IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re JAIME P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **JAIME P.,** Appellant and Petitioner.	S135263

First Appellate District, Division Four, No. A107686
Solano County Superior Court No. J32334
The Honorable Dwight C. Ely, Judge

RESPONDENT'S ANSWERING BRIEF ON THE MERITS

BILL LOCKYER
Attorney General of the State of California

ROBERT R. ANDERSON
Chief Assistant Attorney General

GERALD A. ENGLER
Senior Assistant Attorney General

MARTIN S. KAYE
Supervising Deputy Attorney General

RONALD E. NIVER
Deputy Attorney General
State Bar No. 51251

455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5859
Fax: (415) 703-1234
Email: ronald.niver@doj.ca.gov

Attorneys for Plaintiff and Respondent

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re JAIME P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **JAIME P.,** Appellant and Petitioner.	S135263

ISSUE PRESENTED

Does the rule of *In re Tyrell J.* (1994) 8 Cal.4th 68, that a juvenile probationer subject to a valid search condition does not have a reasonable expectation of privacy over his person or property, conflict with the holding of *People v. Sanders* (2003) 31 Cal.4th 318, that a valid search of a parolee's home requires the searching officer have knowledge of the parolee's status?

INTRODUCTION

Stopped by an officer who mistakenly believed that he had committed a traffic violation, appellant and the automobile he was driving were searched, leading to the discovery of a handgun beneath the rear passenger seat. At the time of the detention and search, the officer was unaware that appellant was a juvenile probationer. Nevertheless, relying on the search and seizure condition of appellant's probation, the juvenile court concluded that the condition justified the officer's actions.

On appeal, appellant argued that *In re Tyrell J., supra,* 8 Cal.4th 68 (*Tyrell J.*) which upheld the admissibility of evidence seized from a juvenile

probationer by an officer unaware of his status, had been overruled by *People v. Sanders, supra,* 31 Cal.4th 318 (*Sanders*) which held that the reasonableness of a search must be determined in light of the officer's knowledge at the time of the search. The Court of Appeal rejected appellant's argument, ruling that principle of stare decisis required it to follow *Tyrell J.* (Slip. Op. at pp. 4-5.)

Appellant renewed his contention in this Court, which granted his petition for review on August 31, 2005.

STATEMENT OF THE CASE

At 11:25 p.m. on April 27, 2004, Fairfield Police officer Darren Moody was in a marked patrol vehicle following another patrol unit to the station when he heard the other officer run a check on a Chevrolet Caprice in front of both police vehicles. (RT 5-6.) When the dispatcher advised that the license plate was issued to a Toyota, Moody made a U-turn to follow the Caprice, which had turned westward on Tabor Avenue. (RT 6, 20.) As Moody followed the Caprice on Tabor he received a corrected report that the license plate was issued to a Chevrolet, but he continued his pursuit because he saw the Caprice turn northward on Nottingham without signaling. (RT 6, 16, 20.) The officer also turned on Nottingham and saw the Caprice pull over to the curb, again without signaling. (RT 6-7.) Moody parked behind the car, but had not yet activated his emergency lights. (RT 7.)

Four persons were in the car, but two occupants got out of the vehicle when it stopped. (RT 8.) Appellant Jaime P. was the driver; Alfredo P., the remaining passenger, was seated in the rear. (RT 8-9.) The officer detained the two passengers who had left the car because a home on the block had been the target of gang violence within the previous several days. (RT 10.) Additionally, Moody believed that his inability to see the persons in the darkness compromised his safety. (RT 9.) After another officer arrived,

Moody turned his attention to the occupants of the car, illuminating the interior with his spotlights and headlights. (RT 10.)

Appellant turned several times to face the officer, appearing "almost like a deer in the headlights." (RT 11.) Alfredo, the rear passenger, "was bending over the seat into the floorboard area and appeared to be messing with something . . . on the floorboard or under the seat. . . ." (RT 11.) "[A]larmed," Moody "yelled at everybody to keep their hands where I could see them." (RT 11.)

