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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re E.M., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

E.M.,

Defendant and Appellant.

E080637

(Super.Ct.No. J295589)

OPINION

APPEAL from the Superior Court of San Bernardino County. Tony Raphael,
Judge. Affirmed.

Robert L. Hernandez, under appointment by the Court of Appeal, for Defendant
and Appellant.

Rob Bonta, Attorney General, Lance E. Winters, Chief Assistant Attorney
General, Charles C. Ragland, Assistant Attorney General, Robin Urbanski and Brendon
W. Marshall, Deputy Attorneys General, for Plaintiff and Respondent.

I.

INTRODUCTION

Defendant and appellant E.M. (minor) displayed a firearm in his waistband during a verbal altercation with another minor. As a result, minor was charged with, and admitted being a minor in possession of a firearm (Pen. Code,¹ § 29610). Minor was placed on probation for a period of one year in the custody of his parents on various terms and conditions, including that he submit his cell phone or electronic devices to warrantless search by his probation officer and law enforcement (electronic search condition). On appeal, minor contends the electronic search condition is unreasonable and should be stricken because the crime he committed did not involve the use of his cell phone or other electronic devices and the condition is overbroad, or in the alternative, he asserts the condition should be modified to limit the scope of the warrantless searches authorized by the condition. Because minor used social media in connection with the crime, the electronic search condition is both reasonable and tailored to minor's rehabilitative needs. Accordingly, we affirm.

¹ All future statutory references are to the Penal Code unless otherwise stated.

II.

FACTUAL AND PROCEDURAL BACKGROUND²

On October 28, 2022, at approximately 8:00 p.m., law enforcement received a 911 call of a male suspect, later identified as minor, brandishing a handgun at a juvenile victim. Law enforcement's investigation revealed that the victim and another female were in a verbal altercation when minor lifted his shirt up showing a handgun in his waistband and making threats towards the victim telling her to leave his girlfriend alone. The victim identified minor in a photographic lineup, and a subsequent search warrant disclosed a loaded handgun in minor's residence without a serial number.

On January 5, 2023, the San Bernardino County District Attorney filed a Welfare and Institutions Code section 602 petition charging minor with being a minor in possession of a firearm (Pen. Code, § 29610). Four days later, minor admitted the truth of the allegation.

Prior to the dispositional hearing, the probation officer reported that minor lived with his parents, adult uncles, and adult siblings, and that he had experimented with marijuana. According to minor's school records, minor physically attacked another student, was involved in two physical altercations with other students, and was suspended four times. According to police records, minor was an active member of the Westside Pomona street gang. During law enforcement investigation of this case, police officers

² The factual background is taken from the detention report, which the parties had stipulated would constitute the factual basis for minor's admission, and the probation officer's dispositional report.

obtained minor's social media records which showed multiple images and videos of minor "showing off" different handguns and having conversations about selling and purchasing a gun. Minor also regularly posted gang-related videos on his social media accounts. When questioned where he got the handgun from, minor stated that he had purchased the gun eight months ago from a person named "Alex." He noted that he had met Alex through social media. Minor claimed that he did not associate with friends who were members of the Westside Pomona gang any longer and that his parents did not approve of some of his friends.

The dispositional hearing was held on January 24, 2023. At that time, the juvenile court noted that minor's counsel was objecting to the added electronic search condition and that counsel wanted to note the objection for the record. Minor's then counsel responded: "One, I think it's overly broad. It's not specific to this offense. But if the Court is inclined to keep it, what I would ask is to limit—or at least to strike in the very last sentence the term 'by law enforcement.' I think if he's going to be on probation, I understand that probation should have that access. It's important to their supervision. But if he has law enforcement contact, then that would give law enforcement blanket access to his phone, which would include text messages, recordings, photos, that may be private or personal to him and that may have nothing to do with this offense. So I do think it's overly broad."

