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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

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

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H041390  
(Santa Clara County  
Super. Ct. No. 313JV40204A/B)

THE PEOPLE,

Plaintiff and Respondent,

v.

Jeffrey C.,

Defendant and Appellant.

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Jeffrey C., a minor, pleaded no contest to charges that, if committed by an adult, would constitute misdemeanor violations of causing a structure fire and possessing concentrated cannabis. (Pen. Code, § 452, subd. (c); Health & Saf. Code, § 11357, subd. (a).) The juvenile court declared him a ward of the court, granted probation, and returned him to the custody of his parents. The court also ordered the minor and his parents to pay attorney fees, and it imposed various probation conditions, including two conditions at issue here: (1) that the minor not knowingly own, use, or possess any incendiary devices; and (2) that the minor have no contact of any type with Independence High School.

On appeal, the minor contends the juvenile court had no authority to impose attorney fees on him. He also challenges the aforementioned probation conditions as vague and overbroad.

We conclude the juvenile court lacked the authority to impose attorney fees on the minor, and we will modify the order to reflect that the minor is not liable for those fees. We also find that the challenged probation conditions are vague as worded. We will modify the probation conditions, and affirm the order as modified.

## **I. FACTUAL AND PROCEDURAL BACKGROUND<sup>1</sup>**

### *A. Petition A*

In March 2013, the minor and two schoolmates—Brian P. and S.D.—approached a vending machine on the Independence High School campus. Brian asked the minor for a lighter to burn the machine in an attempt to get free snacks. Upon receiving a lighter from the minor, Brian inserted his hand into the machine and set it on fire. The three youths fled when a school janitor approached.

Before the fire was suppressed, it spread to an adjacent vending machine and ultimately to a large school building, causing property damage estimated at \$2.5 million. Investigators classified the fire as an intentional incendiary act. Police identified the minor, Brian P., and S.D. as involved in the offense. The three youths received citations and were released to their parents.

In August 2013, the prosecution filed a juvenile wardship petition (Welf. & Inst. Code, § 602, subd. (a)) alleging the minor engaged in conduct that, if committed by an adult, would constitute a felony violation of causing a structure fire (Pen. Code, § 452, subd. (c)).

### *B. Petition B*

In October 2013, an advisor at Independence High School observed the minor and other students smoking on campus. An administrative search uncovered “wax” and a pipe on the minor’s person. The prosecution filed a wardship petition alleging the minor

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<sup>1</sup> The facts of the offenses are taken from police reports and the probation report.

engaged in conduct that, if committed by an adult, would constitute a felony violation of possession of concentrated cannabis. (Health and Saf. Code, § 11357, subd. (a).)

### *C. Juvenile Court Proceedings*

At a jurisdictional hearing on July 10, 2014, the minor and the prosecution entered into a plea agreement whereby the prosecution moved to reduce both charges to misdemeanors. The minor, in exchange for being made a ward of the juvenile court, pleaded no contest to engaging in conduct that, if committed by an adult, would constitute causing a structure fire and possessing concentrated cannabis. The court accepted the plea agreement and granted the prosecution's motion to reduce both charges to misdemeanors. Upon entry of the plea, the court declared the minor a ward of the court and granted a term of probation to be served in the parent's home.

The court imposed \$700 in attorney fees for the public defender's services and ordered the minor and his parents jointly and severally liable. The court also imposed two probation conditions, among others, requiring: (1) that the minor not knowingly own, use, or possess any incendiary devices; and (2) that the minor have no contact of any type with Independence High School.

## **II. DISCUSSION**

### *A. The Court Lacked Authority to Impose Attorney Fees on the Minor*

The minor argues that the juvenile court had no authority to impose attorney fees on him personally. The Attorney General concedes that the dispositional order should be clarified to state that the minor is not personally liable for the attorney fees. We accept this concession.

Welfare and Institutions Code section 903.1, subdivision (a) provides in relevant part that "[t]he father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the cost to the county or the court, whichever entity incurred the expenses, of legal services rendered to the minor by an attorney pursuant to an order of the juvenile court." (Welf. & Inst. Code, § 903.1, subd. (a).) Nothing in the language of this statute authorizes the imposition of attorney fees directly on a minor. This court has previously held that the statute does not

authorize a juvenile court to impose attorney fees on a minor if the minor is under 18 years of age when counsel is appointed. (*In re Gary F.* (2014) 226 Cal.App.4th 1076, 1083, review den. Aug. 27, 2014.) The minor here was under 18 years of age when the public defender was appointed to represent him (he does not turn 18 until 2016). Accordingly, we will modify the order to clarify that the minor is not liable for attorney fees.

