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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. RAUL DE LA CRUZ, Defendant and Appellant.	B280189 (Los Angeles County Super. Ct. No. PA087738)

APPEAL from an order of the Superior Court of Los Angeles County, Daniel B. Feldstern, Judge. Affirmed with directions.

Laini Millar Melnick, 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, Senior

Assistant Attorney General, Shawn McGahey Webb, Supervising Deputy Attorney General, and Nima Razfar, Deputy Attorney General, for Plaintiff and Respondent.

SUMMARY

Raul De La Cruz (De La Cruz) challenges a condition of his probation authorizing the warrantless search of electronic devices, such as cell phones and computers, under his control. De La Cruz challenges the search condition as unreasonable under *People v. Lent* (1975) 15 Cal.3d 481 (*Lent*). We agree that the search condition is invalid under *Lent* and strike the condition. De La Cruz also contends that the search condition is unconstitutionally overbroad. Because we hold that the condition is invalid under *Lent*, we do not reach this issue.

BACKGROUND

On December 7, 2016, a Los Angeles Police Department officer stopped a vehicle driven by De La Cruz. After running the VIN (vehicle identification number), the officer discovered that the vehicle had been stolen from Victorville four days earlier. The officer observed damage to the driver's side door panel; he further noted that the driver's side key lock had been tampered with. There was no key in the ignition. The owner later confirmed that the vehicle had not been previously damaged and said he did not give anyone permission to drive his vehicle.[1]

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[1] Because De La Cruz entered a no contest plea instead of going to trial, the cited facts have been taken from the

De La Cruz was charged with unlawful driving or taking of a vehicle (Veh. Code, § 10851, subd. (a); count 1). De La Cruz pleaded no contest to the charge and was sentenced to three years of formal probation with the condition that he serve 270 days in county jail.[2]

As part of the terms and conditions of his probation, the trial court ordered and informed De La Cruz as follows: "Submit your person and property to search and seizure at any time of the day or night by any probation officer or other peace officer with or without a warrant, probable cause or reasonable suspicion. This includes your person, your residence, any vehicles and electronic devices. [¶] With respect to your electronic devices you are waiving all rights under 1546 through 1546.4 of the Penal Code.[3] [¶] You are agreeing to provide any police officers with passwords to search your electronic devices."

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preliminary hearing transcript as well as the police reports as stipulated by defense counsel.

[2] De La Cruz's criminal history included prior convictions for drug possession, driving on a suspended license, and petty theft. He had been sentenced to three years of probation in each of these cases.

[3] According to Penal Code section 1546, subsection (f), "electronic device" means "a device that stores, generates, or transmits information in electronic form." Under section 1546.4, subsection (a), "[a]ny person in a trial, hearing, or proceeding may move to suppress any electronic information obtained or retained in violation of the Fourth Amendment to the United States Constitution."

Defense counsel objected to the electronic device search condition, arguing that it had no bearing on the case. The prosecutor responded that this particular search condition was "part of all our probations." The court concurred, noting that "[w]e have had to deal with this and everybody has reached a point where it has been part of the plea agreements. It makes a lot of sense because people do carry information on their cell phones and other devices." The court told defense counsel that if he objected to the search condition, it would be difficult to proceed with the plea. Counsel responded, "I just think it is inappropriate in this case with the 10851. I could understand if it was a drug case or solicitation case, that I understand." The court asked whether De La Cruz wanted to withdraw his plea. After conferring with his client, defense counsel said De La Cruz would agree to the condition in order to take advantage of the plea.

On appeal, De La Cruz challenges the electronic device search condition as unreasonable under *Lent*, *supra*, 15 Cal.3d 481. De La Cruz also contends that the condition is unconstitutionally overbroad.

DISCUSSION

I. De La Cruz's Claims are Cognizable on Appeal

At the outset, the People contend that De La Cruz's claims are not cognizable on appeal because he did not first obtain a certificate of probable cause from the superior court. We disagree.

