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Frederick K. Ohlrich
Clerk of the Supreme Court
Supreme Court of the State of California
350 McAllister Street
San Francisco, CA 94102-4797

RE: *In re Jaime P.*, *People v. Jaime P.*, S135263

Dear Sir:

By order filed on June 28, 2006, the Court has directed the parties in the above-entitled case to discuss the relevance of *Samson v. California* (2006) 547 U.S. ___, 126 S.Ct. 2193, "to the issues in this case, and particularly the continued vitality of *In re Tyrell J.* (1994) 8 Cal.4th 68." The following is submitted for the Court's consideration.

A. *Samson* Does Not Affect The Validity or Wisdom of *Tyrell J.*

Samson v. California, *supra*, held that a suspicionless search of a parolee does not violate the Fourth Amendment. Although it concluded that "parolees have fewer expectations of privacy than probationers" (126 S.Ct. at p. 2198), the Court nevertheless rejected the proposition that parolees "have no Fourth Amendment rights." (*Id.* at p. 2198, fn. 2.) The Court continued: "If that were the basis of our holding, then this case would have been resolved solely under *Hudson v. Palmer* [1984] 468 U.S. 517," which held that the inspection of a prison cell is not a search within the meaning of the Fourth Amendment because prisoners have no reasonable expectation of privacy. Instead, concluding that parolees have a "severely diminished" expectation of privacy (126 S.Ct. at p. 2199), the Court chose to "'examin[e] the totality of the circumstances to determine whether [the] search is reasonable within the meaning of the Fourth Amendment." (*Id.* at p. 2197, quoting *United States v. Knights* (2001) 534 U.S. 112, 118.)

Nothing in *Samson* requires this Court to reconsider its conclusion in *Tyrell J.* that the Fourth Amendment is not offended by the search of a juvenile probationer by an officer unaware of the minor's probation status.[1] Indeed, *Samson* supports the result reached in

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1 In its opening brief on the merits, respondent argued that the official intrusion in this case was not a search within the meaning of the Fourth Amendment because appellant

Tyrell J. for the following reasons. *Samson* recognizes that, under the Fourth Amendment totality of the circumstances balancing test, a substantial governmental interest in conducting the search in question can outweigh the privacy interest of a probationer or any citizen with a reduced expectation of privacy. Although this Court did not expressly employ a totality of the circumstances analysis in *Tyrell J.*, it discussed the same elements: the compelling state interest in the supervision of a juvenile parolee (8 Cal.4th at pp. 81-82, 87) and his concomitant reduced expectation of privacy (*id*. at 83-86). The state interest was in no way lessened by reason of the searching officer's ignorance of the juvenile's probation status because it is the minor's knowledge that he may be searched at any time which "provides a strong deterrent upon the minor tempted to return to his antisocial ways." (*Id*. at p. 87.) Striking the balance of these competing interests, *In re Tyrell J.*, concluded that the search was reasonable, despite the officer's lack of knowledge about the minor's status. *Samson* supports this Court's methodology in *In re Tyrell J.*

B. The Search Was Reasonable Under The Totality Of the Circumstances

Under the Supreme Court's "general Fourth Amendment approach," "[w]hether 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 to which it is needed for the promotion of legitimate governmental interests.'" (*Samson v. California, supra,* 126 S.Ct. at p. 2197, quoting *United States v. Knights, supra,* 534 U.S. at pp. 118-119.)

1. Expectation of Privacy

The United States Supreme Court has agreed with this Court's conclusion in *Tyrell J.* that a probationer, either adult or juvenile, has a significantly reduced expectation of privacy. In *United States v. Knights* (2001) 534 U.S. 112, the High Court concluded that a California adult probationer had a significantly diminished expectation of privacy by reason of his acceptance of the terms and conditions of probation, including the requirement that he submit to a search by a probation officer or any other peace officer. (*Id.* at pp. 119-120.) This holding fully supports this Court's earlier conclusion in *Tyrell J.* that "a juvenile probationer subject to a search condition simply has a greatly reduced expectation of privacy . . . ." (8 Cal.4th at p. 87, fn. 5.)

Like the probationer in *Knights*, appellant had been informed that he and his property

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had no reasonable expectation of privacy. (RB 7-15.) Respondent believes it is necessary to withdraw that argument in view of the conclusion in *Samson* that parolees and probationers retain some minimal expectation of privacy because they are not physically incarcerated. The Court's totality of the circumstances analysis necessarily presumes that the intrusion is a search. (126 S.Ct. at p. 2198, fn. 2.)

was subject to a warantless search. (CT 11D, 70, 80.) He therefore cannot legitimately claim that he was unaware that his expectation of privacy was greatly diminished.

