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July 13, 2006

Honorable Chief Justice Ronald M. George
and Honorable Associate Justices
of the California Supreme Court
Marathon Plaza - South Tower
350 McAllister Street, 8th Floor
San Francisco, CA 94102-1317

Re: *In re Jaime P*., Supreme Court Case No. S135263,
Court of Appeal, 1st Appellate District, Div. 4, Case No. A107686,
Solano County Superior Court, Case No. J32334

SUPPLEMENTAL LETTER BRIEF

To the Honorable Ronald M. George, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

I. Introduction

This letter brief is submitted in response to this court's order directing appellant and respondent to file supplemental letter briefs discussing the relevance of *Samson v. California* ___ US ___ [2006 WL 1666974; 2006 U.S. Lexis 4885; 74 U.S.L.W. 4349] to the issues in this case, and particularly to the continued vitality of *In re Tyrell J.* (1994) 8 Cal.4th 68.

The United States Supreme Court in *Samson* held "the Fourth Amendment does not prohibit a police officer from conducting a suspicionless search of a parolee." (*Samson, supra*, ___U.S.___.) The *Samson* court's analysis undermines *Tyrell J.* because it employed the traditional Fourth Amendment analysis utilized by this court in *Sanders*, and observed that the requirement that the searching officer have prior knowledge of the search condition prevents suspicionless searches from becoming arbitrary, capricious, or
harassing.

In addition, the *Samson* case undermines respondent's argument that juvenile probationers have no expectation of privacy by making it clear that parolees and probationers, subject to warrantless search clauses, are unlike prisoners who have no reasonable expectation of privacy. Such individuals retain a diminished expectation of privacy which permits them to challenge unreasonable searches conducted pursuant to a search condition on Fourth Amendment grounds.

II. The *Samson* Case Should Serve to Overrule *Tyrell J*. Because it is Consistent with this Court's Analysis and Conclusion in *Sanders* that the Search of an Individual Without Knowing he is Subject to a Search Condition is Unreasonable

The issue before the United States Supreme Court in *Samson* was whether California law permitting parolees to be searched without a warrant and without cause violates the Fourth Amendment's prohibition against unreasonable searches. Based on prior contact with Samson, the searching officer knew he was on parole and believed he was facing an at-large warrant. The searching officer therefore stopped petitioner and asked him about the warrant. After confirming that Samson did not have an outstanding warrant, the officer nonetheless searched him based solely on his status as a parolee subject to a search condition and found a plastic baggie containing methamphetamine on his person. (*Samson, supra*, ___U.S.___.)

In reaching its conclusion that the officer's conduct did not violate the Fourth Amendment, the *Samson* court examined the totality of the circumstances known to the officer at the time of the search and determined his conduct was reasonable by assessing the degree to which the officer's conduct intruded upon Samson's privacy and the degree to which the officer's conduct was "'needed for the promotion of legitimate governmental interests.'" (*Samson, supra*, ___U.S.___, quoting *United States v. Knights* (2001) 534 U.S. 112, 118-119.) The *Samson* court rejected the dissent's suggestion that its ruling equated parolees to prisoners who have no Fourth Amendment rights. (*Samson, supra*, ___U.S.___, fn. 2.) The court concluded that while parolees have severely diminished expectations of privacy, they are nonetheless entitled to the Fourth

Amendment's protection against unreasonable searches and seizures.

After establishing that parolees retain a diminished expectation of privacy, the *Samson* court analyzed the governmental interest in conducting suspicionless searches of parolees. Referencing California's parolee recidivsim rate of 68 to 70 percent, the court concluded that California had a substantial interest in reducing recidivism rates and thereby promoting reintegration of parolees into society. The officer's conduct in searching Samson based on his status as a parolee subject to a search clause was held reasonable in light of California's interest in reducing recidivism rates amongst parolees.

California's suspicionless search system which gives police officers discretion to conduct searches of parolees subject to search conditions so long as the search is not "arbitrary, capricious or harassing, was approved by this court in *People v. Reyes* (1998) 19 Cal.4th 743, 752-754. This court in *Reyes* held that because a parolee subject to a search condition has a diminished expectation of privacy, a parolee may be searched without reasonable suspicion (*Reyes, supra*, at p. 751.) Thus, the recent decision by the United States Supreme Court in *Samson* endorses this court's decision in *Reyes.*

More critically with regard to the case at bar, however, the *Samson* court specifically acknowledged the vital role of the "prior knowledge" requirement rendering these searches reasonable. Responding to the dissent's "concern that California's suspicionless search system gives officers unbridled discretion to conduct searches," the *Samson* court noted that this concern was "belied by California's prohibition on 'arbitrary, capricious or harassing searches." (*Samson, supra*, ___ U.S. ___, citing *Reyes, supra*, 19 Cal.4th at pp. 752-754.) California's safeguards against arbitrary, capricious or harassing searches were observed to include the prohibition against suspicionless searches of parolees conducted without prior knowledge of the person's parole status.[1] (*Samson, supra*,

[1]As noted in *Samson,* under California law, all parolees are subject to a search condition upon release from prison. (*Samson, supra*, ___ U.S. ___, citing Penal Code section 3067, subd. (a).)

