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Frederick K. Ohlrich
Court Administrator and 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 Mr. Ohlrich:

The Court directed the parties to file simultaneous supplemental and reply briefs in the above-referenced case. Respondent submits the following reply brief for the Court's consideration.

In his supplemental brief appellant argues as follows: First, *Samson v. California* (2006) 547 U.S. __, 126 S.Ct. 2193 supports his position and this Court's methodology in *People v. Sanders* (2003) 31 Cal.4th 318 because it determines the reasonableness of a parole search by balancing the intrusiveness of the search upon a person's privacy against its promotion of a legitimate governmental interest. Second, *Samson* recognized that a parolee has an existing, albeit diminished, expectation of privacy. Third, that expectation required law enforcement to refrain from harassing searches. The prohibition on such harassing searches required the searching officer to know of the citizen's parolee status. Applying the balancing test to the search in this case, appellant argues that the search was unreasonable for two reasons. First, a juvenile probationer has a greater expectation of privacy than an adult parolee and the need to search a juvenile probationer is less compelling than the need to search a parolee. Second, the officer's lack of knowledge that appellant was a probationer necessarily undermined any assertion that it furthered the state's interest in the supervision of juvenile probationers. Respondent will reply to these arguments seriatim.

First, respondent agrees that the reasonableness of a search is determined by balancing its intrusion against the governmental needs that it serves. That test has been applied for almost 40 years (*Camara v. Municipal Court* (1967) 387 U.S. 523, 534-535), it was urged by the state in *Samson*, and there is no reason to depart from it in this case.

Second, in its supplemental opening brief, respondent agreed that *Samson* forecloses the argument that appellant had no reasonable expectation of privacy. (Resp. Supp. Br. at p. 2, fn. 1.)

Third, respondent concurs in the assertion that a juvenile probationer has reasonable expectation that he will not be the subject of a harassing search because state law confers that entitlement upon him. However, neither the Fourth Amendment nor enforcement of that entitlement necessitates a "knowledge-first" requirement.

As to the Fourth Amendment, the Court in *Samson* said: "Under California precedent, we note, an officer would not act reasonably in conducting a suspicionless search without knowledge that the person stopped for the search is a parolee." (126 S.Ct. at p. 2202, fn. 5, citing *People v. Sanders, supra*, 31 Cal.4th at pp.331-332.) Thus, the Court did not say that the Fourth Amendment required knowledge of the citizen's parolee status. As to the need to prevent harassment: This Court has declared that a search is not arbitrary, capricious our harassing if it is related to rehabilitative, reformative or legitimate law enforcement purposes. (*People v. Reyes* (1998) 19 Cal.4th 743, 754.) A police officer can have a legitimate law enforcement purpose without knowing that the person under investigation is a parolee. In this case, for example, the officer was engaged in a good-faith effort to enforce the traffic laws when he stopped the car driven by appellant. Appellant has never claimed that the officer detained the car for irrational or ulterior reasons. True, the parties agreed that the detention was unsupported by reasonable suspicion, but "a mistake in concluding that probable cause exists for an arrest, does not render the search [or seizure] arbitrary, capricious or harassing." (*People v. Cervantes* (2002) 103 Cal.App.4th 1404, 1408.)

Turning to appellant's claim that the search was unreasonable because the purpose did not justify the intrusion, respondent submits that this argument proves too much. Appellant's claim amounts to an assertion that *no* suspicionless search of a juvenile probationer can be reasonable even if the officer *does* have pre-existing knowledge of his status. This issue is beyond the scope of the grant of review. In any event, the balance of interests identified in *In re Tyrell J.* (1994) 8 Cal.4th 68 – the reduced expectation of privacy of juvenile probationers and the compelling need to rehabilitate those probationers – justifies a suspicionless search.[1]

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[1] Appellant asserts that a compelling state interest has not been shown because the juvenile felony arrest rate has decreased by 58 percent since 1980. (App. Supp. Br. at p. 6.) This reduction is a reflection of the decrease in the crime rate in general. Despite appellant's claim to the contrary, the crime rate also has decreased for adults. In fact, in 2004, the rate per 100,000 population of violent crime was little more than one-half of its rate in 1990 (539.6 v. 1055.3). (California Attorney General, Crime in California, Table 1, at p. 101 (2004).) More importantly, appellant's statistics do not reflect the arrest data for juvenile probationers, who by definition pose a greater threat to the community.

Appellant's second argument is that the rehabilitative purposes of probation cannot be furthered by a search of a juvenile who is not known to the searching officer to be a probationer. Appellant is incorrect. As noted in *Tyrell J.*, a juvenile probationer's knowledge that "every law enforcement officer might stop and search him at any moment" is a powerful deterrent to regression into antisocial behavior. (8 Cal.4th at p. 87.) Perhaps more fundamentally, appellant's submission fails to recognize that the search, as conducted, did not violate his limited Fourth Amendment rights. At the time he was placed on probation, appellant was expressly told that he could be searched at any time. California law defines the expectation of privacy of a juvenile probationer by prohibiting arbitrary, capricious or harassing searches. Because the search was not, or claimed to be, arbitrary, capricious or harassing, it did not violate appellant's well-defined, albeit minimal, expectation of privacy. Because appellant's privacy interests were not transgressed, the purpose of the search was irrelevant to its reasonableness. (*Cf. Whren v. United States* (1996) 517 U.S. 806.)

For the foregoing reasons, respondent respectfully requests that the judgment of the Court of Appeal, First Appellate District, be affirmed.

Sincerely,

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