The juvenile court overruled minor’s counsel’s objection, explaining: “in light of the facts in this case . . . the allegation is that [minor] was at the mall with a gun in his waistband and he brandished—not brandished—lifted his shirt to reveal the gun. And then there is information that on his Instagram account there were multiple images and videos showing him showing off different handguns and having conversations about selling and purchasing a gun. And also showing his allegiance to the Westside Pomona street gang. [¶] I know he will be on probation supervised by probation. Probation can only check in with him every so often. He has to check in every so often. It does look like he’s been contacted by the Montclair Police Department on November 3rd, 2021, part of a robbery investigation. So, I think this will enable law enforcement to have that information.”

Subsequently, the court declared minor a ward of the court and placed him on probation for one year in the custody of his parents on various terms and conditions of probation. Minor timely appealed.

III.

DISCUSSION

When the juvenile court ordered minor placed on probation, it added condition No. 21, the electronic search condition, which states: ““You are to provide the probation officer or any peace officer with access to your cellphone or any electronic device for the purpose of searching social media accounts, applications, photographs, video recordings, e-mail messages, text messages, and voice messages. Such access includes providing all

passwords to any social media accounts and applications upon request. And you shall submit . . . such accounts and applications to search at any time without a warrant by law enforcement or any probation officer.”

Minor argues the electronic search condition should be stricken as applied to him because the crime he committed did not involve the use of his cell phone or other electronic devices. Alternatively, he contends the term is unconstitutionally overbroad and should be modified or narrowly tailored to limit the scope of the warrantless electronic searches authorized by the condition. The People respond that minor has forfeited his overbreadth claim on appeal as applied to him and that if we reach the “merits and determine” the term was overbroad, the “appropriate remedy” is to remand the matter for the juvenile court to impose a more narrowly tailored electronic search condition.

Juvenile courts have broad discretion to fashion probation conditions, and under Welfare and Institutions Code section 730, may impose any reasonable condition that is “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); see *In re Sheena K.* (2007) 40 Cal.4th 875, 889 (*Sheena K.*)) Juvenile probation conditions may be broader than those imposed on adult offenders “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.” (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) “The reasonableness and propriety of the imposed condition is measured not

just by the circumstances of the current offense, but by the minor’s entire social history.”
(*In re Alonzo M.* (2019) 40 Cal.App.5th 156, 164 (*Alonzo M.*))

A court’s discretion is not unlimited however, and a probation condition will be considered 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.”” (*People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*)). ““This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term.”” (*In re P.O.* (2016) 246 Cal.App.4th 288, 294 (*P.O.*), quoting *People v. Olguin* (2008) 45 Cal.4th 375, 379.) Juvenile probation conditions are reviewed under the three-part standard in *Lent*. (*In re Ricardo P.* (2019) 7 Cal.5th 1113, 1119 (*Ricardo P.*)).

Our Supreme Court in *Ricardo P.*, *supra*, 7 Cal.5th 1113 described application of *Lent*’s third prong—whether the condition is reasonably related to future criminality—to an electronic search condition. For a search condition to survive scrutiny the record must establish a connection between the search condition and the probationer’s criminal conduct or personal history, one that is more than “just . . . abstract or hypothetical.” (*Ricardo P.*, at pp. 1121-1122.) “For example, courts may properly base probation conditions upon information in a probation report that raises concerns about future criminality unrelated to a prior offense.” (*Id.* at p. 1122.) There must be, however, “a degree of proportionality between the burden imposed by a probation condition and the legitimate interests served by the condition.” (*Ibid.*)

We review a trial court’s decision to impose a probation condition for abuse of discretion. (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1118.) We will not disturb the juvenile court’s decision to impose a particular probation condition unless the condition is ““““arbitrary or capricious”””” or otherwise exceeds the bounds of reason under the circumstances. (*People v. Castellanos* (2020) 51 Cal.App.5th 267, 275 (*Castellanos*)).