Penal Code[4] section 1237.5 provides in relevant part: "No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere . . . except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has executed and filed a certificate of probable cause for such appeal with the clerk of the court."

Notwithstanding the broad language of section 1237.5, it is well settled that a defendant may, without a certificate of probable cause, appeal "issues regarding proceedings held subsequent to the plea for the purpose of determining the degree of the crime and the penalty to be imposed." (*People v. Jones* (1995) 10 Cal.4th 1102, 1106.)

In determining whether section 1237.5 applies to a challenge of a sentence imposed after a guilty or no contest plea, courts must look to the substance of the appeal. "[T]he crucial issue is what the defendant is challenging, not the time or manner in which the challenge is made." (*People v. Ribero* (1971) 4 Cal.3d 55, 63 (*Ribero*).) "Therefore, the threshold question here is whether [De La Cruz's] challenge to the sentence imposed pursuant to a plea agreement is in substance a challenge to his guilty plea, and thus subject to

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[4] All further statutory references are to the Penal Code unless otherwise indicated.

the requirements of section 1237.5." (*People v. McNight* (1985) 171 Cal.App.3d 620, 624.) "The 'substance-of-the-appeal' test requires us to determine if the facts support a challenge to the sentence imposed rather than to validity of the guilty plea, without determining the merits of the appeal itself." (*Ibid.*)

As the California Supreme Court has noted, when a defendant has agreed to a particular sentence as part of a plea bargain "the rationale for circumscribing the right to appeal pursuant to section 1237.5 applies with equal force." (*People v. Panizzon* (1996) 13 Cal.4th 68, 79 (*Panizzon*).) In other words, "a challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself."[5] (*Ibid.*) "Therefore, it [is] incumbent upon [such a] defendant to seek and obtain a probable cause certificate in order to attack the sentence on appeal." (*Ibid.*)

However, the plea agreement in this case did not include the electronic device search condition. Rather, the agreement simply stated that De La Cruz would receive three years' formal probation. No terms or conditions were specified within the agreement. Nor did the court state that it would impose an electronic device search condition before De La Cruz entered his no contest plea. Thus, unlike the

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[5] See *People v. Buttram* (2003) 30 Cal.4th 773, 789 (*Buttram*) ("when the parties agree to a *specified* sentence, any challenge to that sentence attacks a term, and thus the validity, of the plea itself").

defendant in *Panizzon*, *supra*, 13 Cal.4th 68, De La Cruz is *not* challenging "the very sentence he negotiated as part of the plea." (*Id.* at p. 89.) De La Cruz's claim is *not*, in substance, an attack on the validity of the plea. (See *ibid.*) The parties left to judicial discretion the proper conditions to impose within the agreed-upon three-year probationary term. "Unless the agreement itself specifies otherwise, appellate issues relating to this reserved discretion are therefore outside the plea bargain and cannot constitute an attack upon its validity." (*Buttram*, *supra*, 30 Cal.4th at p. 789.)

Simply put, conditions of probation which were not part of the plea bargain and were imposed after entry of the plea are appealable without a certificate of probable case. (*People v. Narron* (1987) 192 Cal.App.3d 724, 730.) Furthermore, "the acceptance of probation does not preclude a challenge on appeal to the validity of a probation condition." (*Ibid.*) Therefore, the claim is reviewable on appeal despite De La Cruz's failure to seek and obtain a certificate of probable cause. (See *Buttram*, *supra*, 30 Cal.4th at p. 790.)

