S259956

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

CLYDELL BRYANT,

Defendant and Appellant.

Case No. S_____

Second Appellate District Division One, Case No. B271300
Los Angeles County Superior Court, Case No. GA094777
The Honorable Michael Villalobos, Judge

PETITION FOR REVIEW

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

The People respectfully petition this Honorable Court for review of a published decision by the Court of Appeal, Second Appellate District, Division One, striking a mandatory supervision condition that permitted warrantless searches of appellant Clydell Bryant's personal electronic devices. (Cal. Rules of Court, rule 8.500.) The opinion was filed on November 27, 2019, and is published at 42 Cal.App.5th 839. (Exh. A.)

ISSUE PRESENTED

Whether the validity of a mandatory supervision condition should be assessed in the same manner as a parole condition, rather than a probation condition, since mandatory supervision is more akin to parole, particularly with respect to the supervisee's limited privacy expectations and the State's greater interest in reducing recidivism.

STATEMENT OF THE CASE

Appellant Clydell Bryant was convicted of one count of carrying a firearm concealed within a vehicle and sentenced to imprisonment in county jail for a term of two years, with half of the term to be served in custody and half on mandatory supervision. As a condition of mandatory supervision, the trial court ordered Bryant to submit to searches of texts, emails, and photographs on personal electronic devices in his possession ("electronics search condition"). In its initial published opinion, the Court of Appeal applied the test of *People v. Lent* (1975) 15 Cal.3d 481, which governs probation conditions, and ordered Bryant's electronic search condition to be stricken. The Court held that the condition was invalid

because an electronics search condition can be reasonably related to a defendant's criminality under the *Lent* test only where there is a showing that his criminality was specifically connected to electronic device use. (*People v. Bryant* (2017) 10 Cal.App.5th 396, 404-406.)

The People petitioned for rehearing, arguing that the Court of Appeal's application of *Lent* was incorrect because, unlike probation, mandatory supervision is a continuation of a custody term, and therefore a different, broader review standard applied.[1] Although the Court of Appeal corrected several errors in its opinion, it denied rehearing without acknowledging the People's argument that *Lent* is not the appropriate test for assessing the validity of mandatory supervision conditions. (Exh. B.)

The People sought plenary review, asking this Court to clarify the proper test for assessing mandatory supervision terms. In the alternative, the People asked for a grant-and-hold behind *People v. Ricardo P*., S230923, which would assess the validity of an electronics search condition of probation under the *Lent* test. This Court granted and deferred review pending the *Ricardo P*. decision.

In *Ricardo P*., this Court held that an electronics search *probation* condition was invalid under *Lent* because it was not reasonably related to the offender's future criminality. ((2019) 7 Cal.5th 1113, 1116.) The Court concluded that the condition and the state interests served by it lacked proportionality to the significant burden it imposed on the juvenile probationer's privacy interests because there was no showing his criminal conduct involved electronic devices. (*Id*. at p. 1122.)

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[1] Under Penal Code section 1170, subdivision (h)(5), offenders are sentenced to a prison term, but the time is served in county jail. The People will refer to this as a "custody term" for ease of reference when discussing sentences served as part of a "split sentence" or while an offender is on mandatory supervision.

On remand following *Ricardo P.*, the People again argued that the *Lent* test does not apply to conditions of mandatory supervision, and therefore *Ricardo P.* did not control the outcome here. Given the widespread acceptance among the courts of appeal that mandatory supervision is more akin to parole than probation, the People argued that mandatory supervision terms should be analyzed in the same manner as parole terms, meaning they should be upheld as long as the terms are reasonably related to effective supervision or future criminality without regard for the particular offender or offense. And under that test, the condition imposed in this case is valid.

The Court of Appeal rejected the People's position and analyzed Bryant's mandatory supervision term under the *Lent* test, as it would have done with a probation term. As support for applying *Lent*, it relied primarily on Penal Code[2] section 1170, subdivision (h)(5)(B), which provides that those on mandatory supervision are to be supervised in the same manner as probationers. (Opn. at 14-15.)

REASONS FOR REVIEW

THIS COURT SHOULD PROVIDE GUIDANCE TO THE LOWER COURTS BY ESTABLISHING THE PROPER TEST FOR ASSESSING THE VALIDITY OF MANDATORY SUPERVISION CONDITIONS

Review is necessary to decide an important question of law and to secure uniformity of decision. (Cal. Rules of Court, rule 8.500(b)(1)).

Due to recent legislation, there are now four types of felony supervision in California—probation, postrelease community supervision, parole, and mandatory supervision. Unlike *Ricardo P.*, the instant case involves a condition of mandatory supervision under the Criminal Justice

[2] All further undesignated statutory references are to the Penal Code.

Realignment Act of 2011, as modified in 2015. That Act generally requires a court to impose a split sentence in which persons convicted of certain felony offenses serve a portion of their sentence in county jail and the remainder of their sentence in the community on mandatory supervision. (§ 1170, subd. (h)(5).) Mandatory supervision is essentially a continuation of a custody term, whereas probation is a grant of clemency in lieu of a custody commitment.

Despite this significant difference between mandatory supervision and probation, the courts of appeal have reflexively applied the *Lent* test in both contexts. But the *Lent* test is not a one-size-fits-all solution, as this Court has recognized (see *People v. Burgener* (1986) 41 Cal.3d 505, 532-533), and it is not well suited to the stricter oversight that is appropriate in the mandatory supervision context. The lower courts have provided varied, confusing, and inconsistent reasons for assessing mandatory supervision conditions under the *Lent* test. And several of these opinions contradict decisions of this Court and the United States Supreme Court. The published opinion in this case adds to the existing confusion over the proper way to analyze mandatory supervision conditions.

Moreover, because split terms under the Criminal Justice Realignment Act became mandatory as of January 1, 2015, issues concerning the validity of mandatory supervision conditions are very likely to recur and a decision establishing the manner in which the conditions are to be analyzed will have widespread application to future cases. (See § 1170, subds. (h)(5)(A) & (h)(7), as amended by Stats. 2014, ch. 26 (A.B. 1468), § 16, effective June 20, 2014.)

This Court's intervention is therefore warranted to clarify the law on this recurring issue.