Moody spoke to appellant, who provided a school identification but said he had no driver's license. (RT 12.) While talking to appellant, the officer observed a box of ammunition on the front floorboards. (RT 12-13.) Moody then directed appellant and Alfredo to exit the vehicle and pat-searched them and the other two occupants. (RT 13.) One of the passengers, Sosa, had a padlock tied to a bandana, but the others were not armed. (RT 13.)

After ascertaining that none of the occupants of the car had a valid driver's license, Moody called a tow truck to remove and store the vehicle. (RT 14.) An inventory search of the Caprice uncovered a loaded .44 caliber handgun beneath the rear passenger seat. (RT 15.)

On July 13, 2004, at a combined suppression and jurisdictional hearing, the Solano County Juvenile Court denied appellant's motion to suppress and sustained a petition filed pursuant to Welfare and Institutions Code, section 602, finding that petitioner drove a vehicle without a driver's license (Veh. Code, § 12500, subd. (a)); and carried a loaded firearm (Pen. Code, § 12031, subd. (a)(1)), while associated with a criminal street gang (§ 186.22, subd. (b)(1)). (CT 93-95, 98-99, 111-117, 125-127, 163-164.)

On August 31, 2004, the court continued appellant as a ward of the court, set the maximum term of confinement at eight years four months, and placed appellant on probation. (CT 165-167.)

On May 25, 2005, the Court of Appeal for the First Appellate District,

Division Four, affirmed the judgment, holding that the evidence was admissible under this Court's decision in *In re Tyrell J., supra,* 8 Cal.4th 68.

On August 31, 2005, this Court granted appellant's petition for review.

SUMMARY OF ARGUMENT

Appellant argues that *In re Tyrell J.,* which ruled that evidence taken from a juvenile probationer was admissible despite the officer's lack of knowledge of the juvenile's probationer status, has been fatally undermined by *Sanders,* for two reasons. First, *Sanders* held that the reasonableness of a search must be determined by the officer's knowledge at the time he conducted the search. Second, *Sanders* declared that suppression of evidence seized by an officer unaware of a parolee's status will promote the purpose of the exclusionary rule, namely, deterrence of police misconduct. Because the officer in this case did not know that appellant was on juvenile probation, appellant submits, that status cannot be used to justify his search. Suppression of evidence will serve the purpose of the exclusionary rule, appellant adds, because it will deter police from conducting otherwise illegal searches in the hope that the probationer's subsequently revealed status will authorize the admission of evidence seized from them. Appellant is incorrect.

First, *Tyrell J.* expressly declared that a juvenile probationer has no reasonable expectation of privacy in his person or effects. (8 Cal.4th at p. 86.) Consequently, under *Katz v. United States* (1967) 389 U.S. 347, a governmental intrusion into those areas cannot be a search within the meaning of the Fourth Amendment. Because it is not a search, the officer does not need a warrant, probable cause, or even reasonable suspicion to justify his actions under the Fourth Amendment. Furthermore, because a citizen's subjective expectation of privacy must be validated by society to create a reasonable expectation, or rejected by society to defeat that expectation, the officer's knowledge of those expectations is irrelevant to the question of their existence.

Even if the officer does not know that the citizen has no expectation of privacy, the officer's intrusive action toward that citizen is not a search.

Second, appellant's exclusionary rule argument fares no better. He speculates that a police officer will conduct on otherwise illegal search of a juvenile in the hope that the juvenile later will be identified as a probationer, in which event the evidence seized from him will be admitted by reason of his probationary search condition. But the premise of the exclusionary rule is that an officer who is unaware of a citizen's probationary status will assume that evidence unlawfully seized from a citizen will be suppressed. To the extent that *Sanders* suggests otherwise, it is contrary to *Pennsylvania Board of Probation and Parole v. Scott* (1998) 524 U.S. 357, and therefore violates article I, section 28(d) of the California Constitution. To the extent that *Sanders* concludes that the normal operation of the exclusionary rule is inadequate to enforce the Fourth Amendment, it is inconsistent with the last 45 years of the United States Supreme Court's Fourth Amendment jurisprudence.

