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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

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

THE PEOPLE,
Plaintiff and Respondent,

v.

JORGE M.,
Defendant and Appellant.

A106285

(Sonoma County
Super. Ct. No. 31201)

Following a jurisdictional hearing the juvenile court found that defendant committed the offense of possession of burglar's tools (Pen. Code, § 466), declared him a ward of the court in the custody of his parents and placed him on probation. In this appeal he claims that the evidence does not support the jurisdictional finding, and complains of the imposition of invalid gang conditions as part of his probation and a court security fee (Pen. Code, § 1465.8). We conclude that the gang conditions must be modified to avoid vagueness or overbreadth, and the court security fee must be stricken, but we find substantial evidence to support the jurisdictional finding and otherwise affirm the judgment.

STATEMENT OF FACTS

At about 5:30 in the afternoon on January 28, 2004, Sonoma County Deputy Sheriff Provost was on patrol in a marked police vehicle near the intersection of Verano and Riverside in the city of Sonoma. He observed a "late model Buick" traveling the

opposite direction on Verano with only its parking lights illuminated in violation of Vehicle Code section 24800. As Deputy Provost turned around and activated his overhead warning lights, the Buick accelerated rapidly. He then activated his siren, whereupon the car immediately in front of him pulled over to the right, but the Buick continued to accelerate well above the posted speed limit. Deputy Provost momentarily lost sight of the Buick after it made a right turn onto Riverside and appeared to him to be “attempting to flee.” Within “10 to 15 seconds,” however, the deputy found the Buick in a duplex parking lot.

Deputy Provost parked directly behind the Buick and left his patrol vehicle. He noticed that the three occupants of the Buick “had jumped out of the vehicle and were in a face-to-face confrontation.” Provost “ordered them to get back in the car,” and “requested a back-up unit.” Defendant took a seat in the rear of the Buick behind the driver. The person in the driver’s seat was identified as Alejandro Hernandez. The front passenger seat was occupied by Sergio Perez. None of the occupants of the Buick were able to produce a driver’s license upon request, and Hernandez “had an outstanding warrant for driving under a suspended license.” Deputy Provost also observed a baseball bat in the front seat of the Buick near the driver Hernandez. He decided to arrest Hernandez and tow the vehicle. He also directed Deputy Lawrence, who arrived as “a back-up officer,” to conduct an inventory search of the vehicle.

In the trunk of the Buick the officers discovered three used car stereos. The car stereos were “loose in the trunk” without any packaging, slightly “banged up,” and the wires were stripped “bare at the ends.” According to Deputy Lawrence, each of the car stereos appeared to him “to have been removed from another vehicle.” He checked the serial numbers of the stereos, but none of them were reported stolen. Deputy Lawrence testified that only “rarely” do people know “their serial numbers,” so even without any stolen property reports he considered it “very possible” the car stereos were stolen.

Also seized from the floorboard of the trunk of the Buick was a small cellophane bag tied at the top that contained broken porcelain spark plug chips.¹ Notebooks that belonged to Perez were found in the trunk near the bag of porcelain chips. The officers offered expert opinions that bags of porcelain chips are commonly used to “break car windows” to enter vehicles more quietly than other methods. Deputy Lawrence determined that under the circumstances – that is, with the associated discovery in the trunk of “multiple stereos” that appeared “to have been taken from other vehicles” – the bag of porcelain spark plug chips found in the trunk was “a tool used for committing automotive burglaries” and “stereo stealing.” The deputies further testified that in their patrol area of the Sonoma Valley substation auto burglaries with entry effectuated through the use of “window smashes” constituted a majority of the reported crimes, perhaps 100 to 150 per month. Most of the reported auto burglaries occur in the night or early morning hours, but recently reports had been made of auto burglaries committed “in the middle of the day in public parking lots.” No auto burglary had been reported that day, however.

Once Deputy Provost questioned and released Perez, he decided to interview defendant, whose last name “matched the registered owner of the vehicle.” Defendant stated that the Buick “belonged to his mother.” Defendant acknowledged that he did not have a driver’s license, but represented that his mother had given permission for his friend Hernandez to drive the car.

