

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

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

2d Juv. No. B289885  
(Super. Ct. No. 18JV-00029A)  
(San Luis Obispo County)

THE PEOPLE,

Plaintiff and Respondent,

v.

A.E.,

Defendant and Appellant.

The San Luis Obispo County District Attorney filed a petition under Welfare and Institutions Code section 602 alleging that appellant A.E. committed second degree burglary (Pen. Code, § 459), possessed burglar's tools (*id.*, § 466), and committed felony vandalism (*id.*, § 594, subd. (b)(1)). Appellant admitted the felony vandalism offense and the remaining charges were dismissed. The juvenile court declared appellant a ward of the

court and placed him on probation. One probation condition permits law enforcement to search appellant's electronic devices. Appellant contends this condition is invalid under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*).

After the parties filed their briefs, our Supreme Court resolved a split among the Courts of Appeal and held that a similar "electronics search condition . . . is not reasonably related to future criminality and is therefore invalid under *Lent*." (*In re Ricardo P.* (2019) 7 Cal.5th 1113, 1128 (*Ricardo P.*)). The court struck the condition and remanded the matter to allow the juvenile court to consider whether to impose a condition that would be reasonable under *Lent*. (*Ricardo P.*, at p. 1129.)

In supplemental briefing, the parties agreed appellant's electronics search condition must be stricken, but disagreed as to whether a remand is appropriate. Appellant claimed "[i]t is difficult to surmise a search condition in this case that would survive scrutiny under *In re Ricardo P.*" Appellant's counsel expressed the same skepticism at oral argument, but stated he did not object to the remand. Consistent with the disposition in *Ricardo P.*, we strike the electronics search condition and remand the matter to the juvenile court for further proceedings. (See *Ricardo P.*, *supra*, 7 Cal.5th at p. 1129.) Otherwise, we affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

When appellant was 14 years old, he smashed a hammer into the window of a BMW and took several items from the vehicle. He then smashed two more windows, causing \$6,000 in damage. The offense was recorded on a surveillance video.

A police officer, who recognized appellant in the video, contacted him on a nearby street. Appellant denied any knowledge of the crime, but the officer found a knife in appellant's pocket and a set of keys on the ground. Appellant

stated, “Fuck it, you found the keys, lift up my sweatshirt.” The officer did so and found a hammer in appellant’s waistband. The BMW’s owner confirmed the knife and keys were taken from the vehicle.

Appellant later admitted he smoked marijuana and took Xanax pills that night and did not remember committing the offense. He recalled waking up in the hospital just before getting a medical clearance for booking. Appellant was “not really” concerned he had completely blacked out.

Appellant told a probation officer that he tried alcohol in the seventh grade and did not like it. He said he does not drink often and last consumed alcohol in 2017, when he drank six beers. Appellant started smoking marijuana in the fifth grade. He began smoking regularly in the eighth grade and then started smoking every day. Appellant’s mother reported that appellant drinks alcohol and takes Xanax with his friends.

Appellant also is chronically truant. He brought a knife to school one day, and stole a fire extinguisher from the laundry room of an apartment complex several hours before vandalizing the BMW.

Appellant’s mother told the probation officer she had not taken away appellant’s phone or his video games as punishment for his poor behavior, but said she would consider that option. At the disposition hearing, she stated: “This past weekend when [appellant] kind of act[ed] out I took his phone away, so I’ve been, you know, enforcing.”

Paragraph No. 22 of the juvenile court’s disposition order requires that appellant “[s]ubmit any electronic device, used to store or transmit digital information, that you own, possess or control, to a search of any source of electronic data identified below, at any time, with or without probable cause, by a peace

officer, and provide the peace officer with any passwords necessary to access the data source specified.” Sources of electronic data identified in the probation condition are limited to: text messages, voicemail messages, call logs, photographs, email accounts, social media accounts and internet browsing history. The order further states that the “rehabilitative and/or supervisory concerns addressed by this search term include the following:” “Drug/alcohol use or drug sales,” “[t]hreats of violence towards others,” “[u]se or possession of weapons” and “[a]ssociation with court ordered non-associates.”

Appellant’s counsel objected to the electronics search condition. She stated: “I certainly agree this minor has a substance abuse problem. . . . But there’s nothing in any of the reports or the analysis that indicate he uses ex-voicemail [*sic*], call logs, photographs, e-mails, or any other social media to further his behavior. His charges are vandalism, and certainly did not involve the use of any kind of social media. There’s no indication that he uses . . . his devices for drug purchase or sales. Not even an indication that he sells quite frankly, and I think this is overbroad . . . .”

The prosecutor responded: “[T]he drug use is very concerning to me. . . . [Appellant] admits to being under the influence of not just marijuana, which at 14 I have a difficult time condoning in any sense, but also Xanax, and then the fact he blacked out, I think there’s a link there to [the electronics search condition].” The juvenile court agreed “there’s a reasonable correlation” between the search condition and appellant’s drug use.

## DISCUSSION

Appellant argues the electronics search condition must be stricken because it is unreasonable under the standards

announced in *Lent*. We agree the condition is inconsistent with *Lent*, but reject appellant’s assertion that a remand is not warranted.