A. Mandatory supervision conditions should be assessed in the same manner as parole conditions because mandatory supervision is more like parole than probation

In *Lent*, this Court adopted the rule that a probation condition will not be deemed invalid unless it "(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality [citation] . . . ." (*Lent*, *supra*, 15 Cal.3d at p. 486, internal quotations and citation omitted.)

In *Burgener*, *supra*, 41 Cal.3d at page 532, the defendant argued that *Lent* should also apply to parole conditions and that, under *Lent*, a parole search condition would be "reasonably related to parole supervision only if it would be a proper condition of probation." While this Court agreed that parole conditions, like probation conditions, "must be reasonable since parolees retain constitutional protection against arbitrary and oppressive official action," the Court rejected the defendant's argument that parole and probation conditions are one and the same or subject to the same *Lent* analysis. (*Id*. at p. 532 [also stating, "We have never equated parole with probation in this regard"].)

The Court discussed the differing nature of parole, including that it is mandatory and that a parolee is a convicted felon being released from prison. (*Burgener*, *supra*, 41 Cal.3d at pp. 531-532.) The Court explained that "[a] convicted defendant released on probation, as distinguished from a parolee, has satisfied the sentencing court that notwithstanding his offense imprisonment in the state prison is not necessary to protect the public." (*Id*. at pp. 532-533.) "The probationer may serve a jail term as a condition of probation (§ 1203.1), but his probation is not a period of reintegration into society during which the same degree of surveillance and supervisions as that deemed necessary for prison inmates is required." (*Id*. at p. 533.)

"Balancing the[] [limited privacy] interests of the parolee against the societal interest in public safety" led the Court "to conclude that warrantless searches of parolees are not per se unreasonable if conducted for a purpose properly related to parole supervision." (*Burgener, supra*, 41 Cal.3d at p. 532.) The Court accordingly ruled that "[t]he distinction between felony parole and probation justifies the inclusion of [a] parole search condition in all parole agreements." (*Ibid*.) It also explained that a parole search condition need not be related to a defendant's offense, but is instead "per se [] related to future criminality" and reasonable. (*Id*. at p. 533.)

This Court concluded in *Burgener* that parole and probation conditions are not to be analyzed in the same manner, and it suggested that probation conditions are more reasonably fashioned based upon the particular offender or offense whereas parole search terms need only be reasonably related to parole supervision generally. (See *Burgener*, *supra*, 41 Cal.3d at pp. 532-533.)[3] The same reasoning should apply to mandatory supervision.

Mandatory supervision is distinct from parole, as it is part of a custody term, but it is more comparable to parole than probation for purposes of assessing the validity of conditions of release. As noted, post-2015, split sentences including a period of mandatory supervision are generally required. (§ 1170, subd. (h)(5)(A) & (h)(7).) Because mandatory supervision is generally required and is the presumptive term, a split term does not reflect a discretionary determination by a trial court that a defendant is not suited for full sentence custody. (See § 1170, subd.

[3] In *People v. Reyes* (1998) 19 Cal.4th 743, 739, 742, this Court subsequently disapproved of a different part of the *Burgener* opinion that required reasonable suspicion for parole searches.

(h)(5)(A) [split term "shall" be imposed unless the court finds in the interests of justice it is not appropriate in that case]; Cal. Rules of Court, rule 4.415(a) [stating the statutory presumption in favor of mandatory supervision should lead to limited denials of mandatory supervision].)

Whereas a grant of probation is an act of clemency in lieu of punishment (*People v. Moran* (2016) 1 Cal.5th 398, 402), a county jail commitment followed by mandatory supervision is more "akin to a state prison commitment" (*People v. Fandinola* (2013) 221 Cal.App.4th 1415, 1422). (See § 667.5, subd. (d) [stating that for purposes of prior prison terms, a defendant "shall be deemed to remain *in prison custody* for an offense until the official discharge from custody, *including any period of mandatory supervision*"], italics added; *Fandinola*, *supra*, 221 Cal.App.4th at p. 1422 [recognizing that section 667.5, subdivision (b) provides one-year enhancements for prior prison terms, including split sentences served in part by mandatory supervision]; Couzens & Bigelow, Felony Sentencing After Realignment (May 2017) <http://www.courts.ca.gov/partners/documents/felony_sentencing.pdf>, pp. 16-17, 54 (Couzens & Bigelow) [a split term "is the equivalent of a state prison commitment"].) In other words, a defendant who is on mandatory supervision has not yet completed his sentence. (See § 1170, subdivision (h)(5)(B) ["During the period when the defendant is under that supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court"].)

Because mandatory supervision is essentially a continuation of a custody term in the community and much more like parole than probation, mandatory supervision terms should be assessed like parole terms and upheld if they are reasonably related to effective supervision. (See *Burgener*, *supra*, 41 Cal.3d at pp. 532-533; see also *People Martinez*

(2014) 226 Cal.App.4th 759, 762-763 [mandatory supervision is not the equivalent of probation and is more like parole]; *Fandinola*, *supra*, 221 Cal.App.4th at p. 1422 [finding mandatory supervision is more like parole than probation and noting that mandatory supervision "comes into play *only after* probation has been denied"], emphasis added.)[4]

B. This Court's intervention is necessary to clarify the proper test for mandatory supervision conditions because the lower courts are assessing those terms in an inconsistent and incorrect manner

Despite the significant differences between mandatory supervision and probation, as well as between parole and probation, and the existence of contrary authority, several courts of appeal have used *Lent's* probation-based analysis as a one-size-fits-all solution. As noted, this Court ruled in *Burgener* that parole and probation conditions are not subject to the same analysis, yet court of appeal decisions have since applied the same *Lent* analysis to both. (See, e.g., *In re Stevens* (2004) 119 Cal.App.4th 1228, 1233 [applying *Lent* to parole conditions, reasoning that "the expectation of privacy is the same"], citing *In re Naito* (1986) 186 Cal.App.3d 1656, 1661, & *Burgener*, *supra*, 41 Cal.3d at p. 532; see also *Martinez*, *supra*, 226 Cal.App.4th at pp. 762-763 [relying on *Stevens* and *In re Hudson* (2006) 143 Cal.App.4th 1, 9, for position that probation and parole conditions are