When reviewing the reasonableness of a probation condition we also, “tak[e] into account ‘the sentencing court’s stated purpose in imposing it.’” (*P.O.*, *supra*, 246 Cal.App.4th at p. 294.)

Even if otherwise reasonable under *Lent*, however, “[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.” (*Sheena K.*, *supra*, 40 Cal.4th at p. 890.) ““The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.”” (*People v. Appleton* (2016) 245 Cal.App.4th 717, 723.)

We review constitutional challenges to probation conditions de novo. (*In re Malik J.* (2015) 240 Cal.App.4th 896, 901.)

As noted by the People, unless a probationer’s challenge to a condition of probation presents a pure issue of law, preservation of the challenge on appeal requires a timely objection below. (*People v. Welch* (1993) 5 Cal.4th 228, 237 [failure to object to

probation condition on *Lent* grounds forfeits claim on appeal]; *People v. Patton* (2019) 41 Cal.App.5th 934, 946 [objection necessary to preserve as-applied constitutional challenge to probation condition]; *Sheena K.*, *supra*, 40 Cal.4th at p. 889 [same].) Application of the forfeiture rule is warranted where an appeal challenges a trial court’s discretionary sentencing choices based on case-specific factors: “[C]haracteristically the trial court is in a considerably better position than the Court of Appeal to review and modify a sentence option or probation condition that is premised upon the facts and circumstances of the individual case.” (*Sheena K.*, at p. 885.) The forfeiture rule exempts only a facial constitutional challenge that “does not require scrutiny of individual facts and circumstances but instead requires the review of abstract and generalized legal concepts—a task that is well suited to the role of an appellate court.” (*Ibid.*)

Here, contrary to the People’s argument, minor did not forfeit his overbreadth challenge to the electronic search term on appeal based on the particular facts of his case. The record clearly indicates minor’s counsel objected to the imposition of the added electronic search term on the ground the condition was overbroad as applied to minor.

Nonetheless, we reject minor’s contention that the probation condition here is unreasonable under *Lent*. Minor’s conduct warrants the electronic search condition. Minor had posted pictures and videos of himself on his social media account “showing off” different handguns and having conversations about selling and purchasing a gun. Minor also regularly posted gang-related videos on his social media accounts. Whether or not minor’s use of social media pertained to his current offense or past uncharged

conduct, the juvenile court could have relied on this information when exercising its broad discretion to impose probation conditions. (See *Ricardo P.*, *supra*, 7 Cal.5th at p. 1122 [courts may rely on “information in a probation report that raises concerns about future criminality unrelated to a prior offense”].) Thus, based on the information in the probation report, we conclude that the juvenile court did not abuse its discretion because the condition is reasonably related to future criminality and does not meet the third *Lent* factor.

Minor argues otherwise, relying on *Ricardo P.* In *Ricardo P.*, the California Supreme Court concluded that probation condition requiring a juvenile to submit to warrantless search of his electronic devices was not ““reasonably related to future criminality,”” the third prong of the *Lent* test. (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1115.) The court held that “*Lent*’s requirement that a probation condition must be ““reasonably related to future criminality”” contemplates a degree of proportionality between the burden imposed by a probation condition and the legitimate interests served by the condition.” (*Ricardo P.*, at p. 1122.) In particular, *Ricardo P.* acknowledged that electronics search conditions “significantly burden[] [a probationer’s] privacy interests” in part due to the immense storage capacity of modern cell phones. (*Id.* at p. 1123.)

However, *Ricardo P.* is distinguishable on its facts, as in that case there was no indication in the record that the juvenile had used an electronic device in connection with his burglary offenses. (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1122.) The court noted that the case “involves a probation condition that imposes a very heavy burden on privacy with a

very limited justification”; thus, on the record before it, “the electronics search condition [was] not ““reasonably related to future criminality””” and was invalid under *Lent*.

(*Ricardo P.*, at p. 1124.)

