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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. JORGE GAMBOA, Defendant and Appellant.	E040668 (Super.Ct.No. FSB055852) **OPINION**

APPEAL from the Superior Court of San Bernardino County. John W. Bunnett, Judge. (Retired judge of the L.A. Mun. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Robert F. Somers, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer and Edmund G. Brown, Jr., Attorneys General, Mary Jo Graves, Chief Assistant Attorney General, Gary W. Schons, Senior Assistant Attorney General,

Lilia E. Garcia, Supervising Deputy Attorney General, and Scott C. Taylor, Deputy Attorney General, for Plaintiff and Respondent.

Pursuant to a plea agreement, defendant pleaded guilty to discharge of a firearm with gross negligence (Pen. Code, § 246.3) and assault with a deadly weapon by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)). In return, defendant was sentenced to 120 days in county jail and placed on probation for a period of three years on various terms and conditions. On appeal, defendant contends (1) the probation condition requiring him to submit to and cooperate in field interrogations infringes upon his Fifth Amendment constitutional privilege against self-incrimination and is unconstitutionally vague; (2) the probation condition requiring him to submit to a search and seizure of his person, residence, and/or property under his control at any time of the day or night by any law enforcement officer, with or without a search warrant and with or without cause, is unconstitutionally overbroad; and (3) the probation condition requiring him to keep the probation officer informed of whether he owns any pets is unconstitutionally overbroad. We reject these contentions and affirm the judgment.

I

FACTUAL BACKGROUND[1]

On May 2, 2006, San Bernardino Sheriff's deputies responded to a call of someone shooting a gun. When the officers arrived, they saw defendant driving at a high rate of speed through a stop sign. When the officers pulled him over, defendant had a

[1] The factual background is taken from the probation officer's report.

nine-millimeter handgun in his car and admitted he had fired shots into the air to celebrate seeing his mother. A box of ammunition was found in the trunk of the car. Defendant stated he lived in Arizona, and it was not a "big deal" to shoot into the air there. The officers found four spent cartridges in the area, and defendant admitted firing at least five times.

II

DISCUSSION

A. *Field Interrogation Condition*

At sentencing, defense counsel objected to the probation condition requiring defendant to "[s]ubmit to and cooperate in a field interrogation by any peace officer at any time of the day or night," as "unconstitutional and overbroad." The court denied the request to strike this condition.

Defendant contends this probation condition violates his constitutional right against self-incrimination and is vague and overbroad. We disagree.

"'The primary goal of probation is to ensure '[t]he safety of the public . . . through the enforcement of court-ordered conditions of probation.' [Citation.] [C]onditions of probation 'are routinely imposed when the sentencing court determines, in an exercise of its discretion, that a defendant who is statutorily eligible for probation is also suitable to receive it.' [Citation.] In the granting of probation, the Legislature has declared the primary considerations to be: 'the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of

conditions of probation; the loss to the victim; and the needs of the defendant.' [Citation.] [¶] In granting probation, courts have broad discretion to impose conditions to foster rehabilitation and to protect public safety pursuant to Penal Code section 1203.1. [Citations.] 'The court may impose and require . . . [such] reasonable conditions[] as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer.' [Citation.] The trial court's discretion, although broad, nevertheless is not without limits: a condition of probation must serve a purpose specified in the statute. In addition, . . . Penal Code section 1203.1 . . . require[s] that probation conditions which regulate conduct 'not itself criminal' be 'reasonably related to the crime of which the defendant was convicted or to future criminality.' [Citation.]" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120-1121; see also § 1203.1; *People v. Welch* (1993) 5 Cal.4th 228, 233; *People v. Warner* (1978) 20 Cal.3d 678, 682-683.)

Defendant's concern that the field interrogation condition is overly broad, vague, and serves no legitimate purpose is not well founded. Like the standard probation search condition, a field interrogation probation condition is a correctional tool that can be used to determine whether the defendant is complying with the terms of his or her probation or disobeying the law. (See *People v. Reyes* (1998) 19 Cal.4th 743, 752 [purpose of an unexpected search is to determine not only whether parolee disobeys the law, a basic condition of parole, but also whether he or she obeys the law; the condition helps

measure the effectiveness of parole supervision]; *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1006 [probation is an alternative form of punishment, carrying with it certain burdens, such as a search term, which can be used as a correctional tool].)