[4] A prior version of the Criminal Justice Realignment Act provided that a defendant's sentence may include "a period of county jail time and *a period of mandatory probation* not to exceed the maximum possible sentence." (Stats. 2011, ch. 39, § 27, eff. June 30, 2011, operative Oct. 1, 2011, italics added.) Before the operative date of the Act, the Legislature amended section 1170 to delete the reference to "mandatory probation" and substitute it with the term "mandatory supervision." (Stats. 2011-2012 1st Ex. Sess., ch. 12, § 12, eff. Sept. 21, 2011, operative Oct. 1, 2011; Stats. 2011, ch. 361, § 6.7, eff. Sept. 29, 2011, operative Oct. 1, 2011.)

analyzed under the same standard].) The Court of Appeal in *Martinez* has now also applied *Lent* to mandatory supervision conditions, and other courts have followed, even though mandatory supervision is more similar to parole than probation and is most akin to a custody commitment. (See *Martinez*, *supra*, 226 Cal.App.4th at pp. 762-763; see also Opn. at 14-15; *People v. Malago* (2017) 8 Cal.App.5th 1301, 1305-1306 [relying on *Martinez* and *Stevens*]; *People v. Relkin* (2016) 6 Cal.App.4th 1188, 1193-1194 [relying on *Martinez*].)

However, *Martinez*'s reasoning is flawed. First, *Martinez* recognized the distinctions between mandatory supervision and probation, and determined that mandatory supervision should be analyzed in the same manner as parole conditions, yet it applied *Lent's* probation-based analysis. *Martinez* explained that, although mandatory supervision offenders are subject to the same general procedures as probationers, mandatory supervision is not the equivalent of a grant of probation as it "'comes into play only after probation has been denied.'" (*Martinez*, *supra*, 226 Cal.App.4th at pp. 762-763, quoting *Fandinola*, *supra*, 221 Cal.App.4th at p. 1422.) The Court concluded that mandatory supervision conditions should be analyzed in the same manner as parole conditions because mandatory supervision "'is akin to a state prison commitment'" and "'is more similar to parole than probation.'" (*Martinez*, *supra*, 226 Cal.App.4th at p. 763, quoting *Fandinola*, *supra*, 221 Cal.App.4th at pp. 1422-1423.) Nevertheless, the Court applied *Lent* in assessing the mandatory supervision conditions. (*Martinez*, *supra*, 226 Cal.App.4th at p. 764.)

Second, the *Martinez* court's faulty leap—from explaining that mandatory supervision conditions are to be analyzed like parole conditions to applying the *Lent* test for assessing probation conditions—resulted from its reliance on *Stevens*. (*Martinez*, *supra*, 226 Cal.App.4th at p. 764, citing *Stevens*, *supra*, 119 Cal.App.4th at p. 1233.) As noted, *Stevens* determined

that the validity of parole and probation conditions are to be analyzed in the same manner despite this Court's contrary opinion in *Burgener*. (Compare *Burgener*, *supra*, 41 Cal.3d at pp. 532-533, with *Stevens*, *supra*, 119 Cal.App.4th at p. 1233.) Also, *Stevens* reached that conclusion after incorrectly finding that "the expectation of privacy is the same" for parolees and probationers. (*Ibid*.) Two years after *Stevens* was decided, the United States Supreme Court explained that "*parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment.*" (*Samson v. California* (2006) 547 U.S. 843, 850, italics added; accord, *People v. Schmitz* (2012) 55 Cal.4th 909, 921.) The High Court further clarified that, with parolees, the State's interests in reducing recidivism are "substantial." (*Id*. at p. 853 ["This Court has repeatedly acknowledged that a State has an overwhelming interest in supervising parolees because parolees . . . are more likely to commit future criminal offenses"], internal quotations and citation omitted.) As such, *Stevens* no longer withstands scrutiny and *Martinez*, in relying on *Stevens* as its basis for applying the same *Lent* analysis for probation terms to mandatory supervision terms, was wrongly decided.

While cases such as *Malago* and *Relkin* simply relied on the flawed analysis in *Martinez* and *Stevens* in applying *Lent* to mandatory supervision terms, other courts have applied *Lent* for different reasons, all of which are incorrect and some of which are confusing. For example, the Court of Appeal here applied *Lent* to a mandatory supervision condition, primarily due to the language of section 1170, subdivision (h)(5)(B), which provides that those on mandatory supervision are to be supervised in the same manner as probationers. (See Opn. 14-15.) But section 1170, subdivision (h)(5)(B), sets forth only the *manner* in which mandatory supervision is to be administered and supervised. The statute says nothing about the permissible *scope* of mandatory supervision conditions. (See *Martinez*,

supra, 226 Cal.App.4th at pp. 762-763 [explaining that, although those on mandatory supervision are to be monitored like probationers, "'this does not mean placing a defendant on mandatory supervision is the equivalent of granting probation or giving a conditional sentence. Indeed, section 1170, subdivision (h), comes into play only after probation has been denied'"], quoting *Fandinola*, *supra*, 221 Cal.App.4th at p. 1422; Couzens & Bigelow, *supra*, at pp. 54-55 ["Merely because the probation officer is supervising the defendant does not make it 'probation' any more than people being supervised by probation on post release community supervision following release from prison"].)

In one unpublished case, the Court of Appeal determined that mandatory supervision terms should be analyzed like parole conditions and, therefore, need only be reasonably related to parole supervision. But the Court went on to also apply *Lent*, stating that the reasonableness of mandatory supervision terms is determined under *Lent*. (See *People v. Trowbridge*, 2019 WL 5798627, *2-4.) It is unclear which test would apply under this reasoning. Another unpublished case rejected the People's argument that *Lent* should not apply to parole or mandatory supervision terms and relied on *Martinez*, but it also stated that *Burgener* did *not* hold that *Lent* is inapplicable to parole terms. (See *People v. Lopez*, 2019 WL 7037476, *3-4.) This conclusion is at odds with the People's reading of *Burgener*. (See *Burgener*, *supra*, 41 Cal.3d at pp. 532-533 [rejecting defendant's argument that *Lent* applied to his parole terms and making clear that parole and probation conditions are not to be analyzed in the same manner].)

