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In the Supreme Court of the State of California

In re RICARDO P., a Person Coming Under the Juvenile Court Law.	Case No. S230923
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **RICARDO P.,** Defendant and Appellant.	

SUPREME COURT
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First Appellate District, Division One, Case No. A144149
Alameda County Superior Court, Case No. SJ14023676
The Honorable Leopoldo E. Dorado, Judge

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ISSUED PRESENTED

Whether the juvenile court abused its discretion under *People v. Lent* (1975) 15 Cal.3d 481 by imposing an electronics search condition of probation as a rehabilitative and deterrence measure reasonably related to future criminality.

INTRODUCTION

Ricardo P. was adjudged a ward and placed on probation after he admitted two felony first degree burglaries. (Typed Opn. 1.) To monitor Ricardo's involvement with drugs, the juvenile court imposed conditions of probation, including Ricardo's submission to warrantless searches of data stored on his electronic devices and data in electronic accounts accessed through these devices. (*Id.* at pp. 3, 5.)

The Court of Appeal recognized that a properly drafted condition could include electronics searches "reasonably likely to be relevant to Ricardo's rehabilitation" (*id.* at p. 15), but it found the condition, as written, unconstitutionally overbroad by not "limit[ing] the types of data on or accessible through his cell phone that may be searched in light of this purpose" (*id.* at p. 14). The appellate court ordered the juvenile court "to determine which types of information must be subject to search to accomplish the condition's purpose" and "to impose a narrower condition if it wishes." (*Id.* at p. 17.) Such a condition might include "electronic information that is reasonably likely to reveal whether Ricardo is boasting about his drug use or activity, such as text and voicemail messages, photographs, e-mails, and social-media accounts." (*Id.* at p. 18.)

Ricardo challenges the Court of Appeal's threshold determination under the tripartite test of *People v. Lent, supra,* 15 Cal.3d 481[1] that an electronics search condition is authorized by state law in his case. (See Typed Opn. 6-11.) The appellate court found *Lent*'s third factor was not satisfied and rejected Ricardo's argument there needs to be evidence he had used electronic devices and social media to communicate about illegal conduct. (*Id.* at p. 9.) The court instead held it sufficient that the searches would enable effective supervision of Ricardo through his other probation conditions. (*Id.* at p. 10.) No controlling authority, the court said, "requires a connection between a probationer's past conduct and the locations that may be searched to uphold a search condition under *Lent, supra*, 15 Cal.3d 481. Because no such connection is required, conditions permitting searches of probationers' vehicles, for example, are permissible regardless of whether the record shows that the probationer has access to a vehicle or has engaged in illegal activity related to a vehicle. Given the ubiquity of electronic devices, particularly cell phones, we cannot say that an electronics search condition is unreasonable simply because the record does not show that the probationer necessarily has access to such devices or has used them to engage in illegal activity. We therefore conclude that the electronics search condition here is valid under *Lent* because it is reasonably related to preventing future criminality." (Typed Opn. 11.) The Court of Appeal's conclusion rejecting Ricardo's *Lent* claim is correct.

Ricardo's alternative constitutional claim is improperly raised and premature. It need not be addressed on the merits and would fail if it were.

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[1]*Lent* was superseded on another ground by Proposition 8 as stated by *People v. Wheeler* (1992) 4 Cal.4th 284, 290-295.

STATEMENT

The statement is taken from the opinion by the Court of Appeal, which in turn took the facts of the offense from the probation report. (Typed Opn. 2, fn. 4.)

> In February 2014, when he was almost 18 years old, Ricardo and two adults broke into two homes in San Jose. They were chased out of the first home before they could take anything. A few hours later, they stole costume jewelry from the second home, and all three were soon apprehended.
>
> Several months later, the Santa Clara County District Attorney filed a petition under Welfare and Institutions Code section 602, subdivision (a) seeking to have Ricardo declared a ward of the court. The petition alleged two felony counts of first degree burglary. After Ricardo admitted the petition's allegations, the case was transferred to Alameda County for disposition.
>
> At the dispositional hearing, the juvenile court declared Ricardo a ward of the court and placed him on probation with various conditions. These included conditions prohibiting him from using or possessing controlled substances, associating with people he "know[s] to use, deal[,] or possess illegal drugs," and having any contact with the two adult co-participants in the burglaries. Additional conditions were imposed to facilitate monitoring of Ricardo's compliance with the terms of his probation. These included conditions requiring him to submit to drug testing and to "[s]ubmit person and any vehicle, room[,] or property, electronics including passwords under [his] control to search by Probation Officer or peace office[r] with or without a search warrant at any time of day or night." [. . .]
>
> Ricardo objected to the drug-related conditions on the basis there was no evidence he used drugs. In response, the juvenile court cited the following language from the dispositional report: "In regards to the present offense, the minor reported he wasn't thinking. He continued by saying that he stopped smoking marijuana after his arrest because he felt that [it] did not allow him to think clearly." When Ricardo then objected to the electronics search condition, the court responded, "I think the law is very clear that [such a condition] is