II. The Search Condition and the *Lent*, *supra*, 15 Cal.3d 481 Test

"The Legislature has placed in trial judges a broad discretion in the sentencing process, including the determination as to whether probation is appropriate and, if so, the conditions thereof." (*Lent*, *supra*, 15 Cal.3d at p. 486.) Consequently, we review conditions of probation only for

abuse of discretion. (*People v. Olguin* (2008) 45 Cal.4th 375, 379 (*Olguin*).) "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.' " (*Lent,* at p. 486.) "Conversely, 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." (*Ibid.*)

De La Cruz contends the electronic device search condition was unreasonable under the three-prong test set forth in *Lent*, *supra*, 15 Cal.3d 481.[6] The *Lent* test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a probation term. "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

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[6] The California Supreme Court is currently reviewing whether a trial court may impose an electronic device search condition if it has no relationship to the defendant's crimes. (See *In re Ricardo P.* (2015) 241 Cal.App.4th 676, review granted Feb. 17, 2016, S230923; *In re J.E.* (2016) 1 Cal.App.5th 795, review granted Oct. 12, 2016, S236628; *People v. Nachbar* (2016) 3 Cal.App.5th 1122, review granted Dec. 14, 2016, S238210; *In re Q.R.* (2017) 7 Cal.App.5th 1231, review granted Apr. 12, 2017, S240222.)

future criminality." (*Olguin*, *supra*, 45 Cal.4th at pp. 379–380.)[7] Whether an electronic device search condition is reasonably related to preventing future criminality depends upon the facts and circumstances in each case. (*In re J.E.*, *supra*, 1 Cal.App.5th at p. 802, rev. granted; *People v. Burton* (1981) 117 Cal.App.3d 382, 391; *In re Martinez* (1978) 86 Cal.App.3d 577, 584.)

The People concede the electronic device search condition has no relationship to De La Cruz's specific offense and that using a cell phone or other electronic device does not itself constitute unlawful conduct. Thus, the question here is whether the search condition is reasonably related to

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[7] *Olguin*, *supra*, 45 Cal.4th 375 upheld a probation condition requiring the defendant to inform his probation officer of any pets in his residence. The defendant challenged the condition as invalid under *Lent*, *supra*, 15 Cal.3d 481, arguing that pet ownership was not reasonably related to his crime or his future criminality. (*Olguin*, at p. 380.) The California Supreme Court disagreed, explaining that "[p]ets residing with probationers have the potential to distract, impede, and endanger probation officers in the exercise of their supervisory duties. By mandating that probation officers be kept informed of the presence of . . . pets, this notification condition facilitates the effective supervision of probationers and, as such, is reasonably related to deterring future criminality." (*Id.* at p. 378.) In short, a probation condition is reasonably related to future criminality if it "enables a probation officer to supervise his or her charges effectively." (*Id.* at pp. 380–381; see *People v. Balestra* (1999) 76 Cal.App.4th 57, 69.)

preventing future criminality by De La Cruz. As De La Cruz notes, however, when before the trial court, "[t]here was no explanation of how the search condition would reasonably prevent future criminal activity: indeed, the condition was a blanket condition the court imposed on all probationers."

We recently addressed this very issue in *People v. Bryant* (2017) 10 Cal.App.5th 396, review granted June 28, 2017, S241937 (*Bryant*), wherein we struck an electronic device search condition.[8] In *Bryant*, the defendant was convicted of possessing a concealed and loaded firearm in a vehicle. (*Id.* at p. 398.) The trial court imposed a two-year sentence, part of which was to be served by the defendant under mandatory supervision. (*Ibid.*) As part of his supervision, the trial court required the defendant to submit to searches of his "text messages, e-mails, and photographs on any cellular phone or other electronic device in his possession or residence." (*Ibid.*)

On appeal, we struck the electronic search condition because there was "no showing of any connection between [the defendant]'s use of a cellular phone and criminality,

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[8] Pending review and filing of the California Supreme Court's opinion, unless otherwise ordered by the Supreme Court, a published opinion of a Court of Appeal may be cited for potentially persuasive value only. (See Cal. Rules of Court, rule 8.1115.) We also note that although the Supreme Court has granted review in *Bryant*, *supra*, 10 Cal.App.5th 396, review granted, the Supreme Court has deferred briefing in the case pending its decision in *In re Ricardo P.*, *supra*, 241 Cal.App.4th 676, review granted.