This court observed in *People v. Adams* (1990) 224 Cal.App.3d 705 that "a warrantless search condition is intended and does enable a probation officer '"to ascertain whether [the defendant] is complying with the terms of probation; to determine not only whether [the defendant] disobeys the law, but also whether he obeys the law. Information obtained . . . would afford a valuable measure of the effectiveness of the supervision given the defendant and his amenability to rehabilitation."' [Citation.]" (*Id.* at p. 712.) In addition, as our Supreme Court observed, "[w]hen [warrantless search and seizure] conditions are imposed upon a probationer . . . , it is established that the individual 'consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term. Probation is not a right, but a privilege.' [Citation.]" (*In re York* (1995) 9 Cal.4th 1133, 1150, quoting *People v. Bravo* (1987) 43 Cal.3d 600, 608.)

Likewise, here, the field interrogation probation condition will provide practical, on-the-street supervision to defendant. Field interrogations will be used to monitor defendant's compliance with conditions of his probation. Also, information obtained from field interrogations will provide a valuable measure of his amenability to rehabilitation, which is related to his future criminality. A condition allowing field interrogations may further dual purposes of deterring future offenses by the probationer

and ascertaining whether he is complying with the terms of his probation. The purpose of an unexpected, unprovoked field interrogation of defendant is to ascertain whether defendant is complying with the terms of probation -- to determine not only whether he *disobeys* the law, but also whether he *obeys* the law. Information obtained under such circumstances would afford a valuable measure of the effectiveness of the supervision given defendant. (See, e.g., *People v. Reyes*, *supra*, 19 Cal.4th at p. 752.)

Although the field interrogation probation condition forbids defendant from doing something that is not in itself criminal, that is, "'ignore his interrogator and walk away'" (*United States v. Mendenhall* (1980) 446 U.S. 544, 553), it is related to the purposes of probation as described in *People v. Lent* (1975) 15 Cal.3d 481. It provides officers with a means of assessing defendant's progress toward rehabilitation, it assists them in enforcing other terms of his probation, and it deters further criminal activity. Thus, the field interrogation condition serves the purposes of probation and is valid under the *Lent* criteria. (*Id*. at p. 486.) In addition, implicit in almost every probation condition, including the field interrogation condition, is reasonableness.

Here, defendant discharged a firearm with gross negligence (Pen. Code, § 246.3) while driving around in a public street and committed an assault with a deadly weapon by means of force likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)). By his grossly negligent actions, he endangered the lives of innocent people. In addition, defendant had a proclivity to carry deadly weapons as evidence by his criminal history. He had been convicted in January 2004 of carrying a concealed weapon in a vehicle (Pen.

Code, § 12025) and previously had been charged with carrying a loaded firearm in a public place (Pen. Code, § 12031, subd. (a)(1)). We believe the field interrogation condition is necessary to help reform defendant by discouraging him from carrying dangerous and deadly weapons and firearms or concealing future criminality and to ensure that defendant remains in compliance with probation. The field interrogation term is reasonably related to defendant's future criminality.

Additionally, "interrogation" inherently means questions related to "seek solution of a crime." (See Black's Law Dict. (6th ed. 1990) p. 818, col. 2.) Thus the inherent meaning of the term limits the questions that could be asked of a probationer in a field interrogation to those designed to monitor the probationer's compliance with the other terms of his or her probation as well as future criminality. We do not find that the failure to make this limitation explicit provides any justification for striking the condition. It may be that this limitation is implicit in the language that the court adopted and could be permitted to stand without modifying the language of the condition. Moreover, as discussed in detail, *post*, it is unlikely that a probationer would likely be found to have violated the field interrogation term in a probation revocation hearing for merely refusing to answer questions unrelated to the conduct of the probationer. This condition would assist defendant in maintaining compliance with the law and the terms of his probation.