2. State Interest

As is true of the supervision of its parolees, the State has an "overwhelming interest" (*Samson v. California, supra*, 126 S.Ct. at p. 2200) in the supervision of its juvenile probationers, and for the same reasons. First, there "is the concern, quite justified, that [the probationer] will be more likely to engage in criminal conduct than an ordinary member of the community." (*United States v. Knights, supra,* 534 U.S. at p. 121.) Intensive supervision will serve to deter such antisocial conduct. Second, supervision will "promote reintegration and positive citizenship among probationers. . . ." (*Samson v. California, supra*, at p. 2200.) This rehabilitative function is "arguably stronger [as applied to juveniles] than in the adult context. . . ." (*In re Tyrell J., supra,* 8 Cal.4th at p. 87.)

It is fallacious to assert that these deterrent and rehabilitative functions are not served by searches by police who are unaware that the minor is a probationer. This argument fails to consider the juvenile's expectations. If he believes that he may be searched at any time and the fruits of the search are admissible in court, he will be far less likely "to return to his antisocial ways." (*In re Tyrell J., supra,* at p. 87.)

3. No Intent To Harass

A juvenile probationer is not without protection of his residual privacy interests, however. A search may not be arbitrary, capricious, or conducted for the purpose of harassment. (*In re Tyrell, supra,* 8 Cal.4th at p. 87.) A search does not fall into any of these categories if it is related to rehabilitative, reformative or legitimate law enforcement purposes. (*People v. Reyes* (1998) 19 Cal.4th 743, 754, citing *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004.)

Judged by those criteria, the search in this case was not arbitrary, capricious, or harassing. In this case, officer Moody believed he had witnessed appellant's commission of two traffic violations in his failure to signal when he turned right onto Nottingham and when he pulled over to the curb.[2] The trial court's ruling that the probation search rationale

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2 Penal Code section 22107 provides:

> No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter in the event any other vehicle may be affected by the movement.

justified denial of the suppression motion necessarily constituted a finding that the search was not arbitrary, capricious, or intended to harass. (RT 37.)

That finding is supported by substantial evidence. Officer Moody twice saw appellant turn without signaling. Although the parties agreed that appellant's failure to signal did not violate section 22107, they also agreed that the officer "thinks the law says, if you don't use a signal, there's a violation of the Vehicle Code." (RT 33.) The parties cited no case, and respondent has found none, which holds that a trailing police vehicle "may [not] be affected by the movement." In any event, even if the officer's understanding of the law was erroneous, it is unquestionable that he did not intend to harass appellant or to violate his rights under the Fourth Amendment. Thus, appellant received the protection to which he was entitled as a probationer with a significantly reduced expectation of privacy.

C. The Search Is Justified by the "Special Needs" Doctrine

Although *Samson* found it unnecessary to determine whether a parole search is justified as a "special need" (126 S.Ct. at p. 2199), the high court has held that the search of a probationer serves such a need. Squarely in point is *Griffin v. Wisconsin* (1987) 483 U.S. 868.

In *Griffin*, the Court held that a state's operation of a new probation system "presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable cause requirements." 483 U.S. at 873-74. The Court explained:

> [P]robation, like incarceration, is "a form of criminal sanction imposed by a court upon an offender after verdict, finding, or a plea of guilty". . . . [P]robationers (as we have said it to be true of parolees) . . . do not enjoy "the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions." [¶] These restrictions are meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large. These same goals require and justify that the restrictions are in fact observed.

Id. at 874-875 (citations omitted and last ellipsis and third brackets original).

Although *Griffin* involved an adult probation system, its holding applies to a juvenile probation program. Indeed, to the extent that probation's primary goal is to rehabilitate, *Griffin* applies a fortiori to the California juvenile system, in which that goal is "stronger than

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It is not clear why the officer's vehicle was not "affected by the movement," but the parties agreed, and the court apparently accepted the concession, that the detention was unlawful. (RT 33.)

in the adult context." (*In re Tyrell J. supra,* 8 Cal.4th at p. 87.)

This purpose is served by a search conducted by an officer unaware of the juvenile probation status. For the reasons explained in part B. 3, a juvenile probationer who is aware that he may be searched at any time and that he cannot successfully move to suppress the fruits of the search on the ground that the officer lacked knowledge of his status is more likely to obey the law.