___U.S.___, fn. 5, citing *Sanders, supra*, 31 Cal.4th at pp. 331-332.) Further responding to the dissent's concern, the court noted the prior knowledge requirement in *Sanders* is what prevented law enforcement from engaging in capricious searches, "conducted at the unchecked 'whim' of law enforcement." (*Ibid*.)

As this court held in *Sanders*, the prosecution cannot rely on a parolee's diminished expectation of privacy to justify the search of a parolee. If the officer is unaware of the individual's parole search clause at the time of the intrusion, he is not furthering the government's interest which permits the warrantless search. (*Sanders, supra,* 31 Cal.4th at p. 333.) Thus, echoing this court's decision in *Sanders*, the *Samson* court found the suspicionless search reasonable only because the officer knew Samson was subject to a parole search condition before conducting the search, and he conducted the search pursuant to that knowledge.

Hence, the decision in *Samson* both endorses this court's analysis and affirms the prior knowledge requirement recognized in *Sanders.* If a searching officer is unaware that an individual is on parole or otherwise subject to a warrantless search condition, the search is not justified by the state's interest in reducing recidivism amongst parolees, regardless of the individual's diminished expectation of privacy.

III. The *Samson* case Undermines the Reasoning in *Tyrell J*. by Holding a Probationer's Expectation of Privacy is Greater than that of a Parolee and by Assessing the Degree to which the Officer's Conduct is Needed to Advance a Legitimate Government Interest

As discussed above, the traditional Fourth Amendment analysis evaluates the reasonableness of an officer's conduct in a given case by assessing the totality of the circumstances known to the officer at the time of the search. "Whether a search is reasonable 'is determined by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree which it is needed for the promotion of legitimate governmental interests.'" (*Samson, supra,* ___ U.S. ___, quoting *Knights, supra,* 534 U.S. at pp. 118-119; also see *Sanders, supra,* at pp. 333-334.)

This approach repudiates *Tyrell J.*'s exclusive focus on the juvenile probationer's diminished expectation of privacy without considering whether the officer conducting the search was knowingly advancing the government interest permitting suspicionless searches of probationers.

The ruling in the *Samson* case is consistent with the cardinal Fourth Amendment principle that the reasonableness of a search must be assessed based on the factual circumstances known to the officer before the search begins. (*Sanders, supra*, 31 Cal.4th at p. 334, citing *Scott v. United States* (1978) 436 U.S. 128, 137; and *Ornelas v. United States* (1996) 517 U.S. 690, 696.) Respondent appears to agree by acknowledging that "the reasonableness of a search must be determined in light of the investigating officer's knowledge" and specifically stating it does not "contend[] that a search may be justified by facts and information of which the searching officer is unaware," (RBOM 5, 9.)

In order to avoid a traditional Fourth Amendment analysis (employed in *Sanders, Knights*, and now *Samson*), respondent argues that juvenile probationers, like adult prisoners, have no reasonable expectation of privacy and can not therefore be searched within the meaning of the Fourth Amendment. (RBOM 9-10, fn. 1, relying in part upon *Hudson v. Palmer* (1984) 468 U.S. 517 [holding traditional Fourth Amendment analysis of the totality of the circumstances inapplicable to the question of whether a prisoner had a reasonable expectation of privacy in his prison cell].)

The *Samson* court, however, made it abundantly clear that despite all of the restrictions imposed on parolees, they retain a sufficient expectation of privacy to require that searches of their persons be reasonable under the Fourth Amendment. While the *Samson* court specifically held parolees are different than prisoners, it also held "parolees have even fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation is to imprisonment." (*Samson, supra*, ___ U.S. ___.) If parolees have an extant, but diminished expectation of privacy that entitles them to Fourth Amendment protection, juvenile probationers necessarily have a greater expectation of privacy than parolees. The *Samson* decision therefore refutes respondent's assertion that juvenile probationers may not challenge the reasonableness of a search because they have no reasonable expectation of privacy.