Defendant claims the field interrogation condition implicates his Fifth Amendment privilege against self-incrimination. We find no constitutional violation.

Defendant is not an ordinary citizen. He is a convicted felon who has been granted the privilege of probation. It has long been settled that certain constitutional rights can be limited where appropriate in the probation process. (See *People v. Arvanites* (1971) 17 Cal.App.3d 1052, 1063 [prohibition against planning and engaging in demonstrations was valid where the defendant falsely imprisoned a man during a protest rally]; *In re Mannino* (1971) 14 Cal.App.3d 953, 968-969 [probation condition prohibiting the defendant from active participation in demonstrations following his conviction of assault at a college demonstration was reasonable], overruled on other grounds in *People v. Welch*, *supra*, 5 Cal.4th at p. 237; *People v. King* (1968) 267 Cal.App.2d 814, 822-823 [condition of probation proscribing participation in demonstrations valid where the defendant battered police officers at an antiwar demonstration].) Because of his status as a felon, defendant may be detained and questioned by a peace officer without the requirement that the officer have at least a reasonable suspicion, based on articulable facts, that defendant is engaged in criminal activity. (See *Terry v. Ohio* (1968) 392 U.S. 1.) Although an ordinary citizen "may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen [to a peace officer] or answer [any question put to him] does not, without more, furnish those grounds[,]" we repeat that defendant is not an ordinary citizen. (*Florida v. Royer* (1983) 460 U.S. 491, 498.) The impingement on his constitutional right to remain silent is warranted due to his status as a felon. The condition is sufficiently narrow to serve the interests of the state and his reform and

rehabilitation while merely requiring him to submit to and cooperate in a field interrogation. Defendant still retains his Fifth Amendment privilege, as discussed below. Furthermore, any custodial interrogation that might follow a field interrogation would be subject to the requirements of *Miranda v. Arizona* (1966) 384 U.S. 436, 478-479.

While probationers have long been required to "cooperate" with their probation officers, a probationer is not foreclosed from asserting his Fifth Amendment privilege, and it would not be inherently uncooperative for him to assert that privilege. (See *United States v. Davis* (1st Cir. 2001) 242 F.3d 49, 52 (*Davis*) [finding no realistic threat in a requirement to "cooperate" with the probation officer].) Therefore, although defendant must cooperate with the police, he retains the right to assert the Fifth Amendment, and his probation cannot be revoked based on a valid exercise of that right. (*Minnesota v. Murphy* (1984) 465 U.S. 420, 427, 434 (*Murphy*).) In *Murphy*, the Supreme Court explained that if a state attaches "[t]he threat of punishment for reliance on the privilege" against self-incrimination by asserting either "expressly or by implication . . . that invocation of the privilege would lead to revocation of probation . . . the probationer's answers would be deemed compelled and inadmissible in a criminal prosecution." (*Id*. at p. 435.) However, defendant's probation condition contains no such threat. It would not be inherently uncooperative for defendant to assert the Fifth Amendment; defendant could still follow instructions and answer nonincriminating questions. (See *Davis*, at p. 52.) Therefore, although defendant must generally cooperate with the police, he retains

the right to assert the Fifth Amendment, and his probation cannot be revoked based on a valid exercise of that right.