The factor that none of the aforementioned cases address is that the *Lent* analysis, and the clarification of it in *Ricardo P.*, was created for probationers whom trial courts deemed suitable for another chance at living a law-abiding life in the community. That analysis focuses on the offender

or offense and whether probation conditions are reasonably tailored to that offender's rehabilitation and future criminality. (See generally *Ricardo P.*, *supra*, 7 Cal.5th at pp. 1116, 1122 [requiring proportionality between the two]; *Moran*, *supra*, 1 Cal.5th at p. 402 [probation is primarily rehabilitative in nature].) *Lent*, as applied in *Ricardo P.*, does not consider three key factors: (1) the varying types of supervision and their attendant privacy interests; (2) that mandatory supervision is a continuation of a custody term in the community; or (3) that a mandatory supervision offender was sentenced to serve a term in custody because he was deemed unsuitable or ineligible for probation. For the same reasons that parole search conditions are per se related to future criminality without regard for the particular offender or offense (see *Burgener*, *supra*, 41 Cal.3d at p. 533), mandatory supervision search conditions are per se related to future criminality. Therefore, like parole search conditions, mandatory supervision search conditions need only be reasonably related to fostering effective supervision, without consideration of the particular offender or underlying offense. (See *id*. at pp. 532-533.)

A test like that suggested in *Burgener* is more appropriate than *Lent* for assessing the validity of mandatory supervision conditions. Blanket application of the *Lent* test to mandatory supervision or even parole conditions fails to take into account the significantly different nature and goals of those types of supervision in comparison to probation. Such a practice similarly fails to recognize that offenders on mandatory supervision have diminished privacy interests when compared with probationers or that the State has stronger supervisory interests in the former category of offenders.

C. The published opinion below adds to the existing confusion over the proper way to assess mandatory supervision conditions

Here, as noted, the Court of Appeal provided yet another faulty reason for applying the probation-based *Lent* analysis to mandatory supervision conditions when it did so simply because the probation department monitors both. The Court of Appeal's analysis resulted in it (1) incorrectly suggesting that the privacy interests of those on mandatory supervision are the same as probationers, and (2) failing to consider that the State has a more significant supervisory interest in mandatory supervision offenders. (See *Samson*, *supra*, 547 U.S. at p. 850 [parolees have lesser expectation of privacy than probationers, and states have more substantial supervisory interests with parolees]; accord, *Schmitz*, *supra*, 55 Cal.4th at p. 921; *Burgener*, *supra*, 41 Cal.3d at p. 533 [noting more significant supervisory interest in parolees versus probationers]; see also *Fandinola*, *supra*, 221 Cal.App.4th at pp. 1422-1423 [finding that mandatory supervision is more akin to prison commitment and more like parole than probation].) The Court then invalidated Bryant's electronic search condition under *Lent*, finding it placed a significant burden on his privacy interests without information in the record suggesting it was connected to preventing his future criminality. (Opn. at 9-13.) However, he was not a probationer who had been granted clemency in lieu of custody and whose conditions reasonably needed to be fashioned to his particular conduct and rehabilitation.[5]

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[5] *Ricardo P.* mentioned the instant case in dicta as an example where proportionality between the crime and search condition would be lacking under *Lent*—an electronics search condition was placed on an offender who concealed a firearm in a vehicle. (*Ricardo P.*, *supra*, 7 Cal.5th at p. 1123.) Based on this reference, the People conceded in the Court of Appeal that, if this Court were to determine that *Lent* and *Ricardo P.* apply to mandatory

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Bryant was serving a custody term, with the latter portion to be completed in the community, and he was subject to stricter supervision, like a parolee. His electronics search condition permitted searches of only his text messages, emails, and photographs, which reasonably limited the monitoring to his activities and interactions with others. Periodic monitoring of these items would be reasonably related to effective supervision. Thus, his electronics search term would satisfy the standard articulated in *Burgener*. (See *Burgener*, *supra*, 41 Cal.3d at pp. 532-533.)

The published Court of Appeal opinion here has added to the existing confusion in the lower courts over the proper way to analyze mandatory supervision and parole search terms.

(…continued)
supervision conditions and in the same manner as they apply to probation conditions, Bryant's electronics search condition should be stricken. However, this Court did not further discuss the instant case or mention that it involved mandatory supervision rather than probation terms. (See *Ricardo P.*, *supra*, 7 Cal.5th at p. 1123.)

CONCLUSION

This Court should grant review in order to provide guidance to the lower courts by establishing the appropriate test for analyzing mandatory supervision conditions.

Dated: January 3, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **PETITION FOR REVIEW** uses a 13-point Times New Roman font and contains 3,975 words.

Dated: January 3, 2020

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E X H I B I T - A

**(Second Appellate District, Court of Appeal, Division One,
B271300 – 16-Page, Published Opinion - Filed Nov. 27, 2019)**

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. CLYDELL BRYANT, Defendant and Appellant.	B271300 (Los Angeles County Super. Ct. No. GA094777)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Villalobos, Judge. Affirmed with directions.

David Greifinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris and Xavier Becerra, Attorneys General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez and Andrew S. Pruitt, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted Clydell Bryant of possessing a concealed, loaded, unregistered firearm in a vehicle. The court imposed a two-year sentence, a portion of which was to be served under mandatory supervision. During the period of mandatory supervision, the court required Bryant to submit to searches of text messages, emails, and photographs on any cellular phone or other electronic device in his possession or residence. He contends that the requirement is invalid under *People v. Lent* (1975) 15 Cal.3d 481, 486 (*Lent*) and is unconstitutionally overbroad.

In an opinion filed April 3, 2017, we agreed with Bryant that the condition is invalid under *Lent* and struck the condition. (*People v. Bryant* (2017) 10 Cal.App.5th 396 (*Bryant I*), review granted June 28, 2017, S241937, opn. vacated Sept. 25, 2019.) The Supreme Court granted Bryant's petition for review and deferred consideration of the case pending its decision in another case. After it decided that other case in *In re Ricardo P.* (2019) 7 Cal.5th 1113 (*Ricardo P.*), the Supreme Court transferred the instant case to this court with directions to vacate our prior opinion (*Bryant I*) and reconsider the cause in light of *Ricardo P.* We have done so, and again hold that the search condition in this case is invalid under *Lent*.