appropriate[,] . . . particularly [for] minors or people that are [Ricardo's] age. I find that minors typically will brag about their marijuana usage or drug usage, particularly their marijuana usage, by posting on the Internet, showing pictures of themselves with paraphernalia, or smoking marijuana. It's a very important part of being able to monitor drug usage and particularly marijuana usage."

(Typed Opn. 2-4, fns. omitted and bracketed ellipsis added.)

SUMMARY OF ARGUMENT

"Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter." (Welf. & Inst. Code, § 202, subd. (b).) "The purposes of juvenile wardship proceedings are twofold: to treat and rehabilitate the delinquent minor, and to protect the public from criminal conduct." (*In re Jose C.* (2009) 45 Cal.4th 534, 555.)

Appropriate restrictions on juvenile wards include "[l]imitations on the minor's liberty imposed as a condition of probation or parole." (Welf. & Inst. Code, § 202, subd. (e)(3).) Under Welfare and Institutions Code section 730, subdivision (b), when a ward described in section 602 is placed under the supervision of the probation officer or committed to the care, custody, and control of the probation officer, "[t]he 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." This court consistently implements the legislative authorization of probation conditions that reasonably afford

the prospect of a ward's reformation and the protection of society. (See *In re Sheena K.* (2007) 40 Cal.4th 875, 889.)

The court determines the validity of a probation condition under state law by applying the tripartite test of *People v. Lent, supra,* 15 Cal.3d 481. The *Lent* test provides that a probation condition is unauthorized only if it (1) has no relationship to the crime of 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. (*Id.* at p. 486.) A condition will not be invalidated unless all three factors in the *Lent* test are present. (*People v. Olguin* (2008) 45 Cal.4th 375, 379.) The question on review presupposes the first and second *Lent* factors are present in this case. The Court of Appeal found under *Lent*'s first factor that Ricardo's possession of two cell phones when arrested for the burglaries he committed with adults did not show that the phones "played [any] role in his criminal activity." (Typed Opn. 8.) As to *Lent*'s second factor, the court noted that the use of electronic devices typically is not itself criminal conduct. (*Id.* at p. 9.)

The Court of Appeal correctly held that the third factor—i.e., the condition is one that "requires or forbids conduct which is not reasonably related to future criminality" (*Lent*, *supra*, 15 Cal.3d at p. 486)—is not triggered by the electronics search condition. Contrary to Ricardo's argument, the third factor does not depend upon a showing that electronic devices or electronic information accessible through the devices have a proven nexus to earlier admitted conduct that brings his case within section 602 or that directly impacts his prospects for rehabilitation. Nor, as his argument implies, does *Lent*'s tripartite structure yield a de facto two-part test under which the first "no relationship to the crime" factor subsumes the third "not reasonably related to future criminality" factor. This court invoked the third *Lent* factor in *People v. Olguin, supra*, 45 Cal.4th 375, to uphold a condition that, while lacking a direct relationship to the offense of

conviction, enabled the court and the probation officer to supervise the offender's adherence to other conditions and to deter and detect new crimes or probation violations. Consistent with this court's decisions, *Lent*'s third factor is triggered where the condition's *mode* of regulating otherwise lawful conduct does not reasonably relate to future criminality. In that way, the third factor takes into account the reformative and public protection goals of the juvenile justice system specifically and the probation system for juveniles and adults generally.

Contrary to Ricardo's claim, the scope of juvenile probation conditions is not unfettered or subject only to the imagination of the juvenile court in positing rationales linking the condition to deterrence. The scope of juvenile probation conditions is still checked by the reasonableness requirement of Welfare and Institutions Code section 730, subdivision (b). At bottom, the nexus test posited by Ricardo is contrary to *Lent*, is unnecessary, and would undermine the juvenile court's ability to further the ward's rehabilitation.