Appellant is also incorrect that *United States v. Knights* (2001) 534 U.S. 112, and equal protection considerations, require the overruling of *Tyrell J. Knights* assumed, and the government did not dispute, that the search of an adult probationer's residence was a search in the constitutional sense. *Knights* did not, because it could not, address the issue whether the inspection by a peace officer of a juvenile probationer's person is a search. Appellant's equal protection argument fails for the same reason. Although the reasonableness of a search must be determined in light of the investigating officer's knowledge, that officer's state of mind is irrelevant to the issue whether his investigation constitutes a search.

ARGUMENT

BECAUSE APPELLANT WAS NOT SEARCHED WITHIN THE MEANING OF THE FOURTH AMENDMENT, THE INVESTIGATING OFFICER'S KNOWLEDGE OF APPELLANT'S PROBATION STATUS WAS UNNECESSARY

Appellant contends that the detention and search of the car he was operating violated the Fourth Amendment. He argues: (1) the prosecution conceded that he was detained without reasonable suspicion that he committed a traffic violation; (2) although he was on probation and subject to a lawful search condition, the officer was unaware of his status; (3) for that reason, the search cannot be characterized as a probation search, a recognized exception to the probable cause and warrant requirements of the Fourth Amendment. Appellant recognizes that *In re Tyrell J.*, permits the introduction of evidence seized from a juvenile probationer by an officer unaware of his status, but submits that the reasoning of *People v. Sanders*, requires reconsideration and rejection of *Tyrell J.* Finally, appellant argues that this result is required by the decision of the United States Supreme Court in *United States v. Knights* (2001) 434 U.S. 112, and equal protection considerations. Appellant's contention is without merit.

A. The Juvenile Court's Ruling

The district attorney conceded that appellant's failure to signal when he made a right turn and pulled over to the curb was not a violation of Vehicle Code section 22107 because no other vehicles were "affected by the movement." (RT 33.) Although the court apparently accepted this concession, referring to the officer's "questionable actions," it concluded that the search and seizure condition of appellant's probation "legitimized" these actions. (RT 37.)

B. Standard Of Review

In reviewing a trial court's ruling on a motion to suppress, the appellate court defers to findings of fact, both express and implied, if supported by substantial evidence. Selection of the applicable legal principles and application of those principles to the facts as found are reviewed independently. (*People v. Celis* (2004) 33 Cal.4th 667, 679; *People v. Ayala* (2002) 23 Cal.4th 225, 255.)

The "state Constitution . . . forbids the courts to order the exclusion of evidence at trial as a remedy for an unreasonable search and seizure unless that remedy is required by the federal Constitution as interpreted by the United States Supreme Court." (*In re Tyrell J., supra*, 8 Cal.4th at p. 76; *accord, People v. McKay* (2002) 27 Cal.4th 601, 608; *People v. Camacho* (2000) 23 Cal.4th 824, 830.)

C. Appellant Was Not Searched Within The Meaning Of The Fourth Amendment

1. The *Katz* Test

"In assessing when a search is not a search [within the meaning of the Fourth Amendment]" (*Kyllo v. United States* (2001) 533 U.S. 27, 32), courts apply the test first articulated by Justice Harlan in his concurring opinion in *Katz v. United States* (1967) 389 U.S. 347, 361-364, and adopted by the Court in subsequent decisions (*Kyllo v. United States, supra*, 533 U.S. at p. 33; *Florida v. Riley* (1989) 488 U.S. 445, 449; *California v. Greenwood* (1988) 486 U.S. 35, 39; *California v. Ciraolo* (1986) 476 U.S. 207, 211; *Smith v. Maryland* (1979) 442 U.S. 735, 740-741). According to this test, "a Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." (*Kyllo v. United States, supra,* at p. 33.) Conversely, a Fourth Amendment search does not occur unless "the individual

manifested a subjective expectation of privacy in the object of the challenged search," and "society [is] willing to recognize that expectation as reasonable." (*California v. Ciraolo, supra*, at p. 211.) Thus, an expectation of privacy, no matter how fervently held by a citizen, does not convert police action into a search unless society has validated that expectation.