The traditional Fourth Amendment analysis employed in *Sanders*, *Knights*, and *Samson* must be applied herein. By so evaluating the searching officer's conduct in this case, one readily concludes that the search was unreasonable. First, because juvenile probation is lower on the continuum of possible punishments, a juvenile probationer's expectation of privacy is greater than a parolee's expectation of privacy. Second, California's interest in reducing the high recidivism rates among parolees is far more compelling than its interest in rehabilitating and deterring juvenile probationers from future misconduct. Parolees pose a much greater risk to society than juvenile probationers due to the seriousness of their crimes and recidivism rates which demonstrate "most parolees are ill prepared to handle the pressures of reintegration" and "require intense supervision." (See *Samson, supra*, ___ U.S. ___; and *Sanders, supra*, 31 Cal.4th at p. 344 [dissenting opinion of J. Baxter].)

In contrast, California's juvenile crime rates are currently among the lowest recorded in the past 40 years. (Center on Juvenile and Criminal Justice, *Testing Incapacitation Theory: Youth Crime and Incarceration in California*, p. 5, *Table 2. Arrests per 100,000 population, ages 10-17, 1960-2004* (July 2006) [http://www.cacj.org.].) According to a recent study by the Center on Juvenile and Criminal Justice, while the adult felony crime rate increased 11 percent from 1980 through 2004, "the juvenile felony rates dropped in the same period by 58 percent, from 3,195 arrests per 100,000 youths in 1980 to 1,345 arrests per 100,000 youths in 2004." (*Id*. at p. 4.) Hence, when assessing the officer's conduct together with appellant's diminished expectation of privacy as a juvenile probationer, and California's interest in rehabilitating and reducing the crime rate amongst juvenile probationers, it is clear that the officer's conduct in this case was unreasonable.

Even assuming a juvenile's expectation of privacy was as diminished as that of a parolee, or that the government's interest in reducing recidivism and monitoring juvenile probationers rose to the level of the government's interest in reducing recidivism among parolees, the officer's conduct in this case fails the test of reasonableness because he was unaware of appellant's search condition at the time of the intrusion. Therefore, he was not furthering the government's interests which permitted imposition of the search condition.

IV. Conclusion

As Justice Kennard wrote in her dissent in *Tyrell J.*, allowing an officer to conduct a suspicionless search of a juvenile probationer subject to a search condition without knowing about the search condition at the time of the search, "erodes the credibility of the constitutional prohibition against unreasonable searches and seizures." (*Tyrell J., supra,* 8 Cal.4th at p. 90 (dissenting opinion of J. Kennard.) The United States Supreme Court's decision in *Samson* is consistent with this view. In fact, both the majority and dissenting justices agreed that the suspicionless search of a parolee is unreasonable unless the searching officer has prior knowledge of the parolee's status. As Justice Stevens noted, "It would necessarily be arbitrary, capricious, and harassing to conduct a suspicionless search of someone without knowledge of the status that renders that person, in the State's judgment, susceptible to such an invasion." (*Samson, supra,* ___ U.S. ___, fn. 7 [dissenting opinion of J. Stevens].); see also fn. 5, citing *Sanders, supra,* 31 Cal.,4th at pp. 331-332 [majority opinion].)

For the foregoing reasons and those discussed in appellant's opening brief on the merits, reply brief on the merits, and answer to the amicus curiae brief filed by the Los Angeles District Attorney's Office, appellant urges this court to find *Tyrell J.*'s holding, that juvenile probationers may be searched without reasonable suspicion and without knowledge as to their probationary status, is no longer viable.

Respectfully submitted,

Diana M. Teran
Attorney for Appellant

BRIEF LENGTH CERTIFICATION

I, Diana M. Teran, certify pursuant to Rule 29.1 of the California Rules of Court, that the attached SUPPLEMENTAL LETTER BRIEF dated July 13, 2006 was produced on a computer using Word Perfect 12 and the computer generated word count on this document was 2,260, less than the maximum of 2800 imposed by subdivision (d)(2) of rule 29.1.

_____

Diana M. Teran

DECLARATION OF SERVICE BY MAIL

The undersigned declares under penalty of perjury that the following is true and correct: I am over eighteen years of age and not a party to the within cause. My business address is 1048 Irvine Avenue, PMB 613, Newport Beach, California. On the date below, I served copies of the attached SUPPLEMENTAL LETTER BRIEF dated July 13, 2006, in *In re Jaime P*. (Supreme Court Case No. S135263) by depositing true copies thereof, enclosed in sealed envelopes with postage thereon fully prepaid, in the United States mail in Orange County, California, addressed as follows:

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One copy by by First Class Mail to each of the following:

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Executed this 13th day of July 2006 in Newport Beach, California.

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