*B. The Condition Prohibiting Possession of Incendiary Devices*

The minor challenges the probation condition requiring him not to “knowingly own, use, or possess any incendiary devices” on the grounds that it is unconstitutionally vague and overbroad. The Attorney General concedes that the term “incendiary devices” lacks precision and should be modified. We accept the concession and we will modify the condition accordingly.

“A probation condition ‘must be sufficiently precise for the probationer to know what is required of him [or her], and for the court to determine whether the condition has been violated,’ if it is to withstand a challenge on the ground of vagueness.” (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*) [quoting *People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325].) The minor argues that the condition is impermissibly vague because the term “incendiary device” could include a variety of common household items capable of either igniting or fueling fires.

We agree. Because the minor could theoretically violate this probation condition by possessing any number of unspecified objects, the condition does not provide the minor with adequate notice of what is required of him. We will modify the condition to state that the minor not knowingly own, use, or possess any items that are capable of igniting fires, for example: a lighter, a torch, or matches.

*C. The Condition Prohibiting Contact with Independence High School*

The minor challenges the probation condition prohibiting “contact of any type with Independence High School” on three grounds. First, he contends the condition is unconstitutionally vague because the wording could be interpreted as prohibiting contact with “anyone associated with the school, either directly or through a third person,

everyday at all hours, no matter where they are located.” Second, he argues that the condition is vague in the absence of a scienter requirement because “contact can often be unwitting.” Finally, he argues that the condition as worded is unconstitutionally overbroad because it infringes upon his First Amendment rights of association.

The Attorney General contends that the probation condition is sufficiently precise and that it may be interpreted to prohibit the minor “from being present on the campus or communicating with the school officials while they are on campus.” The Attorney General also argues that it is unnecessary to add an explicit scienter requirement to the condition because the knowledge requirement is implicit. Finally, the Attorney General argues that the condition is sufficiently narrow and reasonably related to the purpose of the condition: preventing the minor from causing further harm to the school.

We agree with the minor’s first vagueness argument. As noted above, a probation condition “ ‘must be sufficiently precise for the probationer to know what is required of him . . . .’ ” (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 890.) The term “contact” encompasses both physical contact and communication. (Webster’s 3d New Internat. Dict. (1993) p. 490.) Furthermore, the term “Independence High School” could reasonably be construed to include not only the physical campus, but school officials, employees, and students. Thus, the ambiguous language of the condition fails to provide the minor with adequate notice of what is prohibited. We will therefore modify the condition in accord with the Attorney General’s interpretation to state that the minor shall stay away from the Independence High School campus and shall not communicate with school officials while they are on campus. Furthermore, because the minor could unknowingly communicate with a school official while the official is on campus (e.g., by calling a school official’s cell phone without knowing the school official is on campus), we will incorporate the suggested scienter requirement.

As modified, we conclude the condition does not violate the minor’s First Amendment rights of association. “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.” (*In re Sheena K.*,

*supra*, 40 Cal.4th at p. 890.) Freedom of association has long been recognized as a constitutional right. (*Roberts v. United States Jaycees* (1984) 468 U.S. 609, 617.) But with the above modification, the restrictions on the minor's associational rights are narrowly tailored to the condition's purpose of preventing the minor from causing further harm to the school. Thus, the modified condition does not violate the minor's constitutional rights.

### **III. DISPOSITION**

The order is modified as follows: (1) the minor shall not be personally liable for the payment of attorney fees; (2) the probation condition prohibiting possession of incendiary devices is modified to state that the minor shall not knowingly own, use, or possess any items that are capable of igniting fires, for example: a lighter, a torch, or matches; and (3) the no-contact probation condition is modified to state that the minor shall stay away from the Independence High School campus, and shall not knowingly communicate with any Independence High School officials while they are on campus. As so modified, the order is affirmed.

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MÁRQUEZ, J.

We concur:

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BAMATTRE-MANOUKIAN, ACTING P.J.

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MIHARA, J.