“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 J.B.* (2015) 242 Cal.App.4th 749, 753-754.) “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.” (*Id.* at p. 754.) “[C]ourts may properly base probation conditions upon information in a probation report that raises concerns about future criminality unrelated to a prior offense.” (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1122.)

“Though broad, the juvenile court’s discretion has limits.” (*In re Alonzo M.* (2019) 40 Cal.App.5th 156, 164.) Under *Lent*, a probation condition “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 . . . .’” (*Lent*, *supra*, 15 Cal.3d at p. 486.) “The *Lent* test is conjunctive -- all three prongs must be satisfied before a reviewing court will invalidate a condition of probation.” (*People v. Contreras* (2015) 237 Cal.App.4th 868, 879.)

In *Ricardo P.*, *supra*, 7 Cal.5th 1113, the minor (Ricardo) was declared a ward of the court after he committed two felony burglaries. (*Id.* at p. 1115.) The juvenile court placed him on probation and imposed various conditions, including that he “[s]ubmit . . . 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.” (*Id.* at pp. 1116-1117.) Ricardo told a probation officer he committed the crime because he was not thinking and that he had stopped smoking marijuana because it interfered with his ability to think clearly. The juvenile court believed the electronics search condition was “appropriate . . . particularly [for] minors or people that are [Ricardo’s] age.” (*Id.* at p. 1117.) It observed that “minors typically will brag about their marijuana usage or drug 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.” (*Ibid.*)

On appeal, Ricardo challenged the legality of the electronics search condition. The Court of Appeal upheld the condition under *Lent*, but determined it was unconstitutionally overbroad. (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1116.) Our Supreme Court granted review on whether the electronics search condition satisfied the third prong of *Lent*, i.e., whether it ““requires or forbids conduct which is not reasonably related to future criminality.”” (*Ricardo P.*, at p. 1119.)

The high court was skeptical about the juvenile court’s inference that Ricardo was using drugs during the burglaries and the generalization that minors tend to brag about drug use on the Internet. (*Ricardo P.*, *supra*, 7 Cal.5th at pp. 1119-1120.) But even accepting these premises, the court noted that cases “upholding probation conditions under *Lent*’s third prong have involved stronger connections between the burdens imposed by the challenged condition and a probationer’s criminal conduct or personal history.” (*Id.* at p. 1120.) The third prong of *Lent* “contemplates a degree of proportionality between the burden imposed by a probation condition and the legitimate interests

served by the condition.” (*Id.* at p. 1122.) Nothing in the record suggested Ricardo had ever used an electronic device or social media to promote illegal activity. (*Ibid.*) The court concluded the condition is not valid under *Lent*’s third prong “because the burden it imposes on Ricardo’s privacy is substantially disproportionate to the condition’s goal of monitoring and deterring drug use.” (*Ricardo P.*, at p. 1120.)

Although the Supreme Court determined Ricardo’s electronics search condition is invalid, it chose not to “decide whether there is sufficient basis in the present record to support the Court of Appeal’s suggestion that the juvenile court, on remand, may restrict the condition to search of ‘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.’” (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1124.) Nor did the court “address how the parameters of such a condition might be delineated.” (*Ibid.*) Those issues are to be considered on remand. (*Id.* at p. 1129.)

The *People* seek a similar remand here, stating “the matter should be remanded to the juvenile court for a hearing consistent with *In re Ricardo P.*” Given that *Ricardo P.* ordered a remand on facts less compelling than those presented here, we conclude a remand is appropriate. (See *Ricardo P.*, *supra*, 7 Cal.5th at p. 1129.)

The primary purpose of the electronics search condition in both cases was to monitor and deter the minor’s illegal drug use. In *Ricardo P.*, the Supreme Court “share[d] some of Ricardo’s skepticism’ about the juvenile court’s inference that he was using drugs at the time he committed the burglaries.” (*Ricardo P.*, *supra*, 7 Cal.5th at pp. 1119-1120.) That concern is not present

here. Appellant, who was 14, admitted he used marijuana and Xanax before vandalizing the BMW and has no recollection of the crime. Appellant’s attorney conceded appellant has a substance abuse problem, and the juvenile court found the offense “troubling.” It noted appellant “blacked out,” does not “remember anything,” is “not showing a great deal of remorse,” and is “using marijuana all the time and Xanax.” Under these circumstances, it makes little sense to forego a remand here when one was ordered in *Ricardo. P.*<sup>1</sup> (See *In re Alonzo M.* (2019) 40 Cal.App.5th 156, 168.)

#### DISPOSITION

The judgment (disposition order) is modified to strike the electronics search probation condition (No. 22). The matter is remanded to the juvenile court so that it may consider whether the electronics search condition could be narrowed to withstand scrutiny under *Lent*. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

TANGEMAN, J.

---

<sup>1</sup> Since we are striking the electronics search condition, we need not and do not address appellant’s alternative argument that the condition is unconstitutionally overbroad.



Charles S. Crandall, Judge  
Superior Court County of San Luis Obispo

---

David R. Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Nima Razfar, Deputy Attorneys General, for Plaintiff and Respondent.