or remain on school grounds during school hours without having registered with the principal or designee, except to proceed expeditiously to the office of the principal or designee for the purpose of registering. (See Pen. Code, § 627.2.)” As so modified, the dispositional order of December 23, 2011 is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MÁRQUEZ, J.