past or future. [The defendant] was convicted of possessing a concealed weapon in a vehicle. No cellular phone or electronic device was involved in the crime and there is no evidence that [the defendant] would use such devices to engage in future criminal activity. [Citation.] Nor was there any showing as to how the search condition would reasonably prevent any future crime or aid in [the defendant]'s rehabilitation. Although it is conceivable that future searches of [the defendant]'s cellular phone might yield information concerning criminal activity, '[n]ot every probation condition bearing a remote, attenuated, tangential, or diaphanous connection to future criminal conduct can be considered reasonable.' [Citation.] The fact that a search of [the defendant]'s cellular phone records might aid a probation officer in ascertaining [his] compliance with other conditions of supervision is, without more, an insufficient rationale to justify the impairment of [his] constitutionally protected interest in privacy." (*Bryant*, *supra*, 10 Cal.App.5th at pp. 404–405, rev. granted.) We also noted that "[w]hether an electronic search condition is reasonably related to preventing future criminality depends upon the facts and circumstances in each case" and concluded that the search condition was invalid under *Lent*, *supra*, 15 Cal.3d 481. (*Bryant*, at pp. 402, 406.)

We also distinguished *Olguin*, *supra*, 45 Cal.4th 375, stating, "Unlike the pet notification condition in *Olguin* . . . a search of a defendant's cellular phone and other electronic

devices implicates a defendant's constitutional rights."[9] (*Bryant*, *supra*, 10 Cal.App.5th at p. 402, rev. granted.) "In contrast to information about a defendant's pets, a cellular phone search could potentially reveal 'a digital record of nearly every aspect of [its owner's life]—from the mundane to the intimate' [citation], including 'vast amounts of personal information unrelated to defendant's criminal conduct or his potential for future criminality' [citation]. *Olguin*, therefore, does not resolve the question presented here, and the 'fact that a search condition would facilitate general oversight of the individual's activities is insufficient to justify an open-ended search condition permitting review of all information contained or accessible on the [individual's] smart phone or other electronic devices.' "[10] (*Ibid*.)

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[9] Notably, *Olguin*, *supra*, 45 Cal.4th 375 was handed down several years before *Riley v. California* (2014) 573 U.S. ___, 134 S.Ct. 2473, in which the United States Supreme Court outlined the vast privacy concerns triggered by electronic device searches.

[10] Indeed, the probation condition at issue in *Olguin*, *supra*, 45 Cal.4th 375 was designed to assist a probation officer *physically* to enter a probationer's property during the course of his supervision. "Being informed at all times of the pets that are present at a probationer's residence . . . reduces the possible threat to the probation officer's safety by enabling the officer to be aware of, and prepared for, situations that may arise should the officer choose to conduct an unscheduled 'compliance visit' to the probationer at his or

We also noted that most published California cases addressing such conditions have involved juvenile, rather than adult, probation conditions. (See, e.g., *In re J.E.*, *supra*, 1 Cal.App.5th 795, rev. granted; *In re P.O.* (2016) 246 Cal.App.4th 288.) Although these cases were instructive, our consideration of them had to take into account the fact that " 'the power of the state to control the conduct of children reaches beyond the scope of its authority over adults.' " (*Ginsberg v. New York* (1968) 390 U.S. 629, 638.) "This is 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.' "[11] (*In re Victor L.* (2010) 182 Cal.App.4th 902, 910.) Thus, a probation condition that would be reasonable and permissible for a minor under juvenile court supervision may

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her residence." (*Id.* at p. 381.) However, imposing such a requirement does not resolve the underlying issue—whether the officer could search the device in the first place.

[11] To that end, juvenile offenders must accept a probationary sentence and its accompanying terms while an adult offender can refuse probation if he or she believes its terms are more onerous than the sentence which might be imposed in its place. (*In re Sheena K.* (2007) 40 Cal.4th 875, 889.) In *Bryant*, *supra*, 10 Cal.App.5th, review granted, the defendant had been sentenced to mandatory supervision, thus mirroring a juvenile case in that respect. (See *id.* at p. 400.) While we noted this fact in *Bryant*, our decision in that case did not rest upon it.

be unconstitutional or otherwise improper for an adult probationer. (*In re Sheena K.*, *supra*, 40 Cal.4th at p. 889.)