After Deputy Lawrence discovered the stereos and bag of porcelain chips, Deputy Provost asked defendant if the car stereos “or things” in the trunk belonged to him. Defendant said, “They are mine,” whereupon he was placed under arrest, handcuffed, and seated in the rear of the patrol vehicle.

At the sheriff’s substation defendant was questioned further after he was given his *Miranda* rights.² When asked “where the stereos and the amplifier” found in “the trunk

¹ The officers also referred to the bag of porcelain chips as “ninja chips.”

² *Miranda v. Arizona* (1966) 384 U.S. 436.

came from,” defendant replied, “they are mine,” and claimed he “bought them from a guy” he called “Tomatous.” In his initial verbal statement defendant “denied knowing anything about spark plug chips.” In a subsequent written statement defendant indicated that the “bag of chips were left in the trunk by Tomatous” the day before, and were “not his.”

Defendant’s mother Christina testified for the defense that on January 28, 2004, she loaned her Buick to Hernandez and “gave him the keys.” Hernandez had used the Buick on previous occasions, with the understanding that he was to return the keys to her. She advised Hernandez that defendant “could not drive” the car, as he “didn’t have a license.” Defendant and Hernandez told Christina that they wanted to use the car to deliver some job applications.

DISCUSSION

I. Denial of the Motion for Judgment of Acquittal.

Defendant argues that the trial court erred by denying his motion for acquittal brought pursuant to Welfare and Institutions Code section 701.1. He claims that the evidence did not support a finding that he “possessed burglary tools within the meaning of Penal Code section 466,” which in pertinent part provides, “Every person having upon him or her in his or her possession . . . ceramic or porcelain spark plug chips or pieces, or other instrument or tool with intent feloniously to break or enter into any building, railroad car, aircraft, or vessel, trailer coach, or vehicle as defined in the Vehicle Code,” is guilty of a misdemeanor. Specifically, defendant challenges the sufficiency of the evidence to prove two essential elements of the offense: first, that he “possessed the ceramic or porcelain chips;” and second, that he had the intent “feloniously to break or enter into a structure or a means of transportation.”

The standard of review of the “juvenile court’s denial of a motion to dismiss is whether there is substantial evidence to support the offense charged in the petition.” (*In re Man J.* (1983) 149 Cal.App.3d 475, 482.) The standard “is the same as the standard applied by an appellate court in reviewing the sufficiency of the evidence to support a conviction, that is, ‘whether from the evidence, including all reasonable inferences to be

drawn therefrom, there is any substantial evidence of the existence of each element of the offense charged.’ [Citations.]” (*People v. Crittenden* (1994) 9 Cal.4th 83, 139, fn. 13; see also *People v. Mendoza* (2000) 24 Cal.4th 130, 175; *People v. Lopez* (1997) 52 Cal.App.4th 233, 250, fn. 7.)

In this appeal challenging the sufficiency of the evidence to support a juvenile court judgment, “we must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal.” (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) “[W]e ask not whether there is evidence from which the trier of fact could have reached some other conclusion, but whether, viewing the evidence in the light most favorable to respondent, and presuming in support of the judgment the existence of every fact the trier reasonably could deduce from the evidence, there is substantial evidence of appellant’s guilt, i.e., evidence that is credible and of solid value, from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Thus, our sole function as a reviewing court in determining the sufficiency of the evidence is to determine if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*In re Michael M.* (2001) 86 Cal.App.4th 718, 726, fns. omitted; see also *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1088-1089.) The only distinction is that, “When reviewing the denial of a motion to acquit for insufficient evidence made at the close of the prosecution’s case, we consider only the evidence then in the record.” (*People v. Smith* (1998) 64 Cal.App.4th 1458, 1464.)

