IN RE JAIME P.

Decided by the California Supreme Court on November 30, 2006
6-1 Opinion authored by Justice Chin

Majority: Justice Chin, Chief Justice George, Justice Kennard, Justice Werdegar, Justice Moreno, Justice Corrigan
Dissent: Justice Baxter

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On November 30, 2006, the California Supreme Court filed its highly anticipated opinion in *In re Jaime P.*, definitively overruling its 12-year-old decision in *In re Tyrell J.* (1994) 8 Cal. 4th 68. In *Jaime P.*, the Court held than an illegal search and seizure cannot be justified after-the-fact by the state's subsequent discovery that the person searched is on juvenile probation with a search condition. The law enforcement officer must know of the probation search clause before he stops or searches the juvenile – his person, vehicle or property -- without reasonable suspicion. The evidence seized during a search conducted without such prior knowledge is inadmissible in a juvenile delinquency or criminal proceeding. Juvenile probationers now have the same Fourth Amendment protection as adult parolees and adult probationers subject to search conditions.

Tyrell J., and The Way Things Were:

For the past twelve years, since the California Supreme Court's July 1994 decision in *In re Tyrell J.* (1994) 8 Cal. 4th 68, a police officer could detain a juvenile for no reason whatsoever, and then search his person or property without reasonable suspicion or probable cause. If the officer found contraband, and the prosecution later learned that the individual was on juvenile probation with a search condition, the seized evidence would be admissible at the individual's juvenile delinquency proceeding or criminal trial.[1] *Tyrell J.* permitted retroactive justification of the otherwise illegal search by the state's subsequent discovery of the juvenile's probation search clause.

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[1] It is important to remember that not all juvenile probationers are minors. Persons can remain wards of the juvenile court, on juvenile probation, until age 21. A juvenile probationer who is 18 or older when he/she commits a crime, can be prosecuted as an adult.

Defense advocates, scholarly commentators, and some lower court judges have long criticized *Tyrell J.* , echoing concerns first expressed by Justice Kennard in her dissent to the 1994 decision. First, the *Tyrell J.* retroactive justification rule violated the cardinal Fourth Amendment principle that the reasonableness of a search or seizure is determined by objectively assessing the circumstances known to the officer prior to the intrusion. Second, *Tyrell J.* arguably encouraged police misconduct. In neighborhoods where a considerable percentage of youth were on juvenile probation, police officers had an incentive to stop and search without reasonable suspicion and ask questions later -- in the hope that they would get lucky and subsequently discover that the person from whom contraband was illegally seized was on probation with a search condition.

Bound by the principle of stare decisis, the lower courts continued to apply the *Tyrell J.* rule when prosecuting criminal charges against juvenile probationers with search conditions. Illegally seized contraband was admitted even though the law enforcement officer had been unaware of the probation condition prior to the search. Moreover, although the California Supreme Court had never expressly extended the *Tyrell J.* retroactive justification principle to adults, the rule was also applied in criminal prosecutions of adult parolees and adult probationers with search conditions – at least until 2003.

People v. Sanders: The Supreme Court's Changing Analysis

Three years ago, in *People v. Sanders* (2003) 31 Cal. 4th 318, the state's high court confirmed a shift in analysis that had first been evident in *People v. Robles* (2000) 23 Cal. 4th 789. In *Robles*, the Supreme Court had ruled that the illegal search of a residence could not be retroactively justified by the fact that the defendant's housemate was on adult probation with a search clause – a condition unknown to the officers when they searched the shared home. The illegal seized evidence was not admissible in the prosecution of the defendant, a non-probationer. Three years later, in *Sanders*, the Court held that the illegal search of a residence shared by an adult parolee and a non-parolee could not be justified, after-the-fact, by the officer's subsequent discovery that one of the housemates was on parole with a search condition. The contraband found during the illicit search could not be admitted into evidence against either the parolee or the non-parolee.