Furthermore, if the officer inquires into improper matters or otherwise acts improperly, defendant may present evidence at the probation violation hearing to show that the interrogation or conduct was arbitrary, capricious, harassing, or otherwise not reasonably related to the purposes for which she is on probation. (See *In re Tyrell J.* (1994) 8 Cal.4th 68, 87, fn. 5.) Similarly, the field interrogation condition does not allow law enforcement officials to awaken defendant "at any time or place." Rather, the challenged condition requires defendant to submit to and cooperate in a *field* interrogation -- the condition does not allow officers to barge into defendant's home and question him unnecessarily. Also, defendant may, when questioned, give a truthful answer, and his answer may be used at trial without offending the Fifth Amendment. His obligation to answer questions truthfully is the same obligation borne by any witness at a trial or before a grand jury. (*Murphy*, *supra*, 465 U.S. at p. 427.) It is not too onerous to require him, for purposes of rehabilitation and reform, to speak truthfully to an officer. Because he has a duty to answer an officer's questions truthfully, unless he asserts the privilege, it does not violate his right not to incriminate himself. The purpose of probation is, of course, defendant's reformation and rehabilitation, and speaking truthfully to a peace officer is arguably an implied condition of probation. (See *People v. Cortez* (1962) 199 Cal.App.2d 839, 844.) Nevertheless, defendant is not required to give up his freedom to decline to answer particular questions. (*Murphy*, at p. 429.) The

Constitution does not forbid the asking of incriminating questions (*id*. at p. 428), and the state in this case has neither expressly nor by implication threatened that invocation of the Fifth Amendment privilege would lead to revocation of probation.

The defendant in *People v. Miller* (1989) 208 Cal.App.3d 1311, 1315, who was required to submit to polygraph testing at the direction of his probation officer as a condition of probation, also argued that the condition violated his privilege against self-incrimination. The *Miller* court stated: "Defendant misconstrues the nature of the privilege. The privilege against self-incrimination is not self-executing; it must be claimed. [Citation.] Although defendant has a duty to answer the polygraph examiner's questions truthfully, unless he invokes the privilege, shows a realistic threat of self-incrimination and nevertheless is required to answer, no violation of his right against self-incrimination is suffered. [Citation.] The mere requirement of taking the test in itself is insufficient to constitute an infringement of the privilege." (*Ibid*.)

Moreover, the field interrogation condition is less intrusive than some of the other properly imposed conditions of defendant's probation. For example, condition No. 15 forbids defendant from associating "with known convicted felons or anyone actively engaged in criminal activity . . . ." Likewise, condition No. 16 prohibits defendant from associating "with known illegal users or sellers of controlled substances . . . ." Further, condition No. 18 requires defendant to "[c]arry at all times, a valid California driver's license or Department of Motor Vehicles identification card containing [his] true name,

age and current address, and display such identification upon request by any peace officer and not use any other name for any purpose without first notifying the P.O."

Defendant recognizes that under *Murphy* a probation condition that merely requires a probationer to be truthful does not violate a person's right against self-incrimination. (*Murphy*, *supra*, 465 U.S. at p. 436.) The condition here is similar. The obligation to "cooperate" entails the general obligation to appear and to answer questions truthfully, just as in *Murphy* and *Davis*, *supra*, 242 F.3d 49. Defendant is constrained by the condition from doing something which is otherwise lawful, i.e., he may not simply "'ignore his interrogator and walk away'" (*United States v. Mendenhall*, *supra*, 446 U.S. at p. 553), but it is integral to the purposes of probation as described in *Lent*, *supra*, 15 Cal.3d 481. It provides officers with a means of assessing defendant's progress toward rehabilitation, it assists them in enforcing other terms of his probation, and it deters further criminal activity. Thus, the field interrogation condition serves the purposes of probation and is valid under the *Lent* criteria.

To the extent defendant relies on *United States v. Saechao* (9th Cir.2005) 418 F.3d 1073 (*Saechao*), that reliance is misplaced. In *Murphy*, *supra*, 465 U.S. 420, the United States Supreme Court held that the probation condition that a defendant "be truthful with his probation officer in all matters" was constitutional because it only proscribed false statements. (*Id*. at p. 436.) There was nothing in the probation condition that compelled the defendant to answer all questions; the defendant was only required to be truthful if he chose to answer his probation officer's questions. (*Ibid*.) In contrast, the probation

condition in *Saechao* explicitly stated that the defendant must "'promptly and truthfully *answer all* reasonable inquiries'" during a field interrogation. (*Saechao*, at p. 1075, italics added.) The Ninth Circuit held that this probation condition was unconstitutional because, "[n]ot only was [the defendant] required to be truthful to his probation officers, but he was expressly required, under penalty of revocation, to 'promptly . . . *answer all* reasonable inquiries.'" (*Id*. at p. 1078.) The court held that this condition violated the Fifth Amendment because, unlike the condition in *Murphy*, the probationer was not permitted to invoke the privilege against self-incrimination without jeopardizing his supervised release. (*Saechao*, at p. 1078.)