The juvenile court was entitled to assess Ricardo as one who could benefit from searches of his electronic devices while a ward under the supervision and control of the probation officer. The court's purpose to monitor Ricardo's adherence to drug laws and other conditions relating to use of controlled substances is reasonable in light of the record. Ricardo believed marijuana use contributed to his participation in the burglaries, and he claimed he quit using marijuana to think clearly, and presumably exercise better judgment. Suspicionless searches of his electronic devices reasonably relate to future criminality as such searches promote rehabilitation and protect the public from renewed criminal conduct by furnishing a valuable indication of whether Ricardo is following the conditions of probation, especially drug-related conditions. The very existence of the search condition could deter Ricardo from backsliding. It

would be odd and diminish the objectives of the juvenile probation system if the condition only could be imposed for the purpose of deterring a ward from committing future offenses with an electronic device like one used to promote the ward's previous offense or intrinsic to the commission of that offense.

This court need not address Ricardo's Fourth Amendment claim that electronics search conditions are unconstitutionally overbroad under *Riley v. California* (2014) 573 U.S. ___ [134 S.Ct. 2473]. That claim is not fairly included in the question on review or the answer. Moreover, his challenge is premature. Since this court may clarify constitutional overbreadth analysis in *In re A.S.*, No. S220280, further review should await the juvenile court's decision on remand. Regardless, the claim fails on the merits. *Riley* announced a rule addressing searches of cell phones incident to arrest, making clear that other exceptions to the warrant requirement may still justify a search of a cell phone. This case is governed by the distinctly different exception for searches judicially authorized as conditions of probation.

ARGUMENT

I. An Electronics Search Condition Is Reasonable in Ricardo's Case Under *Lent*

Ricardo contends an electronics search condition is precluded in this case by *People v. Lent, supra,* 15 Cal.3d 481. We disagree. The Court of Appeal properly concluded that Ricardo's submission of electronic information to warrantless searches is reasonably related to his rehabilitation and to deterring future criminality by providing for appropriate supervision in light of his particular circumstances.

A. The Juvenile Court Has Broad Statutory Discretion to Impose Probation Conditions to Rehabilitate a Ward, and a Ward's Search Condition Is Reviewed for Abuse of Discretion Under the *Lent* Test

A juvenile court may impose on a ward on probation "any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and reformation and rehabilitation of the ward enhanced." (Welf. & Inst. Code, § 730, subd. (b).)[2] "A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile." (*In re Josh W.* (1997) 55 Cal.App.4th 1, 5; accord, *In re Sheena K., supra*, 40 Cal.4th at p. 889.) The same principle applies when the juvenile court imposes on a ward a requirement that the minor submit to warrantless searches. (*In re Tyrell J.* (1994) 8 Cal.4th 68, 81-82, overruled on a related ground in *In re Jaime P.* (2006) 40 Cal.4th 128, 130, 139.)

Juveniles are reasonably deemed to be more in need of guidance and supervision than adults. The state, when it asserts jurisdiction over a minor, stands in the shoes of the minor's parents, who may curtail a child's exercise of rights as an aspect of their constitutionally protected right to direct the upbringing and education of their children. (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) Additionally, "[a]lthough the goal of both types of probation is the rehabilitation of the offender, '[j]uvenile

[2] A court in a criminal case also has broad discretion to impose "any and all . . . reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and . . . for the reformation and rehabilitation of the probationer." (Pen. Code, § 1203.1, subd. (j).)

probation is not, as with an adult, an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the minor's reformation and rehabilitation.' [Citation.] . . . [¶] 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. [Citations.]" (*In re Tyrell J.*, *supra,* 8 Cal.4th at p. 81.)

With respect to either juveniles or adults, "[g]enerally '[a] condition of probation will not be held invalid unless 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.]' [Citation.] 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 as the condition is reasonably related to preventing future criminality. [Citation.]" (*People v. Olguin*, *supra*, 45 Cal.4th at pp. 379-380, quoting *Lent*, *supra*, at p. 486.) Courts have consistently held the *Lent* test applies to juvenile probation conditions. (*In re P.O.* (2016) 246 Cal.App.4th 288, 294; *In re D.G.* (2010) 187 Cal.App.4th 47, 52.)

A juvenile court's probation conditions are reviewed for abuse of discretion. Such discretion will not be disturbed in the absence of manifest abuse. (*In re P.A.* (2012) 211 Cal.App.4th 23, 33; *In re Josh W.*, *supra*, 55 Cal.App.4th at p. 5.)

B. *Lent*'s Third Factor of Future Criminality Ensures the Mode of Regulating Otherwise Lawful Conduct Is Conducive to the Rehabilitative and Deterrent Functions of the Probation System; It Requires No Nexus to Earlier Offenses

In *Lent, supra*, 15 Cal.3d 481, this court stated that "a condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality." (*Id.* at p. 486.) The court did not suggest, let alone hold, that "future criminality" must be comparable to a previous offense. The probation condition in *Lent* involved a restitution order that the trial court based on the total amount lost by the victim, despite the fact that the defendant was convicted on one count but acquitted on the other. (See *ibid.*) Concluding that a trial court is not limited under that third criterion "to the transactions or amounts of which the defendant is actually convicted," this court found no abuse of discretion in the restitution order for funds taken in the transaction of which the defendant was acquitted. (*Id.* at pp. 486-487.)

