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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re B.F., a Person Coming  
Under the Juvenile Court Law.

2d Juv. No. B279178  
(Super. Ct. No. 16JV-00310)  
(San Luis Obispo County)

THE PEOPLE,

Plaintiff and Respondent,

v.

B.F.,

Defendant and Appellant.

Appellant B.F. committed nine misdemeanors in 2016, at age 16, and was declared a ward of the juvenile court. (Welf. & Inst. Code, § 602.) The court authorized unlimited probation searches of B.F.'s electronic devices. The probation condition is invalid under *In re Ricardo P.* (2019) 7 Cal.5th 1113, 1116 (*Ricardo P.*). B.F. did not use an electronic device to commit any current or past offense and no evidence suggests he will use one

to commit future crimes. We strike the electronics search condition.<sup>1</sup> In all other respects, we affirm.

### **FACTS AND PROCEDURAL HISTORY<sup>2</sup>**

On the night of September 9, 2016, B.F. was in the driveway of Los Osos resident Paul Merkle, on a bicycle belonging to Merkle's son. B.F. seemed intoxicated and became argumentative when Merkle asked if he was stealing the bike. He refused to leave. He swung his skateboard at Merkle, who shielded himself with his arm and was injured. Merkle's son ran into the house yelling that his father was being attacked. Merkle took B.F.'s skateboard so he could not reuse it as a weapon.

When deputies arrived, B.F. identified himself using a false name and birth date. They saw that B.F.'s pupils were dilated, indicating possible drug use. He was searched and found to be carrying hashish; methamphetamine; a debit card stolen from a locked car at the Merkle residence; a rebate card belonging to Merkle; three credit cards and a driver's license belonging to a woman who had reported her wallet stolen; and two credit cards belonging to a man named Larrea. B.F. was read his rights and handcuffed. He slipped from the handcuffs, resisted officers, and yelled and cursed at deputies and the Merkles. The Merkles were traumatized by B.F.'s conduct.

A wardship petition alleged nine counts against B.F.: count 1—assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)); counts 2 and 3—vehicle burglary (*id.*, § 459); count 4—theft (*id.*,

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<sup>1</sup> The court also barred B.F. from associating with anyone who uses or possesses drugs. In his reply, B.F. concedes that the condition is valid and abandons his challenge to it.

<sup>2</sup> By stipulation, the facts are set forth in the incident and probation reports and booking sheet.

§484e, subd. (c)); count 5—giving false identification information to a police officer (*id.*, § 148.9, subd. (a)); counts 6 and 7—possession of controlled substances (Health & Saf. Code, § 11377, subd. (a)); count 8—resisting a peace officer (Pen. Code, § 148, subd. (a)(1)); count 9—receiving stolen property (*id.*, § 496, subd. (a)).

After the People agreed to reduce felony counts 1, 2 and 3 to misdemeanors, B.F. waived his right to trial and admitted all nine counts. At disposition, he was declared a ward of the court under the supervision of a probation officer. He was ordered to serve 25 days in custody, with 25 days credit for time served, and was ordered released to his mother or guardian. Probation conditions include prohibitions on drug use or association with anyone who uses or possesses drugs; submission to random drug and alcohol testing; and searches of his person, residence, possessions, automobile and electronic devices at any time with or without probable cause or a warrant.

### **DISCUSSION**

The juvenile 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.” (Welf. & Inst. Code, § 730, subd. (b).) We review probation conditions for an abuse of discretion. (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1118.)

Trial counsel objected to searches of B.F.’s devices. Citing *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*), he argued that none of B.F.’s offenses involve an electronic device; use of devices is neither inherently criminal nor reasonably related to future criminality; and the searches would violate his constitutional rights. Over this objection, the court imposed an electronic

search condition encompassing text and voicemail messages, call logs, photographs, email, social media accounts and internet browsing history. The court specified that the rehabilitative purpose of this condition relates to drug/alcohol use or drug sales; threats of violence towards others; and use or possession of weapons.

At our request, the parties briefed *Ricardo P., supra*, 7 Cal.5th 1113. Ricardo P. committed two burglaries. He was subject to electronic searches to monitor his compliance with a condition prohibiting his use or possession of illegal drugs. (*Id.* at p. 1115.) On review, the Supreme Court applied the *Lent* test, in which a condition is invalid if it (1) has no relationship to the charged crime; (2) involves conduct that is not inherently criminal; and (3) is not reasonably related to future criminality. (*Id.* at p. 1118.)