Here, defendant is not subject to a condition like the one found impermissible in *Saechao* requiring him to answer all reasonable inquiries; he is subject to a condition like the one found permissible in *Murphy*, bearing the implied general obligation to be truthful in his answers. If asked a question, the answer to which is likely to incriminate him, he is free to invoke his Fifth Amendment privilege and refuse to respond.

Additionally, as explained above, "interrogation" inherently means questions related to "seek solution of [a] crime." (See Black's Law Dict., *supra*, p. 818, col. 2.) Thus, the inherent meaning of the term limits the questions that could be asked of a probationer in a field interrogation to those designed to monitor the probationer's compliance with the other terms of his or her probation, i.e., future criminality. We do not find that the failure to make this limitation explicit provides any justification for striking the condition. This limitation is implicit in the language of the probation

condition, and may stand without modifying the language of the condition. Moreover, pursuant to this decision, we hold that a probationer may not be found to have violated the field interrogation term in a probation revocation hearing for merely refusing to answer questions, where those questions are unrelated to the conduct of the probationer.

In summary, we note that the limitation on defendant's liberty is warranted due to his status as a felon. The condition is sufficiently narrow to serve the interests of the state -- his reform and rehabilitation -- while requiring him merely to submit to and cooperate in a field interrogation. Any custodial interrogation that might follow a field interrogation would be subject to the requirements of *Miranda v. Arizona, supra,* 384 U.S. 436. In these circumstances, we conclude that the condition is reasonable and constitutional.

B. *Warrantless Search Condition*

At sentencing, defense counsel also objected to the standard warrantless search condition requiring defendant to "[s]ubmit to a search and seizure of [his] person, residence and/or property under [his] control at any time of the day or night by any law enforcement officer, with or without a search warrant, and with or without cause . . . ." as duplicative and "unconstitutional as phrased." The court struck the duplicative condition but impliedly denied counsel's the request to strike the standard search condition.

Defendant argues the warrantless search condition is unconstitutionally overbroad and requests that the condition be modified to limit prospective searches to weapons and only for cause. This issue has been well resolved against him. (See, e.g., *People v.*

Adams, *supra*, 224 Cal.App.3d at p. 712; *People v. Bauer* (1989) 211 Cal.App.3d 937, 942; *People v. Wardlow*, *supra*, 227 Cal.App.3d at pp.366-367.) In *Bravo*, the Supreme Court explained: "A probationer, unlike a parolee, consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term." (*People v. Bravo*, *supra*, 43 Cal.3d at p. 608; see also *In re York*, *supra*, 9 Cal.4th at p. 1150.)

"Probation is '. . . an alternative form of punishment . . . when it can be used as a correctional tool. [Citation].' [Citation.] With the benefit of probation comes the burden of a 'consent search term.' Such a term serves as a correctional tool . . . ." (*In re Anthony S.*, *supra*, 4 Cal.App.4th at p. 1006.)

A sentencing court has broad discretion to impose "reasonable conditions" of probation "to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer . . . ." (Pen. Code, § 1203.1, subd. (j)); see *People v. Warner*, *supra*, 20 Cal.3d at pp. 682-683.)

"If a probation condition serves the statutory purpose of '"reformation and rehabilitation of the probationer,"' such condition is '"reasonably related to future criminality"' and will be upheld even if it has no '"relationship to the crime of which the offender was convicted."' [Citation.]" (*People v. Brewer* (2001) 87 Cal.App.4th 1298, 1311.)