Despite these caveats, several juvenile cases have concluded that electronic device search conditions do not pass muster under *Lent*, *supra*, 15 Cal.3d 481. In *In re Erica R.* (2015) 240 Cal.App.4th 907 (*Erica R.*), such a condition was imposed on a juvenile who had been placed on probation after admitting to misdemeanor drug possession. (*Id.* at p. 910.) The *Erica R.* court invalidated the search condition under the third prong of *Lent*, noting, "There is nothing in this record regarding either the current offense or [the minor]'s social history that connects her use of electronic devices or social media to illegal drugs. In fact, the record is wholly silent about [the minor]'s usage of electronic devices or social media." (*Erica R.*, at p. 913.) The court concluded that " '[b]ecause there is nothing in [the minor's] past or current offenses or [her] personal history that demonstrates a predisposition' to utilize electronic devices or social media in connection with criminal activity, 'there is no reason to believe the current restriction will serve the rehabilitative function of precluding [the minor] from any future criminal acts.' " (*Ibid.*) The court acknowledged, however, that "there can be cases where, based on a defendant's history and circumstances, an electronic search condition bears a reasonable connection to the risk of future criminality." (*Id.* at p. 914.)

In *In re J.B.* (2015) 242 Cal.App.4th 749 (*J.B.*), a juvenile who committed petty theft was placed on probation

with a search condition that required him to allow searches of and disclose the passwords to his electronic devices and social media sites. (*Id.* at p. 752.) The trial court found that the search condition would deter the minor from committing new crimes and allow probation officers to monitor the minor's compliance with the terms and conditions of probation. (*Id.* at p. 753.) On appeal, the People argued the condition was reasonably related to future criminality because it served to facilitate monitoring by probation officers of the conditions prohibiting the use of alcohol and drugs, requiring the minor to stay away from the coparticipant with whom he committed the theft, requiring the minor to attend school, and requiring him to obey his parents. (*Id.* at p. 755.) Following the reasoning in *Erica R.*, *supra*, 240 Cal.App.4th 907, the *J.B.* court held that the search condition was invalid under *Lent*, *supra*, 15 Cal.3d 481 because there was "no showing of any connection between the minor's use of electronic devices and his past or potential future criminal activity."[12] (*J.B.*, at p. 756.)

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[12] The *J.B.*, *supra*, 242 Cal.App.4th 749 court also questioned whether *Olguin*, *supra*, 45 Cal.4th 375 "justifies a probation condition that facilitates general supervision of a ward's activities if the condition requires or forbids noncriminal conduct bearing no relation to the minor's offense that is not reasonably related to potential future criminality as demonstrated by the minor's history and prior misconduct." (*J.B.*, at p. 757.) "In our view, such a broad condition cannot be squared with the limitations imposed by *Lent*[, *supra*, 15 Cal.3d 481] . . . and in some cases may

Like the minors in *Erica R.*, *supra*, 240 Cal.App.4th 907 and *J.B.*, *supra*, 242 Cal.App.4th 749—and the adult in *Bryant*, *supra*, 10 Cal.App.5th 396, review granted—there is no showing of any connection between De La Cruz's use of an electronic device and criminality, past or future. De La Cruz was convicted of the unlawful driving or taking of a vehicle. No cell phone or electronic device was involved in the crime and there is no evidence that De La Cruz would use such devices to engage in future criminal activity. (See *Erica R.*, at p. 913.) Nor was there any showing as to how the search condition would reasonably prevent any future crime or aid in De La Cruz's rehabilitation. Although it is conceivable that future searches of De La Cruz's cell phone might yield information concerning criminal activity, "[n]ot every probation condition bearing a remote, attenuated, tangential, or diaphanous connection to future criminal conduct can be considered reasonable." (*People v. Brandão* (2012) 210 Cal.App.4th 568, 574.) As in *Erica R.* and *J.B.,* without facts demonstrating a predisposition to use electronic devices in connection with criminal activity, "

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exceed constitutional limitations." (*J.B.*, at p. 757.) The *J.B.* court ultimately rejected the application of *Olguin* in the context of an electronic device search condition. "The fact that [the] search condition would facilitate general oversight of the individual's activities is insufficient to justify an open-ended search condition permitting review of all information contained or accessible on the minor's smart phone or other electronic devices." (*J.B.*, at p. 758.)