The *Robles* decision had rested, in part, on the distinction between the adult probationer's reduced expectation of privacy (analogous to that of the juvenile probationer in *Tyrell J.*) and the non-probationer defendant's measurably greater privacy expectations, as well as on the fact that the illegal search had

occurred in a residence. The reasoning of *Sanders* was much broader.

In *Sanders*, the Court effectively abandoned the *Tyrell J.* analysis and affirmed the knowledge-first rule previously set forth in *In re Martinez* (1970) 1 Cal. 3d 641(holding that the police cannot retroactively justify the unlawful search of a parolee's home because, unbeknownst to the police, a resident was on parole with a search condition).[2] *Sanders* held that law enforcement officers must know that an occupant of the dwelling is on parole before conducting a "parole search" of the residence. (See *People v. Sanders, supra.*, 31 Cal. 4th at 332.)

The Supreme Court, in *Sanders*, offered two rationales for invalidating a parole search conducted without prior knowledge. First, the reasonableness of a search "must be determined based on the circumstances known to the officer when the search is conducted". This rule applies whether the justifying circumstance is reasonable suspicion, probable cause or a parole search condition. (*People v. Sanders, supra*., 31 Cal. 4th at 332, 334.) Second, a knowledge-first requirement is consistent with the primary purpose of the exclusionary rule – to deter police misconduct. (*People v. Sanders, supra.*, at 332, 334.) The exclusionary rule compels respect for the Fourth Amendment "by removing the incentive to disregard it". (*Id.* at 334 [citing *Mapp v. Ohio* (1961) 367 U.S. 643, 656].) If the courts require prior knowledge of the individual's search condition to validate a lawful "parole search", they will discourage police officers from searching without probable cause on the hope that they may "get lucky" and later discover that the individual is on parole. (*Id.* at 334-335.)

In *Sanders*, the Court rejected the *Tyrell J.* analysis – i.e. its exclusive focus on the probationer or parolee's diminished expectation of privacy. The Court now gave equal consideration to the state's interest purportedly justifying suspicionless intrusion. The officer conducting the search must know that he is acting pursuant to a legitimate government interest. If the officer is unaware that the person is on parole with a search condition, then the search – without a warrant or probable cause – is not justified by the government's interest in

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[2] In *Tyrell J.*, the Court had distinguished *Martinez* and declined to apply its knowledge-first rule to a juvenile probationer with a search clause. The Court noted that when *Martinez* was decided, California parolees were not subject to automatic conditions permitting searches by police officers as well as parole officers. In contrast, a juvenile probationer knew he was subject to a condition permitting a suspicionless search by a police officer at any time, severely diminishing or extinguishing his reasonable expectation of privacy. (*In re Tyrell J., supra.*, 8 Cal. 4th at 88-89).

supervising parolees. (*People v. Sanders, supra.*, 31 Cal. 4th at 333.)

Nevertheless, although the *Sanders* opinion acknowledged that *Tyrell J.*'s retroactive justification rule had "received a chilly reception" from legal commentators and other jurisdictions, the Court did not expressly overrule *Tyrell J.*. The Court declined the government's invitation to re-affirm that the *Tyrell J.* holding still applied to juvenile probationers: "Because this case does not involve a juvenile, we need not, and do not, decide this issue." (*People v. Sanders, supra*., 31 Cal. 4th at 335, n. 5.) The stage was set for *Jaime P.*

In the Wake of People v. Sanders:

In the aftermath of *Sanders*, the appellate courts – in published decisions – uniformly extended *Sanders* beyond its facts, holding that the knowledge-first rule applied to personal searches of parolees (See *People v. Jordan* (2004) 121 Cal. App. 4th 544), and to searches of adult probationers subject to search conditions. *People v. Bowers* (2004) 117 Cal. App. 3d. 1261, 1268-71, rev. den. Aug. 11, 2004 [First District, Division Three held the personal search of an adult probationer could not be justified by a probation search condition unknown to the officer at the time of the detention and search]; *People v. Lazalde* (2004) 120 Cal. App. 4th 858, 908-10, rev. den. Oct. 13, 2004 [Sixth District applied the knowledge-first rule to the search of a motel room occupied by an adult probationer]; *People v. Hoeninghaus* (2004) 120 Cal. App. 4th1180, 1184-85, rev.den. Oct. 13, 2004 [Sixth District held the search of the defendant could not be justified by his probation search condition when the officer was unaware of the condition at the time of the search]; *Myers v. Superior Court* (2004) 124 Cal. App. 4th 1247 [Fourth District, Division Three held that a probationer's search condition did not justify his detention and personal search when the officer conducting the warrantless search lacked knowledge of the condition].)

Moreover, in two published opinions, appellate courts declined to apply the *Tyrell J.* retroactive justification rule to validate illegal searches of individuals on juvenile probation with search conditions. In both cases, the officers did not know of the individuals' probation search clauses at the time of the search. (*People v. Hester* (2004) 119 Cal. App. 4th 376, 402-05, rev.den. Sept. 22, 2004 [Fifth District ruled the stop and search of a vehicle could not be retroactively justified by subsequently information that an occupant was on juvenile probation with a search clause]; *In re Joshua J.* (2005) 129 Cal. App. 4th 359, rev.den. Aug 17, 2005 [Holding that it was not bound to follow *Tyrell J.* after *Sanders*, the Fifth District invalidated the suspicionless stop and search of a juvenile whose

probation search condition was unknown to the officer].)[3]

On the other hand, other lower appellate courts concluded that they were bound to follow *Tyrell J.* until the California Supreme Court expressly overruled the 1994 opinion. (See, e.g. *In re William R.* (2005) 133 Cal. App. 4th 1004, rev. granted Feb. 22, 2006 [Second District upheld the otherwise illegal stop and search of a juvenile on probation with a search condition, even though the officer did not learn of the search clause until after the search].)

In re Jaime P. : The End of the Retroactive Justification Rule

In July 2005, recognizing the need to clarify the constitutional status of juvenile probationers subject to search conditions, the California Supreme Court granted review in *In re Jaime P.*, on the following question:

> Does the rule of *In re Tyrell J.*, that the search of a juvenile may be justified by a probation search condition unknown to the officer conducting the search, remain viable in light of the reasoning and holding of this court's subsequent decision in *People v. Sanders?*

The basic facts of *Jaime P.* were as follows: On an evening in April 2004, Fairfield Police Officer Moody had initiated a traffic stop on a vehicle driven by the minor, Jaime P. The stop and ensuing detention were not legally justified as the driving practice observed by the officer did not constitute a Vehicle Code violation. During the illicit traffic stop, Officer Moody discovered incriminating information and searched Jaime P.'s car, finding a weapon. Sometime after the illegal stop and tainted search, the government learned that Jaime P. was on juvenile probation subject to a search condition. But Moody had not known of Jaime P.'s probation search condition at the time of the stop and search. Both the juvenile court and the Court of Appeal (First District, Division Four) concluded that they were bound to follow the retroactive justification rule of *Tyrell J.*. Thus, the courts held that the otherwise illegal stop and search were validated by the unknown juvenile probation search condition. The stage was set for the Supreme Court to clarify the continuing validity of *Tyrell J.*

In it's opinion in *Jaime P.*, filed on November 30, 2006, the Supreme Court

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[3] The Attorney General filed petitions for review in most of these cases, and that the Supreme Court denied review in every case extending the *Sanders* knowledge-first rule to adult and juvenile probationers.

concluded that "developments subsequent to *Tyrell J.*, including the recent high court decision in *Samson v. California* (2006) 547 U.S. ____ [126 S.Ct. 2193, our own decision in *People v. Sanders* (2003) 31 Cal. 4th 318, and lower court cases and scholarly comment critical of *Tyrell J.*, have convinced us that it should be overruled." Essentially, the Court endorsed the critique of the *Tyrell J.* retroactive justification rule that had originally been expressed in Justice Kennard's 1994 dissent, noting that re-affirming that rule "will continue to generate inequitable and legally unjustified results".