D. Suppression Would Not Serve The Deterrent Purpose Of The Exclusionary Rule

Viewed from the prospective of the exclusionary rule, the court's ruling in this case was correct. The primary purpose of suppression of evidence, of course, is to deter future police misconduct. (*United States v. Leon* (1984) 468 U.S. 879, 906.) As explained in *In re Tyrell J., supra*, that purpose is adequately served without a "knowledge first" requirement because the officer, without that knowledge, must necessarily assume that illegally seized evidence will be inadmissible in court. (8 Cal.4th at p. 89.) In other words, the normal "rules of engagement" are adequate to deter illegal police action, a conclusion which is consistent with that of the United States Supreme Court. (*Pennsylvania Board of Probation and Parole v. Scott* (1988) 524 U.S. 357, 367.) Even if that calculus is altered in the case of the search of a home of a person not known to be a probationer (see *People v. Robles* (2000) 23 Cal.4th 789, 800), that concern is plainly inapplicable to the search of appellant's car with its reduced expectation of privacy. (*California v. Carney* (1985) 471 U.S. 386, 391-393.)

Additionally, for reasons discussed in part B, *ante*, the full force of the exclusionary rule should not be applied in the context of the search of a parolee or probationer whose expectation of privacy is dramatically reduced by reason of his parole or probation conditions. The deterrent purpose of protecting probationers and parolees from harassing searches in the future—the only protection to which they are entitled—is adequately served by suppressing evidence which was taken during a harassing search. Because no such search occurred in this case, the evidence was properly admitted.

E. Precedent Does Not Require Suppression of Evidence

Finally, appellant's contention is not supported by any decision of this Court or the United States Supreme Court. In *Samson v. California, supra*, the Court noted that "[u]nder California precedent, . . . an officer would not act reasonably in conducting a suspicionless search absent knowledge that the person stopped for the search is a parolee." (126 S.Ct. at p. 2202, fn. 5, citing *People v. Sanders* (2003) 31 Cal.4th 318, 331-332.) The Court did not intimate, much less hold, that the Fourth Amendment required that result. Indeed, to the extent that *People v. Sanders, supra*, is based on any authority other than the Fourth Amendment, it cannot justify exclusion of evidence. (*People v. McKay* (2002) 27 Cal.4th 601, 608.) At most, *Samson* recognized that this Court has held that a knowledge-first requirement applies to adult parolees. Recognition is not synonymous with approval,

however.

Nor does *Sanders*, to the extent that it is consistent with the High Court's Fourth Amendment jurisprudence,[3] compel the disapproval of *In re Tyrell J.* First, *Sanders* involved the search of a dwelling, to which the Fourth Amendment attaches the greatest expectation of privacy. A search warrant is normally needed to justify a police officer's entry into a home. (*Payton v. New York* (1980) 445 U.S. 573.) By contrast, only reasonable suspicion is required to stop a citizen or vehicle on the street. (*Terry v. Ohio* (1968) 392 U.S. 1.) *Sanders* itself recognized this limiting circumstance. (31 Cal..4th at p. 324.) Second, the need to rehabilitate youthful offenders "is arguably stronger than in the adult context." (*In re Tyrell J., supra*, 8 Ca.4th at p. 87.) This purpose is served by the youth's assumption that "every law enforcement officer might stop and search him at any moment." (*Ibid.*) Finally, suppression of reliable evidence probative of guilt is an extreme sanction. (See fn. 3, *supra*.) For reasons advanced in part B, *ante*, it is inappropriate to apply that sanction when the searching officer does not intend to harass the probationer.

F. Conclusion

For the foregoing reasons stated, the judgment of the Court of Appeal, First Appellate District, should be affirmed.

Sincerely,

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3 *Sanders* appears to assume that in the case of a probationer or parolee, police are insufficiently deterred by the prospect that the fruits of their search will be suppressed if the conduct is found to violate the Fourth Amendment. An additional disincentive must be added to protect those with whom the parolee or probationer lives, this Court concluded. (31 Cal.4th at pp. 334-336.) It is ironic that more protection is required in the case of a person whose expectation of privacy is reduced

Even more significantly, the Supreme Court has emphatically stated that "[s]uppression of evidence . . . has always been our last resort, not our first impulse." (*Hudson v. Michigan* (2006) ___ U.S. ___, 126 S.Ct. 2159, 2163.) The Court has applied the exclusionary rule, which sometimes frees the guilty and sets the dangerous at large, only where its deterrence benefits outweigh its substantial social costs. (*Ibid*.) Because the "inadequacies of a legal regime that existed almost half a century ago [when *Mapp v. Ohio* (1961) 367 U.S. 643 was decided]" no longer exist today (*Hudson,* at p. 2167), the need for the expansion of the exclusionary rule is far less urgent.

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