A. The Element of Possession of Burglary Tools.

We first consider the evidence that defendant *possessed* the bag of porcelain spark plug chips found in the trunk of the vehicle. A defendant possesses an object “when it is under his dominion and control. (See 2 Witkin & Epstein, Cal. Criminal Law (2d ed. 1988) Crimes Against Public Peace and Welfare, § 1003, p. 1135.)” (*People v. Peña* (1999) 74 Cal.App.4th 1078, 1083; see also *People v. Martin* (2001) 25 Cal. 4th 1180, 1184; *People v. Bland* (1995) 10 Cal.4th 991, 999.) Possession of the property “may be actual or constructive and need not be exclusive.” (*People v. Land* (1994) 30

Cal.App.4th 220, 223, fn. omitted; see also *In re Jorge M.* (2000) 23 Cal.4th 866, 878; *People v. Morante* (1999) 20 Cal.4th 403, 417; *People v. Santana* (2000) 80 Cal.App.4th 1194, 1199-1200; *People v. Howard* (1995) 33 Cal.App.4th 1407, 1419-1420; *People v. Austin* (1994) 23 Cal.App.4th 1596, 1608.)

“Actual possession occurs when the defendant exercises direct physical dominion and control over the item, however briefly (e.g., in the hand, clothing, purse, bag, *etc.*). (2 Witkin & Epstein, Cal. Criminal Law, *op. cit. supra*, § 1003 and cases cited therein.) Constructive possession does not require direct physical control over the item ‘but does require that a person knowingly exercise control or right to control a thing, either directly or through another person or persons.’ (CALJIC No. 12.01)” (*People v. Austin, supra*, 23 Cal.App.4th 1596, 1608-1609; see also *People v. Morante, supra*, 20 Cal.4th 403, 417-418; *People v. Frazer* (2003) 106 Cal.App.4th 1105, 1117; *People v. Peña, supra*, 74 Cal.App.4th 1078, 1083-1084.) “Constructive possession occurs when the accused maintains control or a right to control the contraband; possession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another.” (*People v. Williams* (1971) 5 Cal. 3d 211, 215.) Possession of an item continues “ ‘throughout a defendant’s assertion of dominion and control over’ ” the object, even when the object is not in the defendant’s immediate physical presence. (*People v. Bradford* (1995) 38 Cal.App.4th 1733, 1738, citation omitted.) The element of possession may be “established by circumstantial evidence and any reasonable inferences drawn from that evidence.” (*People v. Meza* (1995) 38 Cal.App.4th 1741, 1746; see also *People v. Palaschak* (1995) 9 Cal.4th 1236, 1242; *People v. Bradford, supra*, at p. 1738.)

The evidence in the record before us shows more than defendant’s mere access or proximity to the unlawful burglary tools stored in the trunk. (Cf., *People v. Martin* (1973) 9 Cal.3d 687, 696; *People v. Gatlin* (1989) 209 Cal.App.3d 31, 44; *People v. Peters* (1982) 128 Cal.App.3d 75, 82; *People v. Myles* (1975) 50 Cal.App.3d 423, 428-429.) He was a passenger in the vehicle in which the porcelain chips were stored. Only slight additional corroborating evidence was therefore necessary to establish that

defendant had the requisite dominion and control over the burglary tools. (See *People v. Mendoza, supra*, 24 Cal.4th 130, 176; *People v. Land, supra*, 30 Cal.App.4th 220, 225; *People v. Myles, supra*, at p. 429; *People v. Zyduck* (1969) 270 Cal.App.2d 334, 336.) The Buick belonged to defendant's mother, and she gave authority to defendant and his friends to use it. Defendant had an obviously close relationship with driver of the Buick, Hernandez, who had received express permission from defendant's mother to drive the vehicle. Defendant admitted his ownership of the used car stereos found with the bag of porcelain chips in the trunk. Testimony was also presented that the car stereos appeared to have been stolen from other vehicles. These additional evidentiary factors amply demonstrate defendant's dominion and control over the porcelain chips. (*People v. Williams, supra*, 5 Cal. 3d 211, 215; *People v. Land, supra*, at p. 228.)