In *People v. Balestra* (1999) 76 Cal.App.4th 57, a warrantless search condition of probation was imposed upon a defendant who entered a guilty plea to inflicting willful cruelty on an elder (Pen. Code, § 368, subd. (a)). (*Balestra*, at p. 61.) The condition was found valid, despite the lack of any relationship between the underlying offense to theft, narcotics, or use of firearms. (*Id*. at pp. 67-68.) The court stated: "As our Supreme Court has recently (and repeatedly) made clear, a warrantless search condition is intended to ensure that the subject thereof is obeying the fundamental condition of all grants of probation, that is, the usual requirement (as here) that a probationer 'obey all laws.' Thus, warrantless search conditions serve a valid rehabilitative purpose, and because such a search condition is necessarily justified by its rehabilitative purpose, it is of no moment whether the underlying offense is reasonably related to theft, narcotics, or firearms: 'The threat of a suspicionless search is fully consistent with the deterrent purposes of the search condition. "'The purpose of an unexpected, unprovoked search of defendant is to ascertain whether [the probationer] is complying with the terms of [probation]; to determine not only whether he disobeys the law, but also whether he obeys the law. Information obtained under such circumstances would afford a valuable measure of the effectiveness of the supervision given the defendant . . . .'" [Citations.]'" (*Id*. at p. 67, italics and fn. omitted.)

Defendant argues that the warrantless search condition "violates the restrictions the Court places on Fourth Amendment waivers" because although the waiver is similar to the condition in *Bravo*, his condition adds the phrase "with or without cause." We are

unpersuaded by defendant's argument that the language "*without cause* suggests that a search may be conducted for any reason, including harassing, arbitrary or capricious reasons, which the *Bravo* holding specifically forbids." Rather, "*Bravo* . . . establishes that an adult probationer subject to a search condition may be searched by law enforcement officers having neither a search warrant nor even reasonable cause to believe their search will disclose any evidence." (*In re Tyrell J., supra,* 8 Cal.4th at p. 80, fn. omitted.)

"In California, a person may validly consent in advance to warrantless searches and seizures in exchange for the opportunity to avoid serving a state prison term. [Citations.] Warrantless searches are justified in the probation context because they aid in deterring further offenses by the probationer and in monitoring compliance with the terms of probation. [Citations.]" (*People v. Robles* (2000) 23 Cal.4th 789, 795.) The California Supreme Court has held that a warrantless search of a probationer's house, undertaken to discover incriminating evidence against a third party residing there, is not constitutionally invalid if the circumstances, viewed objectively, justified the officer's actions. (*People v. Woods* (1999) 21 Cal.4th 668, 671-672 (*Woods*).)[2] In *People v.*

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[2] In *Woods* the court approved of the use of a probation search condition to investigate the probationer's cotenant, a use that was solely intended to further a criminal investigation. In doing so, *Woods* relied heavily on the United States Supreme Court's holding in *Whren v. United States* (1996) 517 U.S. 806 that "'[s]ubjective intentions play no role in ordinary, probable-cause Fourth Amendment analysis.'" (*Woods, supra,* 21 Cal.4th at p. 689.) *Woods* concluded that "*Whren*'s analysis logically extends, *at the very least,* to a search where, as here, the circumstances, viewed objectively, show a possible probation violation that justifies a search of the probationer's house pursuant to a search condition." (*Id*. at pp. 678-679.)

Reyes, *supra*, 19 Cal.4th 743, our Supreme Court held that a search of a parolee subject to search conditions need not be based on reasonable suspicion so long as the search is not arbitrary, capricious, or harassing. The Supreme Court reasoned that, even in the absence of particularized suspicion, a parole search does not intrude on any expectation of privacy that society is prepared to recognize as legitimate. (*Id*. at p. 754.) "As a convicted felon still subject to the Department of Corrections, a parolee has conditional freedom -- granted for the specific purpose of monitoring his transition from inmate to free citizen. The state has a duty not only to assess the efficacy of its rehabilitative efforts but to protect the public, and the importance of the latter interest justifies the imposition of a warrantless search condition." (*Id*. at p. 752; see also *People v. Ramos* (2004) 34 Cal.4th 494, 506; *People v. Sanders* (2003) 31 Cal.4th 318, 332-333.)

