Filed 7/31/12 In re Jaime A. CA2/3

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re JAIME A., a Person Coming Under the Juvenile Court Law.	B233550
THE PEOPLE, Plaintiff and Respondent, v. JAIME A., Defendant and Appellant.	(Los Angeles County Super. Ct. No. MJ19807)

APPEAL from an order of wardship of the Superior Court of Los Angeles County, Benny C. Osorio, Judge. Modified and, as modified, affirmed.

Law Offices of Bruce Zucker and Bruce Zucker, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Roberta L. Davis and Timothy M. Weiner, Deputy Attorneys General, for Plaintiff and Respondent.

Jamie A., a minor, appeals from the order of wardship (Welf. & Inst. Code, § 602) entered following an admission he committed vandalism causing at least $400 damage (Pen. Code, § 594, subd. (b)(1)), following the denial of his suppression motion (Welf. & Inst. Code, § 700.1). The court ordered appellant placed home on probation. We modify the order of wardship and, as modified, affirm it.

FACTUAL SUMMARY

The record reflects on or between March 1, 2010, and June 4, 2010, appellant committed the above offense by vandalizing property belonging to the City of Palmdale. The property included utility boxes, a curb, walls, and a mailbox.

ISSUES

Appellant claims (1) the trial court erroneously denied his suppression motion and (2) the trial court erroneously imposed two probation conditions.

DISCUSSION

1. *The Trial Court Properly Denied Appellant's Suppression Motion.*

a. *Pertinent Facts.*

(1) *People's Evidence.*

Viewed in accordance with the usual rules on appeal (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597), the evidence presented at the hearing on appellant's Welfare and Institutions Code section 700.1, suppression motion established on June 4, 2010, Los Angeles County Sheriff's Deputy Edgar Chavarria was assigned to the Palmdale station. About 2:25 p.m., Chavarria and other deputies went to a house in the 38000 block of Calcedony Court to conduct a parole compliance check of Raymond Calderon, who lived there. Calderon was on parole following his conviction for assault with a deadly weapon. He was released on parole on June 16, 2009. Chavarria did not have a search warrant.

Chavarria testified a person named Jose greeted the deputies at the door and opened it. Chavarria also testified that when he went to the location he saw something that caught his attention. He testified, "When we walked inside this specific bedroom,

we saw two pieces of cardboard with graffiti. We noted the closet doors had graffiti on them. Many things, items, personal items inside the bedroom also had graffiti on them."[1]

Chavarria later testified he was in the hallway when he first saw appellant's bedroom. Its door was open. Chavarria, standing in the hallway and looking into appellant's bedroom through its open doorway, saw graffiti on doors inside the bedroom. Chavarria also testified, "And then when we came in, that's when we noticed the other pieces; the pieces of cardboard and all the other graffiti tools, and all the other graffiti on the personal items." Chavarria further testified "this" was in plain view from the hallway. Chavarria later testified he saw tagging in appellant's bedroom on a mirror, chest drawer, two pieces of cardboard, and the closet doors. The prosecutor asked Chavarria how he knew "that that was[appellant's] room," and Chavarria replied he asked Jose "and the other kids."

At some point, Chavarria saw graffiti on the curb outside the house. The graffiti was the word Demon. Chavarria saw additional graffiti on "two mailboxes and one electrical box within the street." The electrical box was on Calcedony Court. The graffiti on the electrical box was the word Demon. Other graffiti, i.e., the word Demon, was on Adobe Avenue.

During cross-examination, Chavarria testified perhaps four or five agents entered the house with Chavarria. The other four or five agents did not go to different rooms. Chavarria testified, "We moved systematically." Chavarria "moved one room at a time." There were more than two rooms. It was not until after Chavarria checked all the rooms that he found out that "this room belonged to [appellant]." Chavarria knew Calderon had access to appellant's bedroom because it was not locked, it did not have any signs that said "stay away," and it was "obviously opened."

When Chavarria searched appellant's room, Chavarria understood "the door was open so it was still within a common area." Appellant's counsel asked if that was the

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[1] There is no dispute this bedroom was appellant's bedroom and we refer to it as such below.

reason Chavarria entered, and he replied, "We went in initially to conduct a protective sweep." When Chavarria entered to conduct a protective sweep, he did not find anyone.

The following occurred during cross-examination of Chavarria: "Q Now, [appellant's] room. Was that part of the compliance parole search or was that part of the . . . protective sweep?" Chavarria replied it was part of the protective sweep.

Chavarria understood a protective sweep was standard practice on all parole searches. However, Chavarria denied that when deputies decided whether to conduct a protective sweep, the only factor they considered was whether there was a parole search.