B. The Element of Intent.

We turn to the evidence of the intent necessary to establish a violation of Penal Code section 466. The offense of possession of a burglary tool requires not only knowledge of its presence and illegal nature, but the additional specific intent "feloniously to break or enter into" a building or vehicle. (See *People v. Harris* (2000) 83 Cal.App.4th 371, 374; *People v. Meza, supra*, 38 Cal.App.4th 1741, 1745-1746.) The prosecution must prove that the object was intended to be possessed as a burglary tool rather than for an innocent reason. The only way to meet that burden is with evidence that the possessor had the intent to use the object for an unlawful rather than harmless purpose. (See *People v. Fannin* (2001) 91 Cal.App.4th 1399, 1404.) "Intent, however, can be inferred from circumstantial evidence. (§ 21, subd. (a).) Indeed, it is recognized that '[t]he element of intent is rarely susceptible of direct proof and must usually be inferred from all the facts and circumstances disclosed by the evidence.' [Citations.]" (*People v. Falck* (1997) 52 Cal.App.4th 287, 299; see also *People v. Martin, supra*, 25 Cal. 4th 1180, 1184; *People v. Lewis* (2001) 25 Cal.4th 610, 653.)

The finding that defendant was in possession of the porcelain chips is not enough to justify the finding of intent. " " "It is, however, a circumstance to be considered in connection with other evidence." ' [Citations.]" (*People v. Williams* (2000) 79

Cal.App.4th 1157, 1172.) While conscious possession of a burglary tool alone is insufficient to permit the inference defendant knew the unlawful character of the property and entertained the intent to use it to break into a building or vehicle, “ ‘the attributes of the possession—time, place, and manner—may furnish the additional quantum of evidence needed. [Citation.]’ [Citation.]” (*People v. Reyes* (1997) 52 Cal.App.4th 975, 984-985.) The strong inference raised by knowing possession of an object is so substantial that only slight additional corroborating evidence in the form of statements or conduct of the defendant tending to show his guilt need be adduced in order to permit a finding of intent. (*People v. Mendoza, supra*, 24 Cal.4th 130, 176; *People v. Barker* (2001) 91 Cal.App.4th 1166, 1173; *People v. Reyes, supra*, at p. 985; *People v. Anderson* (1989) 210 Cal.App.3d 414, 421; *People v. Enos* (1973) 34 Cal.App.3d 25, 36-37.) “ ‘Corroboration need only be slight and may be furnished by conduct of the defendant tending to show his guilt.’ [Citations.]” (*People v. Shope* (1982) 128 Cal.App.3d 816, 821; see also *People v. Green* (1995) 34 Cal.App.4th 165, 181.)

The corroborating evidence of defendant’s intent may not be overwhelming, but we find that it is at least substantial. He possessed not only the bag of porcelain chips, which is commonly used to break car windows and has no other cognizable, legitimate purpose, but three unpackaged, used car stereos in a condition that, according to the officers, indicated they had been stolen from other vehicles—despite defendant’s explanation to the contrary and the lack of any reports of stolen stereos with those specific serial numbers. The officers also testified that the area was one in which an inordinately high number of auto burglaries regularly occurred. When the Buick was first observed by the deputy, it appeared to accelerate and take evasive action, which is an additional suspicious circumstance that tends to justify an inference the property was possessed with unlawful intent. (See *People v. Souza* (1994) 9 Cal.4th 224, 234-235; *People v. Taylor* (1969) 2 Cal.App.3d 979, 983-984.) Defendant also gave somewhat conflicting and ambiguous statements to the deputy concerning the porcelain chips in the Buick trunk that further justifies an inference of felonious intent: at first, he denied any knowledge of them; then, he claimed they had been placed there by a man named

Tomatous, for a purpose he did not explain. (See *People v. Riel* (2000) 22 Cal.4th 1153, 1189; *People v. Enos, supra*, 34 Cal.App.3d 25, 37.) When the evidence is considered in its entirety, we conclude that it provides adequate support for the finding of defendant's knowledge of the nature of the bag of porcelain chips as a burglary tool and intent to use it to feloniously enter a vehicle in violation of Penal Code section 466.

II. The Probation Conditions.

Defendant challenges the gang conditions of his probation imposed by the juvenile court. At the dispositional hearing the court declared that defendant cannot "wear, display or use anything that would make somebody think that you're in a gang," or "wear clothing which based on the color or some other characteristic would make somebody think you're in a gang or you like a gang." The court also prohibited defendant from associating or "hang[ing] out with anybody that you actually know is a gang member," or frequenting or being present "at places where gangs are known to hang out."³ Defendant now claims that the conditions are vague and overbroad, and therefore must be stricken or modified.