Here, we do not find that the language "without cause" is contrary to the holding in *Bravo* or subsequent Supreme Court cases. Case law establishes that a probationer may lawfully be searched without reasonable suspicion, i.e., without cause, as long as the search is not arbitrary, capricious, or intended to harass.[3] (See *People v. Reyes*, *supra*, 19 Cal.4th at p. 754; *Woods*, *supra*, 21 Cal.4th at p. 682 [probation searches may not be "undertaken in a harassing or unreasonable manner"]; *People v. Robles*, *supra*, 23 Cal.4th at p. 797 [probation searches "must be reasonably related to the purposes of probation"]; *People v. Bravo*, *supra*, 43 Cal.3d at pp. 608, 610-611.) The warrantless search condition

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[3] Of course, a defendant may later challenge the search if undertaken for improper motivations.

would assist defendant in maintaining compliance with the law and the terms of his probation. The condition is reasonably related to defendant's rehabilitation and deterrence of future criminality. We find the condition as imposed is specifically tailored to the individual probationer. Thus, the condition is narrowly drawn to serve the important interests of public safety and rehabilitation.

Nor are we persuaded that the search condition imposed was overbroad. (See *In re Babak S.* (1993) 18 Cal.App.4th 1077, 1084 [condition that impinges upon fundamental right to travel must be narrowly drawn and specifically tailored to defendant].) Defendant argues, by analogy to *People v. Kay* (1973) 36 Cal.App.3d 759, 762, in which the court invalidated a condition allowing search of the person because the weapons used at a sit-in were not the type that could be concealed on the person, but upheld a condition allowing search of the defendant's car because the defendant could carry a similar bludgeon in his car, that the search condition in this case is overbroad because it is not limited to a firearm or other weapon. That case is distinguishable from the present case. *Kay* involved limiting a search to a particular location, i.e., person, residence, or property, not limiting what type of contraband could be searched for. Here, defendant concedes that a firearm can be concealed on a person, in a residence, and in other property. We conclude that the search condition was not overbroad, and the court did not exceed the boundaries of its discretion, as defined by *Lent* in imposing it.

C. *Pet Condition*

At sentencing, defense counsel asked that the trial court strike the word "pets" from probation condition No. 7 on the grounds that it was unconstitutional and overbroad. The court denied that request.

Condition No. 7 specifically provides that defendant "[k]eep the Probation Officer informed of place of residence, cohabitants and *pets* . . . ." (Italics added.)

Defendant contends the trial court abused its discretion in denying his request to strike the pet condition because the condition is not reasonably related to his crime or future criminality and is constitutionally overbroad. We disagree.[4]

As described above, trial courts have broad discretion in determining what conditions of probation will aid the reformation and rehabilitation of the defendant. (Pen. Code, § 1203.1; *People v. Carbajal*, *supra*, 10 Cal.4th at pp. 1120-1121.) Again, a condition will not be held invalid unless it has no relationship to the crime of which the defendant is convicted, relates to conduct which is not itself criminal, and requires or forbids conduct which is not reasonably related to future criminality. (*People v. Lent*, *supra*, 15 Cal.3d at p. 486.) All three factors must be present for a condition of probation to be invalid. (*People v. Wardlow*, *supra*, 227 Cal.App.3d at p. 366.)

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[4] We note that this issue is currently pending before the Supreme Court. (*People v. Olguin* (Dec. 15, 2006, E039342) review granted Mar. 21, 2007, S149303; *People v. Lopez* (Nov. 30, 2006, E039251) review granted Mar. 21, 2007, S149364.)

While pet ownership is not, in itself, criminal, it *is* reasonably related to the supervision of a probationer and hence to his future criminality.