The court invalidated the condition. Because there was “no indication that Ricardo P. had used or will use electronic devices in connection with drugs or any illegal activity, [the evidence] is insufficient to justify the substantial burdens imposed by this electronic search condition. The probation condition is not reasonably related to future criminality and is therefore invalid under *Lent*.” (*Ricardo P., supra*, 7 Cal.5th at p. at p. 1116.) The Supreme Court rejected an argument that device searches are needed to monitor the minor’s drug use because “the burden it imposes on Ricardo’s privacy is substantially disproportionate to the countervailing interests of furthering his rehabilitation and protecting society.” (*Id.* at p. 1119. See *Riley v. California* (2014) 573 U.S. 373, 393-396 [189 L.Ed.2d 430] [electronic devices document all aspects of life, from the mundane to the intimate].)

There is no indication here that an electronic device was involved in B.F.'s crimes and his use of devices is not inherently criminal conduct. Respondent contends that the condition deters B.F.'s future criminality by allowing law enforcement to monitor "compliance with drug-related probation conditions, preventing the use of stolen personal identification information, and promoting his successful rehabilitation towards a drug-free, law-abiding life."

Although B.F. possessed drugs and admitted that "I was under the influence" when he attacked the victim, "there is no suggestion in the record or by the Attorney General that [B.F.] has ever used electronic devices to commit, plan, discuss, or even consider unlawful use or possession of drugs or any other criminal activity." (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1119.) The same problem applies to the court's reasoning that electronics searches avert threats of violence, because B.F. did not make online threats but used a nearby object, a skateboard, as a weapon during an argument.

Respondent speculates, without evidentiary support, that B.F. might use stolen credit cards to make online purchases or commit identity theft. The court did not cite identity theft or fraudulent charges as bases for imposing the electronic search condition. Further, the record does not show B.F. has a history of using stolen credit cards or committing identity theft.

The Attorney General and the probation report suggest that B.F. has a disordered home life. His mother was arrested for domestic violence four days before B.F.'s arrest, she and her fiancé have a history of criminality and drug abuse; B.F. stated that he obtains drugs and alcohol at home; and his mother and grandmother excuse and minimize his behavior. The family

home appears to be unstable, but it is not connected to B.F.'s use of electronic devices, nor does it justify government intrusion to compensate for parental shortcomings.

*Ricardo P.* states that electronics searches may be justified when they relate to “the probationer’s offense or personal history,” citing cases in which the defendant lured the victim using social media; had a history of robbing people of their cell phones; or was convicted of making gang-related threats and used social media to promote his gang. (*Ricardo P.*, *supra*, 7 Cal.5th at pp. 1128-1129.) B.F.’s case is not akin to these examples. Instead, it mirrors *In re Erica R.* (2015) 240 Cal.App.4th 907, where a minor admitted possessing drugs at school. (*Id.* at p. 910.) The appellate court invalidated an unlimited electronics search condition because no evidence linked Erica’s devices to her drug possession offense or to a risk of future criminal conduct. (*Id.* at pp. 912-913.) As in *Erica R.*, there is no evidence that B.F. used his devices to buy or sell drugs.

Here there is at best “an abstract or hypothetical relationship between the probation condition and preventing future criminality.” (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1121.) “[N]othing in the record suggests that [B.F.] has ever used an electronic device or social media in connection with criminal conduct.” (*Id.* at p. 1122.) If the court feared B.F. might relapse, its concerns were allayed by the imposition of a random drug and alcohol testing requirement, and unlimited searches of B.F.’s person, residence, property, possessions or automobile at any time, without a warrant.

Absent any indication that B.F. used a device to commit a current or past crime, or information in the probation report raising concerns about future criminality involving electronic

devices, there is no basis for an electronic search condition that disproportionately invades B.F.'s privacy. The condition fails the test in *Lent* and *Ricardo P.* and must be stricken. We need not reach B.F.'s claim that the condition is unconstitutional.

**DISPOSITION**

The electronic device search condition is stricken. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Linda D. Hurst, Judge

Superior Court County of San Luis Obispo

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