Thus, the restitution order in *Lent* was valid to deter future misconduct although a sizable amount was *not* justified by the offense of which the defendant was convicted. This court in *Lent* plainly did not consider a connection between past and future misconduct as a requirement for the reasonableness of a condition of probation. In other words, *Lent* found a reasonable relationship between the challenged condition and "future criminality" based, in part, on facts that were not tied to proven conduct of the probationer. That is consistent with this court's subsequent decisions applying *Lent*.

1. *Olguin* and *Ramos* establish that a condition may be related to "future criminality" within the meaning of *Lent*, even if the regulated conduct was not involved in the underlying offenses

In *People v. Olguin*, *supra*, 45 Cal.4th 375, the defendant, who had been convicted of driving under the influence of alcohol, challenged as not reasonably related to future criminality and as constitutionally overbroad a probation condition requiring him "to notify his probation officer of the presence of any pets at defendant's place of residence." (*Id.* at p. 378.) Acknowledging that the challenged condition "ha[d] no relationship" to the defendant's crime and the ownership of most pets does not involve criminal conduct, this court nonetheless upheld the condition under *Lent* because it protected the safety of the probation officer charged with "supervising [the] probationer's compliance with specific conditions of probation." (*Id.* at p. 381.) The condition furthered the probation officer's "ability to make unscheduled visits and to conduct unannounced searches of the probationer's residence. Probation officer safety during these visits and searches is essential to the effective supervision of the probationer and thus assists in preventing future criminality. Therefore, the protection of the probation officer while performing supervisory duties is reasonably related to the rehabilitation of a probationer for the purpose of deterring future criminality." (*Ibid.*) The *Olguin* court stated that "even if [the] condition of probation has no relationship to the crime of which [the] defendant was convicted" (*id.* at p. 380), "a condition of probation that enables a probation officer to supervise his or her charges effectively is . . . 'reasonably related to future criminality'" (*id.* at pp. 380-381). The court's supporting citations for the latter quoted passage included *People v. Balestra* (1999) 76 Cal.App.4th 57, 65-67, which this court parenthetically explained was a decision "upholding [a] warrantless search condition that served [a] valid

rehabilitative purpose of helping probation officer ensure that probationer obeys all laws." (*Olguin*, *supra*, at p. 381.)

Olguin's holding followed logically from the court's earlier decision in *People v. Ramos* (2004) 34 Cal.4th 494. There, the court rejected a probationer's challenge to a search condition under *Lent*. The court stated: "The trial court properly held that the probation search condition was reasonably related to the DUI conviction, which allowed officers to search and seize defendant's person, property, and automobile in order to protect the public. As we have held, 'the level of intrusion is de minimis and the expectation of privacy greatly reduced when the subject of the search is on notice his activities are being routinely and closely monitored. Moreover, the purpose of the search condition is to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches.' [Citation.]" (*Id.* at pp. 505-506.) *Ramos* referred to the deterrent effect of probation searches on future criminality separately from the relationship of the condition to the offense of conviction. If they had amounted to the same thing, this court presumably would have said so.

Ramos and *Olguin* together confirm that a probation condition, including probation search conditions, can relate to "future criminality" within the meaning of *Lent*, even if the regulated conduct was not directly involved in the offenses of which the defendant was convicted. *Lent*'s third factor, thus, does not turn upon proofs or admissions establishing that the regulated activity is intrinsic or instrumental to the probationer's crime, or is otherwise emblematic of a particular method or instrumentality of committing an offense for which the minor is declared a ward.

Division One of the First District recently observed in *In re P.O.*, *supra*, 246 Cal.App.4th 288, that if the reasoning for another division's invalidation of an electronics search conditions under the third prong of

Lent were correct (in a noncitable decision now under review), "then juvenile courts would be unable to impose standard search conditions permitting warrantless searches of a minor's person, residence, vehicle, and other physical locations without a showing that those locations were all connected to past criminal conduct. In fact, such conditions are routinely imposed despite their potential to invade minors' privacy. [Citations.] Although 'a minor cannot be made subject to an automatic search condition' [citation], this requires a court to consider whether a search condition is appropriate under the circumstances before imposing it, not to find a connection between the locations to be searched and the minor's past conduct. And to the extent the concern with the reasonableness of electronics searches conditions stems from the impact electronic searches have on privacy, the fact that a probationer is a minor justifies *more* intrusive probation conditions. . . ." (*Id.* at p. 296.)