"'[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.]' [Citation.]" (*In re Byron B.* (2004) 119 Cal.App.4th 1013, 1016 [Fourth Dist., Div. Two], quoting *People v. Delvalle* (1994) 26 Cal.App.4th 869, 879, quoting *People v. Mason* (1971) 5 Cal.3d 759, 768 (dis. opn. of Peters, J.).) However, there is no constitutional right to keep a pet. (See *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361, 388.) A fortiori, there is no constitutional right to keep a pet without telling your probation officer.[5]

Absent any such constitutional concerns, "[a]n adult probation condition is unreasonable if '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 . . . ." [Citation.]' [Citation.]" (*In re Byron B., supra*, 119 Cal.App.4th at p. 1016, quoting *People v. Lent*, *supra*, 15 Cal.3d at p. 486, fn. omitted, quoting *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627.) "As with any exercise of discretion, the sentencing court violates this standard when its determination is arbitrary or capricious or '"'exceeds the bounds of

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[5] Arguably, if keeping the pet was, in itself, a crime, such a requirement might violate the right against self-incrimination. This, however, is not the thrust of defendant's argument.

reason, all of the circumstances being considered.'" [Citations.]' [Citation.]" (*People v. Carbajal*, *supra*, 10 Cal.4th at p. 1121, quoting *People v. Welch*, *supra*, 5 Cal.4th at p. 234, quoting *People v. Warner*, *supra*, 20 Cal.3d at p. 683, quoting *People v. Giminez* (1975) 14 Cal.3d 68, 72.)

"[Probation conditions] are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. [Citation.] These same goals require and justify the exercise of supervision to assure that the restrictions are in fact observed. Recent research suggests that more intensive supervision can reduce recidivism, [citation], and the importance of supervision has grown as probation has become an increasingly common sentence for those convicted of serious crimes, [citation]." (*Griffin v. Wisconsin* (1987) 483 U.S. 868, 875 [97 L.Ed.2d 709, 107 S.Ct. 3164].) A probation condition therefore may be deemed reasonable if it "enable[s] the [probation] department to supervise compliance with the specific conditions of probation." (*People v. Kwizera* (2000) 78 Cal.App.4th 1238, 1240.)

A probation officer may need to visit a probationer's home unannounced. Here, for example, defendant's probation conditions required him to "[s]ubmit to a search . . . of your . . . residence . . . at any time of the day or night . . . ." Knowing, in advance, what animals are in the probationer's home is reasonably related to the safety of the probation officer. While some pets are so innocuous that they could not possibly interfere with a probation officer's performance of his or her duties, it is perfectly

reasonable for the trial court not to be more specific as to species, breed, or temperament. Animals can be unpredictable, particularly when confronted by a stranger in what they consider to be their own territory. Ask any letter carrier. Or ask any professional animal trainer -- they have a saying: "[A]nything with a mouth bites." (Sutherland, Kicked, Bitten and Scratched (2006) p. 63.)

Moreover, a probation officer is entitled to some protection against undue surprise. A trial court drafting probation conditions in the abstract might not think to include a parrot among the pets that must be disclosed; presumably, however, a probation officer would appreciate being warned that that voice in another room may just be a bird. Likewise, any probation officer who has to open a closet or reach under a bed during a search would no doubt like to know ahead of time whether the probationer keeps snakes -- regardless of whether the snakes are venomous.

Even assuming the challenged condition could have been more narrowly tailored, that does not render it invalid; rather, it simply must not exceed the bounds of reason. It not unreasonable to put the burden on the probationer to tell the probation officer what animals may be present. The probation officer can then decide what precautions to take. The challenged condition does not prevent the probationer from owning a pet of any kind. It does not even require approval of the pet. It simply requires notice to the probation officer. This is amply within the bounds of reason.

Significantly, defendant does not challenge the portion of the probation condition that required him to keep the probation officer informed of his cohabitants. This

condition serves the salutary, rehabilitative purpose of preventing defendant from associating with those who might lead him into criminal behavior. Defendant does not seem to think this condition had to be more narrowly drawn so as to require defendant to report only cohabitants who are gang members, drug users, or known felons. It is just as reasonable to require defendant to report all of his pets as it is to require him to report all of his cohabitants.

III

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

RAMIREZ
P.J.

HOLLENHORST
J.