2. *Tyrell J.*

In *In re Tyrell J.*, which involved a search of a juvenile probationer by a peace officer unaware of the juvenile's status, this Court expressly held that "a juvenile probationer subject to a valid search condition does not have a *reasonable* expectation of privacy over his person or property." (8 Cal.4th at p. 86.) This Court subsequently reiterated this holding: "The detention and pat-search of the minor did not intrude on a *reasonable* expectation of privacy, that is, an expectation that society is willing to recognize as legitimate. Accordingly, [the officer] did not act in violation of the Fourth Amendment." (*Id.* at p. 89.)

The reduction of a juvenile probationer's expectation of privacy serves important social goals and values. All unemancipated minors have a reduced expectation of privacy. (*Vernonia School District* 47 *J. v . Acton* (1995) 515 U.S. 646, 654.) Indeed, they "lack some of the most fundamental rights of self-determination – including even the right to liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians." (*Ibid.*)

The expectation of a juvenile probationer is further reduced by reason of his probation status. The juvenile court has broad discretion in formulating conditions of probation. (Welf. & Inst. Code, § 730, subd. (b).) One important condition, of course, is the requirement that the juvenile submit to a warrantless, suspicionless search at any time. This condition "is imposed by the juvenile court to serve the important goal of deterring future misconduct.

A juvenile probationer must thus assume every law enforcement office might stop and search him at any moment. It is this thought that provides a strong deterrent effect upon the minor tempted to return to his antisocial ways." (*In re Tyrell J., supra,* 8 Cal.4th at p. 87.)

Thus, the reduction of a juvenile probationer's expectation of privacy reflects society's customs and traditions and is necessary to serve its compelling interest in the control and rehabilitation of its minor offenders. Consequently, a "normative inquiry" determines that no juvenile probationer retains a "legitimate expectation of privacy." (*Smith v. Maryland, supra*, 442 U.S. at p. 740, fn. 5; *United States v. Scott* (9th Cir. 2005) 424 F.3d 888, 892.)

In light of the foregoing conclusion that the intrusion by police into the person and effects of a juvenile probationer is not a search at all, *Tyrell J.* makes perfect sense and is consistent with settled precedent. It is not here contended that a search may be justified by facts and information of which the searching officer is unaware. To that extent, as will be explained in part 3, *post, People v. Sanders, supra,* 31 Cal.3d at pp. 326, 332, is correct. However, this principle is inapplicable to the threshold issue whether a search occurred in the first place. There is no search, to repeat, unless the government intrudes into an expectation of privacy relied on by the citizen and legitimated by society. A peace officer is unlikely to know about a citizen's subjective expectations; and, more importantly, the social acceptance or rejection of any such personal reliance is a matter of law which exists independently of the officer's knowledge. For these reasons, it is the accused, not the People, who bears the burden of proving that a search was conducted. (See *Rawlings v. Kentucky* (1980) 448 U.S. 98, 104-105.)

The minor in *In re Tyrell J.* was not searched.[1/] No cognizable event

---

1. Although this Court in *In re Tyrell J.* occasionally referred to the "search" of the minor (8 Cal.4th at pp. 74, 86, 87, 89), it is clear that this Court was using the word in the generic, rather than the constitutional (*Katz*), sense.

under the Fourth Amendment occurred. Consequently, as *Tyrell J.* correctly held, the officer's knowledge was irrelevant.

Appellant argues that the "special needs" of the juvenile probation system do not justify the departure by *Tyrell J.* from settled Fourth Amendment jurisprudence, which requires the knowledge-first rule to searches of adult probationers and parolees. (AOB 26-33.) Appellant's entire argument is based on the proposition that the investigation of a juvenile probationer like the one undertaken in his case is a search. Because it is not, appellant's submission must be rejected for that reason alone. To the extent appellant's argument implicates the existence or extent of a juvenile's reasonable expectation of privacy, it is invalid for the following reasons.