'there is no reason to believe the current restriction will serve the rehabilitative function of precluding [De La Cruz] from any future criminal acts.' " (*Erica R.*, at p. 913.)

The People maintain that *Erica R.*, *supra*, 240 Cal.App.4th 907 and *J.B.*, *supra*, 242 Cal.App.4th 749 are distinguishable. As the People correctly note, *Erica R.* and *J.B.* "both involved minors with apparently limited records, not an adult repeat offender with a history of being placed on probation like [De La Cruz]." However, this particular circumstance only bolsters our holding. The juvenile offenders in *Erica R.* and *J.B.* arguably received the stricter supervision condition by virtue of their youth (see *In re Victor L.*, *supra*, 182 Cal.App.4th at p. 910), while De La Cruz ostensibly received this supervision by virtue of his criminal record. Despite the state's ability to impose more onerous probation terms in a juvenile case, the appellate courts still struck down the electronic device search condition at issue in both *Erica R.* and *J.B.* If an electronic device search condition cannot pass muster under *Lent*, *supra*, 15 Cal.3d 481 when imposed in a juvenile case, it certainly should not when imposed on an adult probationer, where "the justification for state supervision . . . is weaker than in the case of minors, and his constitutionally protected interest in his privacy is greater." (*Bryant*, *supra*, 10 Cal.App.5th at p. 406, rev. granted; see *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.)

According to the People, *Erica R.*, *supra*, 240 Cal.App.4th 907 and *J.B.*, *supra*, 242 Cal.App.4th 749 also

gave short shrift to *Olguin*, *supra*, 45 Cal.4th 375. Although *Erica R.* only cited *Olguin* when noting the *Lent*, *supra*, 15 Cal.3d 481 test is conjunctive, (see *Erica R.,* at p. 912), the court also noted that its holding was narrow and "there can be cases where, based on a defendant's history and circumstances, an electronic search condition bears a reasonable connection to the risk of future criminality."[13] (*Erica R.*, at p. 914.) Thus, while acknowledging the underlying tenet of *Olguin*—a probation condition is reasonably related to future criminality if it enables a

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[13] As an example, the *Erica R.*, *supra*, 240 Cal.App.4th 907 court cited *People v. Ebertowski (*2014) 228 Cal.App.4th 1170, where a defendant was convicted of making criminal threats to a police officer. The threats included references to his status as a gang member, and at sentencing the prosecution introduced copies of social media posts made by the defendant which promoted his gang. As a condition of his probation, the trial court required the defendant to submit his electronic devices, along with electronic and social media passwords, to his probation officer for search at any time. (*Ebertowski*, at pp. 1172–1173.) The Court of Appeal, Sixth District, upheld this condition. After noting that the underlying offense was gang related, the court stated that the defendant's "association with his gang was also necessarily related to his future criminality. His association with his gang gave him the bravado to threaten and resist armed police officers." (*Id.* at pp. 1176–1177.) Thus, in *Ebertowski*, the record tied the use of social media to the facts of the underlying offense, making the connection between social media and future criminality reasonable.

probation officer supervise his or her charges effectively—the *Erica R.* court simply refused to treat it like a bright line rule. The *Erica R.* court was correct in doing so given that "[t]he primary focus of *Lent*'s third-prong jurisprudence has been on the particular facts and circumstances of the case before the court, rather than on establishing bright-line rules." (*People v. Trujillo* (2017) 15 Cal.App.5th 574, 584 (*Trujillo*).) "This makes sense given that the appropriateness of a particular probation condition necessarily depends on a myriad of tangible and intangible factors before the trial court, including the defendant's particular crime, criminal background, and future prospects." (*Ibid.*)