The following occurred during appellant's cross-examination of Chavarria: "Q So you decided that in order -- when you were going to conduct this parole search, you were also going to do a protective sweep, correct? [¶] A Correct. [¶] Q And what did you base your decision on? [¶] A. On the fact that it's a parole compliance check. And we don't know whether if there are any people hiding anywhere or the actual person is inside."

(2) *Defense Evidence.*

In defense, Alex A. (Alex), appellant's father, testified he "recall[ed] on March 1st [*sic*] when a search was conducted of [Alex's] residence." Deputies arrived about 1:00 p.m. Alex testified "[m]y kids . . . saw them through the window."[2]

When deputies arrived at the door, one said they were doing a parole sweep for Calderon. Alex replied Calderon was not there but was at work. Deputies explained they were going to conduct a search. They did not ask Alex for permission to conduct a search. Alex opened the door and six to eight deputies entered.

As soon as the first few deputies entered, Alex said, "that's his room right there and he rents that room." Some deputies went upstairs and others went towards the kitchen. A deputy asked if Alex had any weapons. Alex replied no and said, "That's his

[2] There is no dispute when Alex referred to persons entering the home, the persons were deputies and we refer to them as such below.

room right there." There were four bedrooms "with the bottom one where [Calderon] stay[ed]."

Appellant's counsel asked Alex if Calderon had access to the other bedrooms. Alex testified, "[Calderon] pretty much stays down below . . . he goes from work to his room, TV, work, to his room. That's basically his life." Appellant's counsel asked if Calderon had permission without asking to enter appellant's bedroom. Alex replied, "I think from how I know [Calderon], he understands that he's not allowed to go into anyone's room including me and my wife's without permission." According to Alex, deputies found in appellant's bedroom different colored markers and Sharpies. That morning, Alex had entered appellant's room but did not see any of those items.

Appellant brought a Welfare and Institutions Code section 700.1, motion to suppress evidence obtained as a result of the search of appellant's bedroom. Appellant argued, inter alia, the search of appellant's bedroom was an unlawful warrantless search that was not justified as a parole search or a protective sweep. The trial court denied the motion without comment.

b. *Analysis.*

Appellant claims the trial court erroneously denied his suppression motion. He argues Chavarria transitioned from a parole search to an unlawful protective sweep as he went beyond the area of Calderon's room and "mov[ed] to the upstairs hallway" near appellant's bedroom, and Chavarria's subsequent entry into appellant's bedroom was an unlawful warrantless search.

A police officer conducting a parole search may search an area that the officer reasonably believes is within the joint control of the parolee and a nonparolee, and/or an area to which the parolee and a nonparolee have joint access. (Cf. *People v. Boyd* (1990) 224 Cal.App.3d 736, 739, 745-746, 750; *People v. Britton* (1984) 156 Cal.App.3d 689, 702-703; *People v. LaJocies* (1981) 119 Cal.App.3d 947, 955.)

When an officer conducts a protective sweep of an area, there must be articulable facts which, taken together with the rational inferences from those facts, would warrant a

reasonably prudent officer in believing the area to be swept harbors an individual posing a danger to officer safety. (Cf. *People v. Ledesma* (2003) 106 Cal.App.4th 857, 863, 866 (*Ledesma*).) There is no dispute Chavarria lawfully entered the house pursuant to a parole search pertaining to Calderon. We reject appellant's claim for the following reasons.

First, Chavarria did not testify the house had upper and lower floors, that Calderon's room was downstairs while appellant's bedroom was upstairs near the hallway, or that a common area separated the entry into the house from the entry into the hallway. For all Chavarria's testimony reflects, the house was no more than a one-story structure and once Chavarria entered the house he was in the hallway.

It is true Alex testified Calderon's room was downstairs while appellant's bedroom was upstairs near the hallway. However, the trial court was not obligated to believe Alex, appellant's father,[3] and appellant did not introduce into evidence photographs, or even a diagram, of the layout of the house. Based on Chavarria's testimony, the trial court reasonably could have concluded that when Chavarria entered the house, he lawfully entered the hallway pursuant to a parole search.

Second, Chavarria never testified as to where Calderon's room and appellant's bedroom were with respect to each other, or that Chavarria and/or other deputies went beyond Calderon's room to the hallway near appellant's bedroom. For all Chavarria's testimony reflects, Calderon's room might have been located such that Chavarria came to it only after he came to appellant's bedroom. The trial court was not obligated to believe Alex on these issues.