Appellant advances four reasons to support his position. First, he contends, a knowledge-first requirement will deter police misconduct. (AOB 26-28.) He does not confront the rejection of this argument in *In re Tyrell J.*, which forcefully reasoned that a police officer unaware of a juvenile probationer's status necessarily will assume that the fruits of an illegal detention or search will be suppressed. (8 Cal.4th at p. 89.) The United States Supreme Court reached an identical conclusion in *Pennsylvania Board of Probation and Parole v. Scott* (1998) 524 U.S. 357, 367. (See part D, *post*, at pp. 15-17.)

Second, appellant argues that "all aspects of the Fourth Amendment should apply equally to juveniles and adults." (AOB 28.) In *Tyrell J.*, *supra*, however, this Court concluded that the goal of rehabilitating a juvenile

---

In concluding that the minor had no reasonable expectation of privacy, this Court relied on several of the progeny of the *Katz* jurisprudence, including *California v. Ciraolo, supra*, 476 U.S. 207; *Oliver v. United States* (1984) 466 U.S. 170; and *Hudson v. Palmer* (1984) 468 U.S. 517. Informed by these decisions, this Court's ruling that the minor enjoyed no reasonable expectation of privacy can mean only that the official intrusion directed against him did not constitute a search within the meaning of the Fourth Amendment.

probationer, an interest more compelling than the rehabilitation of an adult offender, is undermined by a knowledge-first requirement. The deterrent effect on a juvenile probationer engendered by the knowledge that any law enforcement officer may search him "would be severely eroded if police officers were required to learn the names and memorize the faces of the dozens and perhaps hundreds of juvenile probationers in their jurisdictions." (8 Cal.4th at p. 87.)

More fundamentally, however, appellant's argument proves too much, ironically disserving his position. If adult probationers/parolees have expectations of privacy identical to those of juvenile probationers, it necessarily follows that the (generic) search of a parolee or adult probationer is not a search in the constitutional sense. To the extent they are incompatible, it is *People v. Sanders*, not *In re Tyrell J.*, which must be reconsidered and overruled. (See part 3, *post.*)

Third, appellant argues that a search of a juvenile probationer by a law enforcement officer unaware of his status would not promote the special needs associated with the juvenile probation system. (AOB 29-32.) This argument largely reiterates appellant's previous submissions. It is flawed both because it assumes that official intrusion is a search and because it ignores the salutary effect of the *Tyrell J.* rule on the behavior of juvenile probationers who know that they may be searched at any time.

Fourth, appellant notes that no other jurisdiction, save for Virginia, has adopted the reasoning of *Tyrell J.* (AOB 32-33.) This dearth of precedent reflects the failure of courts which have adjudicated this issue to realize that California juvenile probationers are not searched within the meaning of the Fourth Amendment. For this same reason, all of the California intermediate appellate court decisions upon which appellant relies (AOB 21-25) misapprehend the true holding of *Tyrell J.* Most of those decisions involve adult offenders and, therefore, need not be reviewed by this Court in this case,

which involves a juvenile offender. To the extent that *In re Joshua J.* (2005) 129 Cal.App.4th 359 concludes that *Sanders* "dismantled the foundation and cornerstones" of *Tyrell J.* (*id.* at pp. 363-364), it should be disapproved.

3. *People v. Sanders*

Appellant submits that this Court's decision in *People v. Sanders*, requires reconsideration and rejection of the holding in *Tyrell J.* Appellant's reliance on *Sanders* is misplaced.

In *Sanders*, which involved the warrantless search of the house of a parolee whose status was not known to the searching officer, this Court held that "an otherwise unlawful search of the residence of an adult parolee may not be justified by the circumstance that the suspect was subject to a search condition of which the law enforcement officers were unaware when the search was conducted." (31 Cal.4th at p. 335, fn. omitted.) The Court concluded that the search of a parolee's home could not be justified as a parole search because the officers were unaware that the defendant was on parole. The state interest in the supervision of parolees was not served because the officers did not know that the defendant was a parolee. Consequently, the parolee search rationale was unavailable to justify the search. (*Id.* at pp. 331-335.)