A. The Failure of Defendant to Object.

As a threshold matter we consider respondent's contention that the claim of constitutionally invalid probation conditions "was waived for failure to object." Defendant acknowledges that no objection to the "wording of the . . . conditions" was made in the juvenile court, but insists that the claim in this appeal raises "pure questions of law" that may be resolved without objection below.

"Claims of error relating to sentences 'which, though otherwise permitted by law, were imposed in a procedurally or factually flawed manner' are waived on appeal if not

³ We observe that the minute order for the dispositional hearing on March 26, 2004, indicates in Gang Conditions Nos. 41-44 that defendant may not "wear, display, use or possess any insignia, emblem, button, badge, hat, scarf, bandana," or "any article of clothing which is evidence of affiliation with or membership in any gang," and must avoid association with "any person known to minor to be a gang member," and not "frequent any 'known to minor' gang gathering places." To the extent the reporter's transcript and minute order conflict, we will harmonize the conflict in the record in favor of the reporter's transcript. (See *People v. Smith* (1983) 33 Cal.3d 596, 599; *In re Josue G.* (2003) 106 Cal.App.4th 725, 731, fn. 4.)

first raised in the trial court. [Citation.]” (*People v. Brach* (2002) 95 Cal.App.4th 571, 577; see also *People v. Breazell* (2002) 104 Cal.App.4th 298, 304-305.) According to a fundamental principle of appellate procedure, “with certain exceptions, an appellate court will not consider claims of error that could have been—but were not—raised in the trial court.” (*People v. Vera* (1997) 15 Cal.4th 269, 275.) The waiver doctrine seeks to “ “encourage a defendant to bring errors to the attention of the trial court, so that they may be corrected or avoided” ’ [Citation.]” (*People v. Peel* (1993) 17 Cal.App.4th 594, 600.)

The waiver doctrine has also been applied to constitutional objections. (*People v. Rudd* (1998) 63 Cal.App.4th 620, 628, citing *People v. Williams* (1997) 16 Cal.4th 153, 250; *People v. Padilla* (1995) 11 Cal.4th 891, 971; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1116, fn. 20; *People v. Garceau* (1993) 6 Cal.4th 140, 173; *People v. McPeters* (1992) 2 Cal.4th 1148, 1174; *People v. Ashmus* (1991) 54 Cal.3d 932, 972-973, fn. 10.) “A defendant who contends a condition of probation is constitutionally flawed still has an obligation to object to the condition on that basis in the trial court in order to preserve the claim on appeal.” (*People v. Gardineer* (2000) 79 Cal.App.4th 148, 151.) “ “No procedural principle is more familiar to this Court than that a constitutional right,” or a right of any other sort, “may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.” [Citation.] [Citation.]” (*People v. Saunders* (1993) 5 Cal.4th 580, 590; see also *People v. Rudd, supra*, at p. 629.)

However, “Not all claims of error are prohibited in the absence of a timely objection in the trial court. A defendant is not precluded from raising for the first time on appeal a claim asserting the deprivation of certain fundamental, constitutional rights.” (*People v. Vera, supra*, 15 Cal.4th 269, 276.) Further, failure to object does not prevent correction or vacation of an “unauthorized sentence” on appeal. (*In re Birdwell* (1996) 50 Cal.App.4th 926, 931.) “An unauthorized sentence is a narrow exception to the requirement that the parties raise their claims in the trial court to preserve the issue for appeal.” (*People v. Breazell, supra*, 104 Cal.App.4th 298, 304.) “[A] sentence is

generally ‘unauthorized’ where it could not lawfully be imposed under any circumstance in the particular case. Appellate courts are willing to intervene in the first instance because such error is ‘clear and correctable’ independent of any factual issues presented by the record at sentencing.” (*People v. Scott* (1994) 9 Cal.4th 331, 354; see also *People v. Breazell, supra*, at p. 304; *People v. McGee* (1993) 15 Cal.App.4th 107, 117.) “Claims involving unauthorized sentences or sentences entered in excess of jurisdiction can be raised at any time.” (*People v. Andrade* (2002) 100 Cal.App.4th 351, 354; see also *People v. Turner* (2002) 96 Cal.App.4th 1409, 1415.) A related exception to the waiver rule is that it “is generally not applied when the alleged error involves a pure question of law, which can be resolved on appeal without reference to a record developed below.” (*People v. Williams* (1999) 77 Cal.App.4th 436, 460.)