FACTUAL AND PROCEDURAL SUMMARY

On a night in August 2014, Pasadena Police Department officers responded to a call for service outside a housing complex where a group of individuals were drinking and refusing to leave the area. Bryant and his girlfriend, Lamaine Jones, were smoking marijuana in a parked car in the area. Jones sat in the driver's seat and Bryant in the passenger seat. The car belonged to Jones's mother.

A Pasadena police officer approached the driver's side of the car and smelled a strong odor of marijuana coming from the car. The officer asked Jones and Bryant to step out of the car so he could check for marijuana. Jones and Bryant complied.

The officer searched the car and found a semi-automatic .45 caliber Hi-Point handgun under the front passenger seat. According to the officer, the gun was accessible to a person in the passenger seat, but not the driver's seat. There were nine bullets in the gun's magazine. The police later determined that the gun was not registered. Bryant's DNA matched DNA found on the gun's magazine. DNA from several persons found on the gun's handle could not be matched to any specific person.

A jury convicted Bryant of carrying a concealed firearm in a vehicle (Pen. Code,[1] § 25400, subd. (a)(1)), and found that the firearm was loaded and not registered to him. (§ 25400, subds. (a) & (c)(6).)

The court sentenced Bryant to two years in county jail pursuant to section 1170, subdivision (h), and suspended the last 364 days of the term. During the time the sentence was suspended, Bryant would be subject to mandatory supervision by the county probation department pursuant to section 1170, subdivision (h)(5)(B).

Over Bryant's objection, the court required that, during the term of his mandatory supervision, Bryant submit to searches of text messages and emails on any cellular phone or other electronic device in his possession or residence. In response to defendant's objection to the requirement, the court explained: "Well, it seems

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[1] Unless otherwise specified, subsequent statutory references are to the Penal Code.

to me that while he's on either probation or supervision, the probation officer could go in and search his residence and his person and he could look in the residence for any indicia of any violations either weapons or contraband, or he or she could look for evidence that the defendant is participating or associating with any gangs. [¶] It seems to me that a part of that search should include, while he's on supervision or probation, access to any computer that he uses in the home or his cell[]phone; however, I don't think it's unlimited access, and I would limit it to maybe his text messages and e-mails and nothing else."

At the prosecutor's request and over defendant's further objection, the court added photographs to the items subject to search on Bryant's electronic devices, explaining that this was "reasonable because I think prior experiences have shown there may be evidence with the photographs."[2]

DISCUSSION

The court sentenced Bryant pursuant to subdivision (h) of section 1170. Under that statute, the court shall impose a hybrid or split sentence consisting of county jail followed by a period of mandatory supervision unless, in the interests of justice, it would not be appropriate in a particular case. (§ 1170, subd. (h)(5).) During the period of mandatory supervision, "the defendant shall be supervised by the county probation officer in accordance with

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[2] The court expressed the electronic search condition in a minute order as follows: "Defendant is to submit to search of any electronic device either in his possession including cell phone and/or any device in his place of residence. Any search by probation is limited to defendant[']s text messages, emails, and photos on such devices." (Capitalization omitted.)

the terms, conditions, and procedures generally applicable to persons placed on probation." (§ 1170, subd. (h)(5)(B).) Although mandatory supervision is comparable in some ways to probation, it is not identical. (See *People v. Martinez* (2014) 226 Cal.App.4th 759, 762-763 (*Martinez*).) A defendant who is offered probation, for example, may refuse probation if he " 'finds the conditions of probation more onerous than the sentence he would otherwise face.' " (*People v. Moran* (2016) 1 Cal.5th 398, 403.) In contrast to a defendant who is given probation, however, a defendant may not refuse mandatory supervision. (*People v. Rahbari* (2014) 232 Cal.App.4th 185, 194–195.) Accordingly, the court did not ask Bryant whether he would accept the court's terms of his mandatory supervision.

Courts generally have "broad discretion in fashioning terms of supervised release, in order to foster the reformation and rehabilitation of the offender, while protecting public safety. (*Martinez, supra,* 226 Cal.App.4th at p. 764.) Courts have evaluated the validity of mandatory supervision terms under a test announced in *Lent, supra,* 15 Cal.3d 481. (*People v. Malago* (2017) 8 Cal.App.5th 1301, 1306 (*Malago*); *People v. Relkin* (2016) 6 Cal.App.5th 1188, 1194 (*Relkin*); *Martinez, supra,* 226 Cal.App.4th at p. 764.) Under *Lent*, a court abuses its discretion when it imposes a term or condition that " '(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, supra,* at p. 486.) "This test is conjunctive—all three prongs must be satisfied before a reviewing court will invalidate a . . . term." (*People v. Olguin* (2008)

45 Cal.4th 375, 379; accord, *Ricardo P., supra*, 7 Cal.5th at p. 1118.)[3]

The Attorney General does not dispute that the electronic search condition fails the first two *Lent* prongs—the condition has no relationship to Bryant's crime and the use of electronic devices "is not itself criminal." (See *In re Erica R.* (2015) 240 Cal.App.4th 907, 913; *In re J.B.* (2015) 242 Cal.App.4th 749, 754–755.) The issue, therefore, is whether the electronic search condition is reasonably related to preventing future criminality.