Addressing the rationale of *Tyrell J.* that a probationer or parolee has no cognizable expectation of privacy, the Court declared that "whether the parolee has a reasonable expectation of privacy is inextricably linked to whether the search was reasonable." (*Id.* at p. 333.) The search as to the parolee was unreasonable, the Court ruled, because the officers were unaware of the parole search condition. "Despite the parolee's diminished expectation of privacy, such a search cannot be justified as a parole search, because the officer is not acting pursuant to the conditions of parole." (*Id.* at p. 333.)

Sanders is factually distinguishable from this case for at least two reasons. First, it involved an adult parolee. An adult has a greater expectation

of privacy than an unemancipated minor. Second, in *Sanders*, police searched the parolee's house. The United States Supreme Court recently confirmed the primacy of the residence in terms of expectations of privacy. "[I]n the case of the search of the interior of homes . . . there is a ready criterion, with roots deep in the common law, of the minimal expectation of privacy that *exists*, and that is acknowledged to be reasonable." (*Kyllo v. United States, supra*, 533 U.S. at p. 34; emphasis in original.) These two factors combine to support the Court's implied premise that a search had occurred in *Sanders.* (But see *People v. Reyes* (1998) 19 Cal.4th 743.) In that event, *Tyrell J.* and *Sanders* were addressing discrete issues—whether a search had occurred in *Tyrell J.*; whether the search was reasonable in *Sanders*—and, consequently, the two decisions are compatible.

However, respondent is constrained to note a systemic fallacy in this Court's reasoning in *Sanders*. As explained *ante*, the concept of a reasonable expectation of privacy is the analytical linchpin to determine whether official conduct directed at the citizen's property or privacy interests is a search at all. If society recognizes a legitimate expectation of privacy, the official conduct at issue is a search under the Fourth Amendment, whether reasonable or unreasonable. If the person has no privacy expectation recognized by society as legitimate, the official conduct is not a search, no matter how egregious that conduct may seem in the abstract. Whether a person has such a legitimate expectation of privacy has nothing to do with the reasonableness of any governmental activity aimed at intruding into his interest. That expectation either exists, or it does not.

On the other hand, the reasonableness of a search presupposes a legitimate expectation of privacy which has been somehow affected by governmental activity. If that activity is authorized by the Fourth Amendment, the search is reasonable and any evidence discovered is admissible. If the governmental activity contravenes the Fourth Amendment, of course, the

conduct is unreasonable and the evidence is ordinarily excluded.

To say that "a reasonable expectation of privacy is inextricably linked to whether the search was reasonable," as the Court in *Sanders* did, is to say that governmental activity is a search if it is unreasonable but not a search if the conduct was reasonable. With due respect to this Court, this equation conflates two discrete concepts—the existence of a search and the reasonableness of that search. (See C. Whitebread and C. Slobogin, Criminal Procedure (4th ed. 2000) p. 143.) To reiterate, if there is no reasonable expectation of privacy, the governmental activity *cannot* be a search, no matter how subjectively offensive it might seem. Consequently, because *Sanders* created an analytic construct unsupported by precedent, it did not truly confront the premise of *Tyrell J.* that a person with no reasonable expectation of privacy cannot challenge the police investigation directed toward him.

4. Police Conduct In This Case

Judged by the foregoing analysis, the police investigation of appellant and his car was not a search. At the time of the incident which resulted in the proceedings against him, appellant was subject to a probation condition which required him to submit to a search of his personal property, including his automobile, with or without a warrant or probable cause. (CT 11D, 70, 80.) Unlike the personal search in *Tyrell J.*, the police in this case investigated not only appellant but also his car. Nevertheless, *Tyrell J.* governs the disposition of this case. *Tyrell J.* held that a juvenile probationer had no reasonable expectation of privacy in his person or property. (8 Cal.4th at p. 86.) As appellant's probation condition specifies, property includes his vehicle. His expectation of privacy in the vehicle could be no greater than that in his person for that reason alone. Additionally, the vehicle was in a public place at the time of the incident. For these reasons, the search of the car was not a search in the constitutional sense.