Appellate court opinions are divided on the issue of whether the contemporaneous objection rule of *Welch* governs juvenile cases, where the minor has no right to reject probation on the proposed terms. (See *In re Justin S.* (2001) 93 Cal.App.4th 811, 813-814; *In re Josue S.* (1999) 72 Cal.App.4th 168, 171-173; *In re Kacy S.* (1998) 68 Cal.App.4th 704, 708, fn. 1; *In re Abdirahman S.* (1997) 58 Cal.App.4th 963, 970; *In re Tanya B.* (1996) 43 Cal.App.4th 1, 5.)⁴ Under the circumstances presented in the appeal before us, however, we decide to resolve defendant’s challenge to the probation conditions despite the lack of an objection in the juvenile court. Defendant has not presented a claim on appeal that the probation condition is unreasonable or unwarranted by the evidence.⁵ His constitutional challenge on grounds of vagueness and overbreadth asserts that the conditions as worded could not lawfully be imposed under any circumstances, and therefore constitutes an unauthorized sentence. We realize that if defendant had interposed an objection in the juvenile court, additional evidence to

⁴ We observe, however, that “[a] minor can, of course, object to particular conditions of probation as improper or unwarranted.” (*In re Tyrell J.* (1994) 8 Cal.4th 68, 83, fn. 3.)

⁵ Defendant acknowledges that a “failure to timely challenge a probation condition on ‘*Bushman/Lent*’ [*In re Bushman* (1970) 1 Cal.3d 767; *People v. Lent* (1975) 15 Cal.3d 481] grounds in the trial court waives the claim on appeal.” (*People v. Welch* (1993) 5 Cal.4th 228, 237.)

support the probation conditions may have been presented, or the court may have taken the opportunity to more narrowly draft the conditions to avoid any constitutional deficiencies. Nevertheless, to prevent imposition of an unauthorized sentence and avert any claim of incompetence of counsel we find no forfeiture of the issue, and proceed to determine the validity of the gang conditions as a question of law based upon the record before us. (See, e.g., *People v. Marshall* (1996) 13 Cal.4th 799, 831-832; *People v. Ashmus*, *supra*, 54 Cal.3d 932, 976; *People v. Williams* (1998) 61 Cal.App.4th 649, 657.)

B. The Constitutional Validity of the Probation Conditions.

The juvenile court has exceptionally broad discretionary authority to set probation conditions. (*In re Binh L.* (1992) 5 Cal.App.4th 194, 203.) Imposition of probation conditions upon a juvenile is governed by Welfare and Institutions Code section 730, which, in language similar to Penal Code section 1203.1, subdivision (j), provides in pertinent part, that “ ‘[t]he 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.’ [Subd. (b).]” (*In re Binh L.*, *supra*, at p. 203; see also *In re Brian K.* (2002) 103 Cal.App.4th 39, 43; *In re Antonio C.* (2000) 83 Cal.App.4th 1029, 1033.) “The juvenile court’s broad discretion to fashion appropriate conditions of probation is distinguishable from that exercised by an adult court when sentencing an adult offender to probation. Although the goal of both types of probation is the rehabilitation of the offender, ‘[j]uvenile probation is not, as with an adult, an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the minor’s reformation and rehabilitation.’ [Citation.] ‘[J]uvenile probation is not an act of leniency, but is a final order made in the minor’s best interest.’ [Citation.] [¶] In light of this difference, a condition of probation that would be unconstitutional or otherwise improper for an adult probationer may be permissible for a minor under the supervision of the juvenile court.” (*In re Tyrell J.*, *supra*, 8 Cal.4th 68, 81.)