In this case, however, the record establishes a nexus between minor’s use of electronic devices and his criminal conduct. The juvenile court was therefore entitled to find that the electronic search condition would deter minor from using social media to possess weapons he is prohibited from possessing and to deter future criminality.

Although the condition imposed by the court is not limited to social media applications and sweeps more broadly to encompass text messages, voice messages, photographs, video recordings, and emails, we discern no abuse of discretion in the juvenile court’s determination that the condition was an appropriate means of monitoring minor while he is on probation. As recognized by *Ricardo P.*, ““conditions of probation aimed at rehabilitating the offender need not be so strictly tied to the offender’s precise crime.””

(*Ricardo P.*, *supra*, 7 Cal.5th at p. 1122.) Accordingly, the court was entitled to find that the burden on minor’s privacy rights imposed by the condition was proportionate to the legitimate interest in deterring his future criminality. (*Id.* at pp. 1122-1123.)

Minor argues his electronic search condition is unconstitutionally overbroad and must be narrowly tailored. We disagree.

“““A juvenile court enjoys broad discretion to fashion conditions of probation . . . 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.””” (Alonzo M., *supra*, 40 Cal.App.5th at p. 164.) “The essential question in an overbreadth challenge is the closeness of the fit between the legitimate purpose of the restriction and the burden it imposes on the defendant’s constitutional rights—bearing in mind, of course, that perfection in such matters is impossible, and that practical necessity will justify some infringement.” (*In re E.O.* (2010) 188 Cal.App.4th 1149, 1153.) As previously noted, we review constitutional challenges to probation conditions de novo. (*In re Q.R.* (2020) 44 Cal.App.5th 696, 700-701 (*Q.R.*).

We conclude that the challenged condition is appropriately tailored to minor’s rehabilitative needs. “As drafted, the condition is directed at preventing minor from engaging in the very conduct that brought him under the court’s supervision, while providing probation officers with flexibility in dealing with technological capabilities.” (*Q.R.*, *supra*, 44 Cal.App.5th at p. 702.) It is important for minor’s successful rehabilitation that he not “continue to use electronic devices to commit crimes.” (*Ibid.*) Minor coordinated his crime via social media. This search condition appropriately enables the probation department to monitor whether minor is continuing to use his cell phone to plan criminal activity. The condition is not unconstitutionally overbroad given the state’s legitimate interest in preventing future crimes. Therefore, probation’s interest in broadly monitoring minor’s cell phone or other electronic devices is justified. (See *Castellanos*, *supra*, 51 Cal.App.5th 267, 276.)

Moreover, we conclude that the burden placed on minor's constitutional rights is not unnecessarily high. In *Q.R.*, *supra*, 44 Cal.App.5th 696, the court rejected an overbreadth argument to a probation condition that required the juvenile to submit his electronic devices for a search of text messages, voice mail messages, call logs, photographs, email accounts, and social media accounts, and to provide passwords necessary to access the specified information. (*Id.* at pp. 700, 702-705.) The juvenile had used an electronic device to commit his crimes; thus, that the court have access to his electronic devices was "critical to monitor his progress on probation and to ensure that he is not continuing to engage in the sort of criminal conduct that led to him being declared a ward of the court." (*Id.* at p. 704.) In part, *Q.R.* noted that as a probationer, the juvenile's expectation in privacy was "markedly different from the broader privacy guaranteed under the Fourth Amendment to individuals who are not serving sentences or on grants of probation." (*Id.* at p. 703.) Given the facts of the case, the court concluded the condition was not unconstitutionally overbroad as applied. (*Ibid.*)

As in *Q.R.*, the juvenile court in this case imposed an electronic search condition after considering minor's prior use of social media. The condition is thus appropriately tailored to the state's legitimate purpose, and it is not unconstitutionally overbroad.

IV.

DISPOSITION

The dispositional order is affirmed.

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CODRINGTON
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.