Olguin, *supra*, 45 Cal.4th 375 does not compel "a finding of reasonableness for every probation condition that may potentially assist a probation officer in supervising a probationer." (*People v. Soto* (2016) 245 Cal.App.4th 1219, 1227 [striking probation condition requiring defendant get probation officer's approval before changing county of residence].) Rather, under *Olguin*, our role in evaluating the third *Lent*, *supra*, 15 Cal.3d 481 factor is to determine whether there is a reasonable factual basis for the trial court to decide that the probation condition will assist the probation department to supervise the defendant. (*Olguin*, at pp. 380–381; accord, *In re P.O., supra*, 246 Cal.App.4th at pp. 293–296.)

The facts do not support this conclusion in this case. Although De La Cruz has a criminal background, nothing in

the record demonstrates that cell phones or other electronic devices were involved in his past crimes. Nor is there any evidence that De La Cruz used electronic devices when committing his current offense or that he would use such devices to engage in future criminal activity. It may be that *Lent*, *supra*, 15 Cal.3d 481 and *Olguin*, *supra*, 45 Cal.4th 375 are satisfied "if the facts show the electronics-search condition will allow the probation department to effectively supervise the defendant to further the dual goals of rehabilitating the defendant and protecting the public."[14]

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[14] The facts in *Trujillo*, *supra*, 15 Cal.App.5th 574 demonstrate the quantum and nature of evidence needed to show an electronic device search condition is reasonably related to preventing future criminality. In *Trujillo*, the 19-year-old defendant pleaded guilty to committing violent offenses against innocent bystanders in two separate incidents, and claimed to have done so because of alcohol intoxication. (*Id.* at p. 583.) "Trujillo ha[d] substantial risk factors relevant to reoffending, including significant untreated alcohol abuse, social isolation, family history of suicide (one of which he witnessed), family members who had been gang members, and economic stress." (*Ibid.*) The trial court imposed the search condition aware of these facts as well as the probation department's conclusion that Trujillo would require close supervision of his daily activities to support a successful probation. Thus, "[t]he record show[ed] the trial court did not impose this condition as a matter of routine, but considered the specific facts relevant to Trujillo's case." (*Ibid.*) Here, of course, we are presented with the precisely *opposite* scenario—the trial court expressly admitted it imposed the condition as a matter of

(*Trujillo*, *supra*, 15 Cal.App.5th at p. 585.) However, we have been presented with *no* facts here, other than the unelaborated observation that De La Cruz has a rap sheet, accompanied by absolutely no details regarding those prior offenses. This cannot be deemed sufficient. Probation search conditions may promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers. (*Olguin*, at p. 380.) But the fact that a search of De La Cruz's electronic devices "might aid a probation officer in ascertaining [his] compliance with other conditions of supervision is, without more, an insufficient rationale to justify the impairment of [his] constitutionally protected interest in privacy." (*Bryant*, *supra*, 10 Cal.App.5th at p. 404, rev. granted.) Consequently, we hold that the search condition is invalid under *Lent* and strike the condition. Because we hold that the condition is invalid under *Lent*, we need not address whether it is also constitutionally overbroad.[15]

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routine and did not consider the facts relevant to De La Cruz's case.

[15] We do note that cases upholding an electronic device search condition against a *Lent*, *supra*, 15 Cal.3d 481 challenge have gone on to strike the condition as unconstitutionally overbroad. (See, e.g., *In re P.O., supra*, 246 Cal.App.4th at p. 298.)

DISPOSITION

The trial court is directed to modify the order by striking the term of probation mandating that De La Cruz submit to searches of his cell phone or other electronic devices, and forward the modified order to the Los Angeles County Probation Department. In all other respects, the order is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.