A probation condition, however, may be overbroad if it “unduly restricts the exercise of a constitutional right. ‘[C]onditions of probation that impinge on constitutional rights must be tailored carefully and “reasonably related to the compelling

state interest in reformation and rehabilitation” [Citation.]’ (*People v. Delvalle* (1994) 26 Cal.App.4th 869, 879, 31 Cal.Rptr.2d 725, quoting *People v. Mason* (1971) 5 Cal.3d 759, 768, 97 Cal.Rptr. 302, 488 P.2d 630 [dis. opn. of Peters, J.].)” (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016.) Probation conditions that infringe upon recognized fundamental constitutional rights to travel, association and expression must also “ “be narrowly drawn; to the extent it is overbroad it is *not* reasonably related to the compelling state interest in reformation and rehabilitation and is an unconstitutional restriction on the exercise of fundamental constitutional rights.” ’ ’ ” (*People v. Pointer* (1984) 151 Cal.App.3d 1128, 1139, citations omitted; see also *People v. Hackler* (1993) 13 Cal.App.4th 1049, 1058; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1242; *People v. Watkins* (1987) 193 Cal.App.3d 1686, 1688.) “ “If available alternative means exist which are less violative of a constitutional right and are narrowly drawn so as to correlate more closely with the purpose contemplated, those alternatives should be used [citations].” [Citations.]’ [Citation.]” (*People v. Zaring* (1992) 8 Cal.App.4th 362, 370-371.) Probation conditions are valid, however, “even though they restrict a probationer’s exercise of constitutional rights if they are narrowly drawn to serve the important interests of public safety and rehabilitation [citation] and if they are specifically tailored to the individual probationer.” (*In re Babak S., supra*, 18 Cal.App.4th 1077, 1084; see also *In re Tyrell J., supra*, 8 Cal.4th 68, 82; *People v. Bianco* (2001) 93 Cal.App.4th 748, 754-755.)

“The concept of unconstitutional vagueness is related to the concept of unconstitutional overbreadth, but ‘there are important differences.’ A clear and precise enactment may nevertheless be ‘overbroad’ if in its reach it prohibits constitutionally protected conduct. The underlying concern of the vagueness doctrine is the core due process requirement of adequate *notice*: [¶] No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids. The operative corollary is that a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its

application, violates the first essential of due process of law. [¶] . . . Thus, a law that is ‘void for vagueness’ not only fails to provide adequate notice to those who must observe its strictures, but also impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application.” (*People v. Lopez* (1998) 66 Cal.App.4th 615, 630, citations and internal quotation marks, other than those denoting emphasis, omitted.) A probation condition “ ‘must be sufficiently precise for the probationer to know what is required of him,’ ” and for the court to determine whether the condition has been violated. (*Id.*, at p. 634, quoting from *People v. Reinertson* (1986) 178 Cal.App.3d 320, 324-325.)

“ ‘Two principles guide the evaluation’ ” of a constitutional claim of vagueness. “ ‘First, “abstract legal commands must be applied in a specific context. A contextual application of otherwise unqualified legal language may supply the clue to a law’s meaning, giving facially standardless language a constitutionally sufficient concreteness.” [Citation.] Second, only reasonable specificity is required. . . .’ [Citation.]” (*People v. North* (2003) 112 Cal.App.4th 621, 628.) Vagueness will not be found “ “ ‘if any reasonable and practical construction can be given its language or if its terms may be made reasonably certain by reference to other definable sources.’ ” [Citation.]’ [Citation.]” (*Ibid.*) “ ‘If an accused can reasonably understand by the terms’ ” used “ ‘that his conduct is prohibited,’ ” the language is not vague. (*People v. Sangani* (1994) 22 Cal.App.4th 1120, 1143; *People v. Serrata* (1976) 62 Cal.App.3d 9, 22.)