In *Ricardo P.*, our Supreme Court recently explained that *Lent*'s future criminality prong "contemplates a degree of proportionality between the burden imposed by a probation condition and the legitimate interests served by the condition." (*Ricardo P., supra*, 7 Cal.5th at p. 1122.) "A probation condition that imposes substantially greater burdens on the probationer than the circumstances warrant is not a 'reasonable' one." (*Id.* at p. 1128.) In the case of electronic search conditions, the salient burden on a probationer is the burden imposed on his or her privacy interest. (*Id.* at pp. 1122–1123.) A probationer's interest in privacy is impacted by such a condition because, as the United States Supreme Court has observed, cell phones contain "a digital record of nearly every aspect of their [owner's] lives—from the mundane to the intimate," and "[t]he sum of an individual's private life can

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[3] The Attorney General contends that Bryant waived his *Lent* claim by failing to object in the trial court. We disagree. Bryant's counsel objected to the condition, stating that the facts "do not suggest that any criminal conduct involving a cell[ ]phone or electr[on]ic device has been committed," and that there has not been "a proper showing of the need to impose this term of probation." This was sufficient to preserve the issue on appeal.

be reconstructed through a thousand photographs labeled with dates, locations, and descriptions." (*Riley v. California* (2014) 573 U.S. 373, 394–395; accord, *Ricardo P., supra*, 7 Cal.5th at p. 1123.)

Although the future criminality prong of *Lent* does not "require 'a nexus between the probation condition and the defendant's underlying offense or prior offenses' " (*Ricardo P., supra*, 7 Cal.5th at p. 1122), "there must be information in the record establishing a connection between the search condition and the probationer's criminal conduct or personal history—an actual connection apparent in the evidence, not one that is just abstract or hypothetical." (*In re Alonzo M.* (2019) 40 Cal.App.5th 156, 166, petn. for review pending, petn. filed Oct. 22, 2019.) A condition may be supported by, for example, "information in a probation report that raises concerns about future criminality unrelated to a prior offense." (*Ricardo P., supra*, 7 Cal.5th at p. 1122.)

In *Ricardo P.*, Ricardo, a juvenile, admitted to committing two residential burglaries. (*Ricardo P., supra*, 7 Cal.5th at p. 1116.) He also "told a probation officer that 'he wasn't thinking' when he committed the offense and that 'he stopped smoking marijuana after his arrest because he felt that [it] did not allow him to think clearly.' " (*Ibid.*) The court declared Ricardo a ward of the court and placed him on probation subject to certain conditions. The conditions included drug testing, prohibition of using illegal drugs and alcohol, and a requirement that he " '[s]ubmit . . . electronics including passwords under [his] control to search by [p]robation [o]fficer or peace office[r] with or without a search warrant at any time of day or night.' " (*Id.* at pp. 1116–1117.) In rejecting Ricardo's challenge to the search condition, the juvenile court found that Ricardo's reference to smoking marijuana and his statement

that " 'he wasn't thinking' " during the robberies indicated that Ricardo had used marijuana during the crimes; and because juveniles will use the Internet to "brag about their marijuana usage or drug usage," the electronic search condition was " 'a very important part of being able to monitor drug usage and particularly marijuana usage.' " (*Id.* at p. 1117.)

The Supreme Court held that, even if it accepted the juvenile court's finding that Ricardo used marijuana during the robberies and its "generalization about teenagers' tendency to brag about drug use online," the search condition was invalid because it "impose[d] a very heavy burden on privacy with a very limited justification." (*Ricardo P., supra*, 7 Cal.5th at pp. 1119–1120, 1124.) More particularly, the condition "imposed a sweeping probation condition requiring [the probationer] to submit all of his electronic devices and passwords to search at any time" even though "nothing in the record suggests that [the probationer] has ever used an electronic device or social media in connection with criminal conduct." (*Id.* at pp. 1122–1123.)

Here, the electronic search condition imposed on Bryant is a similarly "sweeping . . . condition" that likewise "significantly burdens [Bryant's] privacy interests." (*Ricardo P., supra*, 7 Cal.5th at pp. 1122–1123.) The right to search extends to all of Bryant's text messages, emails, and photos on any device in his possession or residence, with the potential to reveal "vast amounts of personal information unrelated to defendant's criminal conduct or his potential for future criminality." (*People v. Appleton* (2016) 245 Cal.App.4th 717, 727). Moreover, because the search condition, like the condition in *Ricardo P.*, "lacks any temporal limitations," probation officers could "access digital information that long predated the imposition of" Bryant's sentence. (*Ricardo P., supra,*

7 Cal.5th at p. 1127.) Thus, the electronic search condition similarly "imposes a very heavy burden on privacy." (*Id.* at p. 1124.)

As in *Ricardo P.*, there is "nothing in the record [that] suggests that [Bryant] has ever used an electronic device or social media in connection with criminal conduct." (*Ricardo P., supra,* 7 Cal.5th at p. 1122.) Nevertheless, the trial court reasoned that a search of Bryant's electronic devices was justified because it could aid the probation officer's monitoring of other terms of supervision, such as the proscription against possessing weapons or associating with gangs. That rationale, however, was rejected in *Ricardo P.* because it "would effectively eliminate the reasonableness requirement in *Lent*'s third prong, for almost any condition can be described as 'enhancing the effective supervision of a probationer.' " (*Id.* at p. 1127.)

Tellingly, the *Ricardo P.* Court referred to our prior opinion in this case to illustrate this point and implicitly disapprove of the search condition imposed on Bryant. The Court stated: "If we were to find this record [in *Ricardo P.*] sufficient to sustain the probation condition at issue, it is difficult to conceive of any case in which a comparable condition could not be imposed, especially given the constant and pervasive use of electronic devices and social media by juveniles today. In virtually every case, one could hypothesize that monitoring a probationer's electronic devices and social media might deter or prevent future criminal conduct. For example, an electronics search condition could be imposed on a defendant convicted of carrying an unregistered concealed weapon on the ground that text messages, e-mails, or online photos could reveal evidence that the defendant possesses contraband or is participating in a gang. (But see [*Bryant I, supra,*] 10 Cal.App.5th

[at p.] 405 . . . [invalidating such a condition 'in the absence of facts demonstrating " ' "a predisposition" to utilize electronic devices . . . in connection with criminal activity' " '].)" (*Ricardo P., supra,* 7 Cal.5th at p. 1123.) As the Court's citation to *Bryant I* suggests, *Ricardo P.*'s example is based on the facts in this case. The Court used the example to demonstrate, by way of a reductio ad absurdum, the type of patently unreasonable electronic search condition that could be imposed if monitoring a probationer's electronic devices for evidence of criminality was a sufficient justification for the condition. The Court's implied disapproval of that type of condition, even if dicta in that case, virtually compels our disapproval of the condition where, as here, it was actually imposed. (See *County of Fresno v. Superior Court* (1978) 82 Cal.App.3d 191, 194 ["Dicta may be highly persuasive, particularly where made by the Supreme Court after that court has considered the issue and deliberately made pronouncements thereon intended for the guidance of the lower court upon further proceedings."].)