Third, Chavarria did not testify he saw Calderon after Chavarria entered the house. Even if, as Alex testified, Alex told Chavarria that Calderon was not at home, Chavarria was not obligated to believe Alex. Calderon, less than a year earlier, had been released

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[3] We note, for example, it appears Chavarria testified the parole search and protective sweep occurred about 2:25 p.m. on June 4, 2010, while Alex appears to have testified the events occurred about 1:00 p.m. on "March 1st."

on parole following his conviction for assault with a deadly weapon, a felony. Chavarria reasonably could have believed Calderon was somewhere in the house and posed a danger to Chavarria, the other deputies, and the "kids" whom both witnesses testified were present. Chavarria's actions in proceeding to the hallway near appellant's bedroom after Chavarria entered the house were justified as a lawful protective sweep in search of Calderon. (*Cf. Ledesma*, *supra*, 106 Cal.App.4th at pp. 862-868.)

Fourth, during a parole search of a house where a parolee lives, officers are searching for evidence of the parolee's noncompliance with the terms of parole. Evidence of noncompliance can be found on the parolee's person (e.g., physical possession of illegal drugs) when the parolee is present, as well as in other locations to which the parolee has access in the house (i.e., locations other than the parolee's person).

The trial court reasonably could have inferred from Chavarria's testimony that the hallway was a common area to which Calderon had access. Alex did not categorically deny Calderon had access to the hallway. Instead, when appellant's counsel asked Alex whether Calderon had access to other bedrooms, Alex replied, inter alia, that Calderon "pretty much" stayed downstairs. As mentioned, Chavarria reasonably could have suspected Calderon, who lived in the house, was somewhere inside.

Chavarria testified he decided he would conduct a *parole search and* a protective sweep, and testified he based his decision "[o]n the fact that *it's a parole compliance check*. And we don't know whether if there are *any* people hiding anywhere *or the actual person is inside*." (Italics added.) Appellant suggests this testimony pertained to Chavarria's protective sweep and provided an insufficient basis for it. However, Calderon was the sole parolee subject to the parole search. The trial court reasonably could have understood that Chavarria, testifying he did not know if "any" person was hiding or if "the actual person" was inside, was indicating Chavarria did not know if *Calderon* was hiding or inside.

Chavarria's actions in proceeding to the hallway near appellant's bedroom after Chavarria entered the house were justified as a lawful parole search *for Calderon*. This is

true whether or not Chavarria's actions were justified as a lawful parole search for evidence of noncompliance in locations in the house other than on Calderon's person. Even if Chavarria did not subjectively consider this objectively valid basis for proceeding to the hallway, that fact does not affect the analysis. (Cf. *People v. Woods* (1999) 21 Cal.4th 668, 680.)

In the heading in appellant's opening brief, he asserts the "parole compliance check exceeded its scope when law enforcement improperly converted it to a protective sweep and entered his bedroom[.]" (Capitalization omitted.) However, appellant, in his argument, does not expressly argue Chavarria's entry into appellant's bedroom was unlawful, but only that Chavarria's actions in going beyond the area of Calderon's room and moving to the hallway near appellant's bedroom, were unlawful. To the extent appellant argues the entry into appellant's bedroom was unlawful because Chavarria's preceding actions were unlawful, we reject the argument because those preceding actions were lawful for the reasons previously discussed.

To the extent appellant argues Chavarria's entry into appellant's bedroom was independently unlawful, we reject the argument for two reasons. First, the previously discussed reasons supporting a protective sweep to the hallway supported a protective sweep into appellant's bedroom.

Second, based on Chavarria's testimony, the trial court reasonably could have concluded as follows. Calderon lived in the house. Once Chavarria arrived in the hallway, he observed appellant's bedroom door was open and there were no signs indicating anyone should stay away. Chavarria never suggested appellant had exclusive access to his bedroom.

As to the defense evidence, when appellant's counsel asked Alex whether Calderon had access to other bedrooms, Alex replied, inter alia, Calderon "pretty much" stayed downstairs. Alex never categorically denied Calderon had access to appellant's bedroom. Alex testified to the effect he thought Calderon knew he had to obtain permission to enter appellant's bedroom, but Alex never testified Calderon had not

obtained that permission expressly or informally. Alex never testified appellant had exclusive access to appellant's bedroom. In fact, Alex testified to the effect that on the day of the search and before it occurred, Alex entered appellant's bedroom. Chavarria's entry into appellant's bedroom was justified as a lawful parole search for Calderon.

Finally, even if Chavarria unlawfully entered appellant's bedroom, Chavarria testified at one point that "this" was in plain view from the hallway. Based on the context in which Chavarria so testified, the trial court reasonably could have concluded the antecedent of "this" was the same graffiti Chavarria later observed in appellant's bedroom after Chavarria entered it. The fact there may have been conflicting evidence as to whether Chavarria first observed this graffiti only after he entered appellant's bedroom does not compel a contrary conclusion.