We conclude that the gang clothing, “display,” and “use” condition as articulated by the juvenile court is overbroad in its reach and vague in its meaning. The condition that forbids defendant from wearing clothing or other displays that “would make somebody think” he is associated with a gang impermissibly fails to limit the prohibition to *his* knowledge or awareness. (*People v. Lopez, supra*, 66 Cal.App.4th 615, 629.) Defendant cannot be reasonably expected to have notice of the thoughts and reactions of other people to his clothing or displays. Defendant may ignorantly and unwittingly violate the condition if a third person believes he is wearing gang clothing or

paraphernalia, even if he has no knowledge of the gang connection, or in fact no gang connection even exists. “ “It is an essential component of due process that individuals be given fair notice of those acts which may lead to a loss of liberty. [Citations.] This is true whether the loss of liberty arises from a criminal conviction or the revocation of probation. [Citations.] [¶] “Fair notice” requires only that a violation be described with a “ ‘reasonable degree of certainty’ ” . . . so that “ordinary people can understand what conduct is prohibited.” . . .’ ” [Citation.]’ [Citations.]” (*In re Byron B.*, *supra*, 119 Cal.App.4th 1013, 1018.) To avoid overbreadth and vagueness violations the condition must be limited to a proscription against only wearing clothing or displaying indicia *known to defendant* to be gang related or affiliated. (*People v. Lopez*, *supra*, at p. 629.)

We also agree with defendant that the gang conditions must be modified to clarify the meaning of the term “gang.” Use of the word “gang” in probation conditions has been found “ ‘on its face, uncertain in meaning,’ [citation]” and thus unconstitutional without “the availability of a limiting construction.” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 939.) As announced the conditions fail to give the defendant “sufficient notice of the precluded activities or the persons with whom he should not associate.” (*Ibid.*) To avoid uncertainty we must modify the conditions to specify that the term “gang” included in all of them means “criminal street gang” as defined in section 186.22, subdivision (f) of the Penal Code. (*People v. Gardeley* (1996) 14 Cal.4th 605, 622-623; *In re Jorge G.*, *supra*, at p. 940; *People v. Lopez*, *supra*, 66 Cal.App.4th 615, 631-634.)⁶

⁶ The term “criminal street gang” is defined in section 186.22, subdivision (f) to mean, “any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.” The term “pattern of criminal gang activity” as defined in section 186.22, subdivision (e), only requires the attempted or completed commission or a conspiracy to commit two or more of the section 186.22 subdivision (e) enumerated offenses. (See *People v. Augborne* (2002) 104 Cal.App.4th 362, 374; see also *People v. Gardeley*, *supra*, 14 Cal.4th 605, 621.)

The remaining gang conditions imposed by the juvenile court are neither vague nor overbroad. Prohibitions against defendant's association with *known* gang members or his presence at "places where gangs are *known* to hang out" provide him with adequate notice of the proscribed conduct and are narrowly drawn to meet a compelling state interest in reformation and rehabilitation.

III. The Court Security Fee.

Defendant also complains of the imposition of the "\$20.00 court security fee pursuant to Penal Code section 1465.8" which provides, in pertinent part: "To ensure and maintain adequate funding for court security, a fee of twenty dollars (\$20) shall be imposed on every *conviction for a criminal offense.*" (Italics added.) Defendant argues that a juvenile court adjudication is not a criminal conviction, and therefore the court security fee imposed upon him was not authorized by statute. As the Attorney General concedes, "[a]s long as the word 'conviction' remains in Penal Code section 1465.8, there is simply no authorization to impose a \$20 court security fee upon a ward of the juvenile court." (*Egar v. Superior Court* (2004) 120 Cal.App.4th 1306, 1309.)

DISPOSITION

The imposition of a \$20.00 court security fee is stricken. The minute order for the dispositional hearing is modified to strike conditions 41 through 44 of defendant's probation, and to provide instead that defendant cannot wear, display, use or possess any article of clothing, insignia, emblem, button, badge, hat, scarf, bandana, or any other indicia known to defendant to represent affiliation with or membership in a "criminal street gang" as defined in the section 186.22, subdivision (f) of the Penal Code, or to

associate with any person known by the minor to be a member of a criminal street gang, or be present at any place known by the minor to be frequented by criminal street gang members. In all other respects the judgment is affirmed.

Swager, J.

We concur:

Marchiano, P. J.

Stein, J.