In any event, even absent the Supreme Court's citation to *Bryant I*, the Supreme Court's reasoning and holding in *Ricardo P.* is consistent with the conclusion we reached in our prior decision and supports the same conclusion now. Because of the significant burden imposed on Bryant's privacy interest and the absence of any information in the record to connect the condition with the goal of preventing future criminality, we again hold that the electronic search condition imposed on Bryant is invalid under *Lent.* (See *In re Erica R., supra,* 240 Cal.App.4th at p. 913 [electronic search condition invalid under *Lent* because there was nothing in the record demonstrating a predisposition to using electronic devices in connection with criminal activity]; *In re J.B., supra,*

242 Cal.App.4th 749, 756 [electronic search condition invalid under *Lent* because there was "no showing of any connection between the minor's use of electronic devices and his past or potential future criminal activity"].)

The Attorney General, in a brief filed prior to *Bryant I* and *Ricardo P.*, relied on *People v. Ebertowski* (2014) 228 Cal.App.4th 1170 (*Ebertowski*) and *In re J.E.* (2016) 1 Cal.App.5th 795, review granted Oct. 12, 2016, S236628, opinion vacated Sept. 25, 2019. In *Ebertowski*, the defendant was a gang member who brandished a weapon, told an arresting "officer that he was ' "[f]ucking with the wrong gangster," ' " and repeatedly threatened the officer and the officer's family. (*Ebertowski*, *supra*, 228 Cal.App.4th at pp. 1172–1173.)[4] The defendant pleaded no contest to making criminal threats and resisting or deterring an officer, and admitted a gang allegation. The prosecution requested that the court impose conditions requiring the defendant to submit to a search of electronic devices within his custody or control and provide his passwords to the devices and any social media websites. (*Id.* at p. 1172.) The prosecutor explained that these conditions should be imposed because " 'the defendant has used social media sites historically to promote the Seven Trees Norteño criminal street gang.' " (*Id.* at p. 1173.) The conditions were also a " 'means to effectuate the already existing warrantless search condition.' " (*Ibid.*)

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[4] The *Ricardo P.* Court cited *Ebertowski* as an example of a case in which "the probationer's offense or personal history may provide the juvenile court with a sufficient factual basis from which it can determine that an electronics search condition is a proportional means of deterring the probationer from future criminality." (*Ricardo P.*, *supra*, 7 Cal.5th at pp. 1128–1129.)

The Court of Appeal upheld the probation conditions, explaining that the "conditions were related to [the defendant's] crimes, which were plainly gang related, because they were designed to allow the probation officer to monitor defendant's gang associations and activities. 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. The only way that defendant could be allowed to remain in the community on probation without posing an extreme risk to public safety was to closely monitor his gang associations and activities. The password conditions permitted the probation officer to do so." (*Ebertowski, supra*, 228 Cal.App.4th at pp. 1176–1177.)

In *In re J.E., supra*, 1 Cal.App.5th 795, the Court of Appeal relied on *Ebertowski* in upholding an electronic search condition, and distinguished *In re Erica R.* and *In re J.B.*, stating that the minor in the case before it had "deep-seated issues with drugs," "struggle[d] with school attendance and grades," had been suspended and reprimanded for behavioral issues, brought a weapon to school, had gang graffiti in his locker and a prior association with Norteños gang members, and an "unstable home life." (*In re J.E., supra*, at p. 802.) These facts, the court explained, "support the juvenile court's conclusion that the electronic search condition would ' "serve the rehabilitative function of precluding [Minor] from any future criminal acts." ' " (*Ibid.*, quoting *In re Erica R., supra*, 240 Cal.App.4th at p. 913.)

Ebertowski and *In re J.E.* are distinguishable. There is no evidence that Bryant, unlike the defendant in *Ebertowski*, used any electronic device to promote gang activity. And *In re J.E.* involved a minor who "had a constellation of issues requiring intensive

supervision," including a " 'pretty deep drug issue.' " (*In re J.E., supra*, 1 Cal.App.5th at p. 801.) The electronic search condition was considered " '*critical*' for Minor's rehabilitation" by allowing the probation officer to " 'monitor the purchase, or sales, [or] usage' of drugs." (*Ibid.*) Here, although Bryant had been smoking marijuana in a car, there is nothing to suggest that his phone must be monitored for drug sales, as in *In re J.E.* Moreover, because Bryant is an adult, the justification for state supervision of his personal drug use is weaker than in the case of minors, and his constitutionally protected interest in his privacy is greater. (See, e.g., *In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.)

For all the foregoing reasons, we conclude that the electronic search condition is invalid under *Lent*.[5]

In a brief filed after *Ricardo P.*, the Attorney General concedes that if *Ricardo P.* controls, "it appears the electronic search condition here would be invalid." The Attorney General contends, however, that *Ricardo P.* does not control because *Lent* and *Ricardo P.* addressed conditions of probation, and neither should apply to terms of mandatory supervision imposed under section 1170, subdivision (h)(5). The Attorney General explains that mandatory supervision is more akin to parole than probation because mandatory supervision and parole are mandatory post-incarceration periods during which convicted felons serve a portion of their sentences outside of prison; probation, by contrast, "is a grant of clemency in lieu of a custody commitment." Because of the similarities between mandatory supervision and

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[5] Bryant also contends that the electronic search condition is unconstitutionally overbroad. Because we hold that the condition is invalid under *Lent*, we do not reach this issue.

parole, and their differences with probation, the Attorney General argues that mandatory supervision terms should not be evaluated under the *Lent* test, but by the standards applicable to searches of parolees under *People v. Burgener* (1986) 41 Cal.3d 505 (*Burgener*), disapproved in part in *People v. Reyes* (1998) 19 Cal.4th 743, 752.) Under *Burgener*, a warrantless search condition of a felony parolee does not violate the parolee's "constitutional protection against arbitrary and oppressive official action." (*Burgener*, *supra*, 41 Cal.3d at pp. 532–533.)