D. Exclusionary Rule Considerations

Appellant next contends that suppression of evidence seized by a peace officer unaware of a juvenile probationer's status serves the primary purpose of the exclusionary rule: the deterrence of police misconduct. (*United States v. Leon* (1984) 468 U.S. 897, 906; *United States v. Calandra* (1974) 414 U.S. 338, 348.) As he views the issue, if the evidence is not suppressed under such circumstances, a police officer will be encouraged to conduct an otherwise illegal search in the hope that the target of the search will prove to be a probationer. This argument is without merit for the following reasons.

First, the premise of appellant's argument is that the officer's conduct constitutes a search under the Fourth Amendment. For the reasons set forth in part C., *ante*, the officer's inspection of appellant's person and property was not a search. The United States Supreme Court has never applied the exclusionary rule to police investigatory conduct which did not implicate the Fourth Amendment.

Second, even if exclusionary rule concerns were relevant to this case (but see *People v. Sanders, supra,* 31 Cal.4th at pp. 338-340 (conc. opn.)), appellant's position was rejected in *In re Tyrell J.*, which reasoned as follows: "Because [the officer] did not know whether the minor was subject to a search condition, the officer took the chance that the search would be deemed improper. If it had turned out that the minor was not subject to a search condition, any contraband found in the search of the minor would have been inadmissible in court. Thus, under our interpretation, law enforcement officers still have a sufficient incentive to try to avoid improperly invading a person's privacy." (8 Cal.4th at p. 89.)

This assessment of the competing incentives finds support in *Pennsylvania Board of Probation and Parole v. Scott, supra*, 524 U.S. 357. Addressing the circumstance of a search by an officer who was unaware that

the subject of his search was a parolee, the Court said:

> In that situation, the officer will likely be searching for evidence of criminal conduct with an eye toward the introduction of the evidence at a criminal trial. The likelihood that illegally obtained evidence will be excluded from trial provides deterrence against Fourth Amendment violations, and the remote possibility that the subject is a parolee and that the evidence may be admitted at a parole revocation proceeding surely has little, if any, effect on the officer's incentives.

(*Id.* at p. 367.)

Third, appellant's reliance on *People v. Sanders, supra*, 31 Cal.4th at p. 318 and *People v. Robles* (2000) 23 Cal.4th 789 is misplaced. These cases involved residential searches, which the Court in *Robles* pointed out are significantly different from personal searches. This Court concluded that the *Tyrell J.* rationale provided sufficient incentive to deter improper searches of a person, but declined to extend that rationale to residential searches. Reasoning that residences are frequently occupied by other persons, *Robles* said the *Tyrell J.* rationale "would encourage the police to engage in facially invalid searches with increased odds that a justification could be found later." (*Id.* at p. 800.) By contrast, this case involved a search of appellant and his personal property. It is true that others were in the car, but the determination of whether the fruits of a police inspection must be suppressed should not turn on the fortuitous circumstance of the presence or absence of the occupants in the vehicle.

More fundamentally, however, *Robles* finds no support in logic or precedent. It is at odds with *Scott*, which deemed "remote" the possibility that the subject of the search is a parolee (or, as in this case, a probationer). (524 U.S. at p. 367.) The presence of others in the house may make less remote the possibility that one of them has a probation condition, but how less remote and to what extent that will affect an officer's decision to search are matters of pure speculation. Less speculative is the proposition that a police officer will not conduct an illegal search for fear that the evidence will be excluded at a

criminal trial or, as here, a juvenile wardship proceeding. In reality, *Robles* and *Sanders* reject the efficacy of the exclusionary rule as it presently operates, concluding that additional disincentives must be created to deter police misconduct in the investigation of probationers (or parolees) whose status is unknown to the investigating officers. For reasons just stated, the Fourth Amendment jurisprudence of the United States Supreme Court does not support that proposition.