When a police officer, in a place the officer has a right to be, observes items in plain view, those observations are not a search. (*People v. Camacho* (2000) 23 Cal.4th 824, 832.) Even if Chavarria entered appellant's bedroom unlawfully, the graffiti evidence Chavarria observed was not an excludable product of that entry. For all of the above reasons, the trial court properly denied appellant's suppression motion.[4]

2. *Probation Condition No. 17, But Not Probation Condition No. 12, Must Be Modified.*

a. *Pertinent Facts.*

On October 28, 2010, appellant admitted the present offense, the court ordered appellant placed on deferred entry of judgment (DEJ), and the court imposed probation condition Nos. 12 and 17. Probation condition No. 12 was: "Do not be within one block of any school ground unless enrolled, attending classes, on approved school business, or with school official, parent or guardian." Probation condition No. 17 was: "Do not contact or cause any contact with, nor associate with the victim(s) or witness(es) of any

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[4] In light of the above analysis, we need not reach the issue of whether, even if the search of appellant's bedroom was otherwise unlawful, the resulting evidence was nonetheless admissible on the ground Chavarria inevitably would have conducted a lawful parole search of appellant's *bedroom*, whether or not Chavarria had conducted a parole search for *Calderon*. (See *In re Rudy F*. (2004) 117 Cal.App.4th 1124, 1136.)

offense alleged against you." Probation condition Nos. 12 and 17 were two of 46 probation conditions available to be imposed in the juvenile court's October 28, 2010, standard printed dispositional minute order.

Appellant later violated probation based on a new case and, as a result, the court revoked DEJ in the present case. On April 28, 2011, the court sustained the petition in the present case, entered an order of wardship, and ordered appellant placed home on probation. The court ordered, inter alia, that probation condition Nos. 12 and 17, remain in effect.

b. *Analysis.*

Appellant argues the phrase "one block" in probation condition No. 12 is vague. In his opening brief, he argues the phrase "could mean one city block or it could mean one actual block as determined by the location of the particular school being measured." In his reply brief, appellant argues the phrase "could mean the space between two consecutive streets . . . or it could mean one-tenth of a mile." He suggests the prohibition should be expressed in terms of precise measurement such as in yards or feet.

We reject appellant's arguments. Probation condition No. 12 is not worded in " ' "terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application." [Citations.]' [Citation.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 890.) Nor does the condition create the risk of " ' "arbitrary and discriminatory application." [Citation.]' [Citation.]" (*Ibid.*) Rather, by reference to the common meaning ascribed to the term "block," the condition sets forth an objective standard governing appellant's conduct.[5] In fact, as respondent points out, it is generally easier for a person to measure distance in terms of blocks than in feet or yards.

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[5] We note the term "block" has been defined as, inter alia, "a (1): a usu. rectangular space (as in a city) enclosed by streets and occupied by or intended for buildings[,] (2): the distance along one of the sides of such a block." (Merriam-Webster's Collegiate Dictionary (10th ed. 1995) page 123.)

Appellant also argues probation condition No. 12 is unconstitutionally overbroad because the term "school" can be applied to any location with the term "school" in the title, such as a trade school or a tax preparation school. "A restriction is unconstitutionally overbroad . . . if it (1) 'impinge[s] on constitutional rights,' and (2) is not 'tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation.' [Citations.] 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.)

The term "school" has a common meaning ascribed to it that limits the scope of probation condition No. 12. Moreover, Penal Code section 626, subdivision (a)(4), defines "school" as "any public or private elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, or technical school or any public right-of-way situated immediately adjacent to school property or any other place if a teacher and one or more pupils are required to be at that place in connection with assigned school activities." Appellant's challenge to probation condition No. 12 fails.

Appellant argues the term "victim" in probation condition No. 17 is vague because the City of Palmdale was the victim. Noting the standard dispositional minute order contains boilerplate language not applicable in all settings, we agree with appellant's argument and will modify the condition to delete the reference to a victim. Appellant also argues the term "witness(es)" is vague because the record is devoid of evidence of witnesses other than police and the condition might prohibit appellant from reporting crime to police. We will modify the condition to address this issue.

DISPOSITION

The judgment (order of wardship) is modified by modifying probation condition No. 17 to read, "Do not contact or cause any contact with, nor associate with (1) any person(s) whom you know to be a witness(es) of any offense alleged against you and whom you know is (are) not law enforcement personnel, or (2) any person(s) whom you know to be a witness(es) of any said offense and whom you know is (are) law enforcement personnel, except for a lawful purpose(s) unrelated to said offense." As modified, the judgment is affirmed.

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KITCHING, J.

We concur:

KLEIN, P. J.

ALDRICH, J.