Burgener's acceptance of parole search conditions was based on its determination that such conditions do not violate the Fourth Amendment's proscription against unreasonable searches and seizures and no other law provided greater protection for parolees. (*Burgener*, *supra*, 41 Cal. at pp. 530–536) The *Lent* test, by contrast, is not a constitutional requirement; it is the result of judicial interpretation of section 1203.1, subdivision (j), which permits a court granting probation to impose "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done." (§ 1203.1, subd. (j); see *Lent*, *supra*, 15 Cal.3d at p. 486; *Ricardo P.*, *supra*, 7 Cal.5th at p. 1128; *People v. Dominguez* (1967) 256 Cal.App.2d 623, 627.) Whether persons subject to mandatory supervision would be protected no more than the constitution requires or have the benefit of the greater protection afforded probationers is answered by the text of section 1170, subdivision (h). That subdivision declares that persons subject to mandatory supervision "shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on *probation*." (§ 1170, subd. (h)(5)(B), italics added.) Because terms and conditions applicable to persons placed on probation

are subject to the *Lent* test, it follows that terms and conditions applicable to those on mandatory supervision must also satisfy *Lent*. Accordingly, the courts that have addressed the issue have consistently applied the *Lent* test to mandatory supervision terms. (See, e.g., *Malago*, *supra*, 8 Cal.App.5th at p. 1306; *Relkin*, *supra*, 6 Cal.App.5th at p. 1194; *Martinez*, *supra*, 226 Cal.App.4th at p. 764.) The Attorney General offers no contrary authority. We agree with these cases and conclude that *Lent* applies to terms and conditions of mandatory supervision.

DISPOSITION

The terms of Bryant's mandatory supervision that he submit to searches of his cellular phone or other electronic devices is stricken. The trial court is ordered to file a minute order reflecting the striking of this term and forward a copy of the order to the Los Angeles County Probation Department. The judgment is otherwise affirmed.

CERTIFIED FOR PUBLICATION.

ROTHSCHILD, P. J.

We concur:

CHANEY, J.

JOHNSON, J.

E X H I B I T - B

**(Second Appellate District, Court of Appeal, Division One,
B271300 – 3-Page, Order Modifying the Opinion - Filed May 2, 2017)**

Filed 5/2/17

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. CLYDELL BRYANT, Defendant and Appellant.	B271300 (Los Angeles County Super. Ct. No. GA094777) ORDER MODIFYING THE OPINION AND DENYING RESPONDENT'S PETITION FOR REVIEW (NO CHANGE IN THE JUDGMENT)

THE COURT:

On the court's own motion, the opinion filed in the above-entitled matter on April 3, 2017, shall be modified in the following manners:

On page 4, in the first paragraph of the Discussion, the following sentence and citations are deleted:
Under that statute, the court has discretion "to impose a hybrid or split sentence consisting of county jail followed by a period of mandatory supervision." (*People v. Catalan* (2014) 228 Cal.App.4th 173, 178, citing § 1170, subd. (h)(5)(B).)

This deletion shall be replaced with the following sentence and citation:
Under that statute, the court shall impose a hybrid or split sentence consisting of county jail followed by a period of mandatory supervision unless, in the interests of justice, it would not be appropriate in a particular case. (§ 1170, subd. (h)(5).)

On page 8, the citations that appear on lines 17 through 20 are deleted and replaced with the following citations: (See, e.g., In re J.E., supra, 1 CalApp.5th 795; In re P.O., supra, .

On page 13, in the first paragraph, the citation to *Ebertowski, supra*, 228 Cal.App.4th 1170 is replaced with the following citation: *People v. Ebertowski* (2014) 228 Cal.App.4th 1170 (*Ebertowski*)

On page 13, in the first paragraph, the two references to "minor" are replaced with the word "defendant" in both places so that the first three sentences (and supporting citations) shall read:

The Attorney General, however, relies on *People v. Ebertowski* (2014) 228 Cal.App.4th 1170 (*Ebertowski*), and *In re J.E., supra*, 1 Cal.App.5th 795. In *Ebertowski*, the defendant was a gang member who brandished a weapon, told an arresting "officer that he was ' "[f]ucking with the wrong gangster," ' " and repeatedly threatened the officer and the officer's family. (*Ebertowsk, supra*, 228 Cal.App.4th at pp. 1172-1173.) The defendant pleaded no contest to making criminal threats and resisting or deterring an officer, and admitted a gang allegation.

On page 14, in the second sentence of the paragraph that begins with "*Ebertowski* and *In re J.E.* are distinguishable," replace the word "minor" with the word "defendant" so that the second sentence shall read:

There is no evidence that Bryant, unlike the defendant in *Ebertowski*, used any electronic device to promote gang activity.

These modifications do not constitute a change in the judgment.

Respondent's petition for rehearing, filed on April 18, 2017 is denied.

CERTIFIED FOR PUBLICATION.

ROTHSCHILD, P. J. CHANEY, J. JOHNSON, J.

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Clydell Bryant** No.: **S_____**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On January 3, 2020, I electronically served the attached **PETITION FOR REVIEW** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on January 3, 2020, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

David R. Greifinger
Attorney at Law
tracklaw@me.com
(E-Service Via TrueFiling)

The Honorable Michael Villalobos
Judge
Los Angeles County Superior Court
Alhambra Courthouse
150 West Commonwealth Ave.
Department 5
Alhambra, CA 91801

Damiana Mundorff
Deputy District Attorney
(Courtesy Copy Via Email)

CAP – LA
(Courtesy Copy Via Email)

Second Appellate District
Court of Appeal, Division One
(E-Service Via TrueFiling)

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 3, 2020, at Los Angeles, California.

Lisa P. Ng
Declarant

/s/ Lisa P. Ng
Signature

LA2016501760
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STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **People v. Clydell Bryant**
Case Number: **TEMP-RVEEM72Q**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/3/2020
Date

/s/Lisa Ng
Signature

Rodriguez, Zee (204357)
Last Name, First Name (PNum)

CA Attorney General's Office - Los Angeles
Law Firm