E. *United States v. Knights*

Appellant next contends that *United States v. Knights, supra*, 534 U.S. 112, impliedly requires that a probation search be conducted by an officer who is aware of the search condition. In *Knights*, which upheld a residential search by a police officer who knew that the defendant was a probationer and had reason to suspect he was involved in criminal activity, the Court assumed, in the absence of an assertion to the contrary, that the police intrusion constituted a search. Cases are not authority for propositions not considered. (*People v. Burnick* (1975) 14 Cal.3d 306, 317.) The Supreme Court has never held that police must have any particular mental state to engage in conduct that does not constitute a search. The holding in *Knights* does not implicate this principle.

F. Equal Protection

Finally, appellant contends that the failure to overrule *Tyrell J.* would violate the Equal Protection Clause (U.S. Const., 14th Amend.) because the Fourth Amendment would provide less protection to juvenile probationers than to adult probationers or parolees. He further argues that this disparity would not serve a compelling state interest, the applicable standard when state action implicates a constitutional guarantee. For reasons already advanced, this argument must be rejected.

1. Applicable Principles

As this Court recently reiterated in *People v. Guzman* (2005) 35 Cal.4th 577:

> "Broadly stated, equal protection of the laws means 'that no person or class of persons shall be denied the same protection of the laws [that] is enjoyed by other persons or other classes in like circumstances in their lives, liberty and property and in their pursuit of happiness.' [Citation.]" (*People v. Wutzke* (2002) 28 Cal.4th 923, 943, 123 Cal.Rptr.2d 447, 51 P.3d 310.) It does not mean, however, that "'things . . . different in fact or opinion [must] be treated in law as though they were the same.' [Citation.]" (*In re Eric J.* (1979) 25 Cal.3d 522, 530, fn. 1, 159 Cal.Rptr. 317, 601 P.2d 549.) "[N]either the Fourteenth Amendment of the Constitution of the United States nor the California Constitution [citations] precludes classification by the Legislature or requires uniform operation of the law with respect to persons who are different." (*In re Gary W.* (1971) 5 Cal.3d 296, 303, 96 Cal.Rptr. 1, 486 P. 2d 1201.) Thus, as previously noted, a threshold requirement of any meritorious equal protection claim "is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner. [Citation.]" (*In re Eric J., supra*, 25 Cal.3d at p. 530, 159 Cal.Rptr. 317, 601 P.2d 549.) "This initial inquiry is not whether persons are similarly situated for all purposes, but 'whether they are similarly situated for purposes of the law challenged.' [Citation.]" (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 253, 127 Cal.Rptr.2d 177, 57 P.3d 654.)

(33 Cal.4th at pp. 591-592.)

2. Discussion

Judged by these standards, appellant and the minor in *Tyrell J.*, on the one hand, and the defendant in *Sanders*, on the other, are not similarly situated for purposes of the Fourth Amendment. In *Sanders*, this Court held that the defendant, an adult parolee, was the subject of a search at his residence; in *Tyrell J.*, this Court held that the minor, a juvenile probationer, had not been searched when the officer inspected his belongings. Appellant was a juvenile probationer when police investigated his conducted and inspected his belongings in a public street. Because appellant was not searched within the

meaning of the Fourth Amendment, it was not necessary for the officer to be aware of his status before conducting his investigation.

CONCLUSION

Accordingly, respondent respectfully requests that the judgment of the Court of Appeal be affirmed.

Dated: September 14, 2006

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

ROBERT R. ANDERSON
Chief Assistant Attorney General

GERALD A. ENGLER
Senior Assistant Attorney General

MARTIN S. KAYE
Supervising Deputy Attorney General

RONALD E. NIVER
Deputy Attorney General

Attorneys for Respondent

REN:dd
SF2005400962
jaim40070141.wpd

TABLE OF CONTENTS

TABLE OF CONTENTS (continued)

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES (continued)

TABLE OF AUTHORITIES (continued)

Constitutional Provisions

Statutes

CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S ANSWERING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 5669 words.

Dated: September 14, 2006

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

RONALD E. NIVER
Deputy Attorney General

Attorneys for Respondent