2. Decisions by other courts reflect that electronics search conditions may be upheld as reasonably relating to future criminality in terms of the enforcement of other conditions of probation

Even where the use of an electronic device is neither intrinsic to nor facilitates or promotes a juvenile or adult probationer's offenses, decisions of intermediate courts commonly affirm that searching those devices may reasonably relate to future criminality in terms of enforcing other probation conditions. (*In re J.E.* (2016) 1 Cal.App.5th 795, __ [205 Cal.Rptr.3d 28, __], petn. for review pending, petn. filed Aug. 22, 2016, S236628; *In re George F.* (2016) 248 Cal.App.4th 734 [203 Cal.Rptr.3d 607, 611-612], petn. for review pending, petn. filed Aug. 5, 2016, S236397; *In re P.O.*, *supra*, 246 Cal.App.4th at pp. 294-296; *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, 1176-1177; *United States v. Bare* (9th Cir. 2015) 806 F.3d 1011, 1017-1020; contra, *In re J.B.* (2015) 242 Cal.App.4th 749, 755-756; *In re Erica R.* (2015) 240 Cal.App.4th 907, 913.)

Given the ubiquity of electronic devices, particularly cell phones, an electronics search condition is not unreasonable simply because the record does not show the probationer accessed such devices at the time of his offenses, has used them to engage in other illegal activity, or currently has access to them. As one court considering this issue observed, "[e]ssential to [the minor's] rehabilitation is deterring [the minor] from reoffending." (*In re George F.*, *supra*, 248 Cal.App.4th at p. __ [203 Cal.Rptr.3d at p. 612].) An electronics search condition does "just that, by making sure [the minor] knows that if he strays, his probation officers will find out. The wisdom in *Olguin* . . . is that effective supervision of a probationer deters, and is therefore related to, future criminality." (*Ibid.*)

3. Ricardo's view of *Lent*'s third prong is incorrect

Ricardo insists this court's *Lent* jurisprudence requires a proven nexus between the probation condition and a ward's prior offenses and that validating a condition "that serves only to facilitate supervision of the probationer is unsupported by existing law." (AOBM 25.) He reads the decisions too narrowly. *Olguin* unmistakably stands for the principle that conditions reasonably related to enhancing the effective supervision of probationers are valid under *Lent*. More recently, in upholding under *Lent*'s third factor a no-contact condition curbing "future criminality by preventing [the probationer] from returning to the scene of his past transgression and thus helping [the offender] avoid any temptation of repeating [the] socially undesirable behavior," this court made clear that "conditions of probation aimed at rehabilitating the offender need not be so strictly tied to the offender's precise crime." (*People v. Moran* (Aug. 4, 2016, S215914) __ Cal.4th __ [2016 WL 4137577, *3] [discussing cases].)

Ricardo distinguishes *Olguin*'s unequivocal statement rejecting his reading of *Lent*'s third prong (i.e., "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 as the condition is reasonably related to preventing future criminality" (45 Cal.4th at p. 380)) as intended only to promote officer safety, an issue not involved in this case. Ricardo's view ignores the holding in *Olguin* that the condition was permissible because it was "facilitative of the search condition, a term of probation that defendant [did] not challenge." (*Ibid.*) The court emphasized that the search condition itself aided in deterring further offenses and in monitoring compliance with the terms of probation. Thus, the search condition promoted rehabilitation, reduced recidivism, and protected the community from future harm. (*Ibid.*) "A condition of probation that enables a probation officer to supervise his or her charges effectively is, therefore, 'reasonably related to future criminality.'" (*Id.* at pp. 380-381.) *Olguin* did not limit that holding to conditions involving officer safety. Rather, the court approved both the search condition, and the challenged condition that implemented it, because the mode of regulating the probationer's conduct through those conditions was reasonably related to future criminality. *Olguin* struck a sensible balance between the probationer's reduced liberty interest and the compelling necessity to control and reform that individual.

Nor is *Olguin* the only decision by this court following this path. In an earlier case where this court inadvertently described the tripartite factors test in disjunctive rather than conjunctive terms, the court upheld a probation search condition for a narcotics offender, "since that condition is reasonably related to the probationer's prior criminal conduct and is aimed at deterring or discovering subsequent criminal offenses." (*People v. Mason* (1971) 5 Cal.3d 759, 764, disapproved as to the test's disjunctive wording by *Lent*, *supra*, at p. 486, fn. 1.) The court's use of the conjunctive "and" indicates the search condition was valid for those two separate