The Court began its analysis by reiterating that the *Tyrell J.* holding had been justified on three grounds. First, the Court, in *Tyrell J.*, had concluded that a juvenile probationer subject to a condition that authorized a search, without reasonable cause, by any officer at any time, had either no reasonable expectation of privacy or a greatly diminished expectation. Second, the *Tyrell J.* Court had reasoned that requiring the officer to have advance knowledge of the search condition "would be inconsistent with the special needs of the juvenile probation scheme" – rehabilitative needs that were "arguably stronger" than those of the adult probation system. Third, according to *Tyrell J.*, a juvenile probationer would be deterred from re-offending, and thus rehabilitated, because he'd assume that he could be stopped and searched by every law enforcement officer at any moment. This essential "deterrent effect" would be "severely eroded" if police officers were required to know that the young person was on probation with a search clause prior to any stop and search. (See *Tyrell J., supra*., at 86-87.)

In *Jaime P.*, the Court concluded that all three of these rationales had been rejected or called into question by subsequent high court authority. First, the Court put to rest, once and for all, any notion that a juvenile probationer with a search condition has no reasonable expectation of privacy and no Fourth Amendment rights. Relying on language from *Sanders*, the Court held that both parolees and probationers, adult and juvenile, have diminished but residual expectations of privacy – reasonable expectations that officers will not undertake random searches supported by neither reasonable suspicion of criminal activity nor advance knowledge of their search conditions.

Indeed, the United States Supreme Court stated, in *Samson*, that although both parolees and probationers retain reduced expectations of privacy, "parolees have fewer expectations of privacy than probationers, because parole is more akin to imprisonment than probation". (See *Samson v. California, supra*., 126 S.Ct. at 2198.) Thus, in the hierarchy of privacy expectations, incarcerated prisoners are at the bottom, having the least expectation of privacy, particularly in their cells. Parolees, recently released from prison are at the next level, and

probationers are at the top, having less expectation of privacy than law-abiding citizens, but more than parolees.[4]

The Court in *Jaime P.* rejected an essential premise of the *Tyrell J.* opinion – i.e. that requiring officers to know of the juvenile's probation status and search condition prior to the search would erode the condition's deterrent effects. Assuming that a juvenile probationer is deterred from misconduct by the realization that he can be searched by any police officer at any time, the prior knowledge requirement for officers does not really change the juvenile's own expectations. In *Jaime P.*, the Court observed (as had Justice Kennard in her Tyrell J. dissent) that it is the existence of the search condition, and the juvenile probationer's own knowledge that he is subject to suspicionless searches, that deters him from future criminal acts.

Finally, in *Jaime P.*, the Court reasoned that there were no "special needs" of the juvenile probation system that justify permitting the police to conduct illegal searches of juveniles without knowing that they had the right to do so. The Court noted that a police officer would not be furthering the state's interest in monitoring and supervising juvenile probationers if he was unaware the individual being stopped and searched was on probation subject to a search condition. Also, the Court questioned the assumption that juvenile probationers require greater supervision and more frequent searches than adult probationers and parolees: '[I]t is certainly arguable that the state's interest in reducing the unduly high recidivism rate among adult parolees is on a par with, if not greater than, the need to assure that juvenile probationers do not reoffend.", citing *Samson v. California*, *supra.*, 126 S.Ct. at 2200.)

In the end, the Court in *Jaime P.* reiterated that cardinal Fourth Amendment principle, previously acknowledged in *Sanders* – the reasonableness of a search must be determined based on the circumstances known to the officer

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[4] Indeed, the Attorney General's original position, in *Jaime P.*, was that a juvenile probationer with a search condition has no reasonable expectation of privacy, and thus is not "searched" within the meaning of the Fourth Amendment. The Attorney General abandoned this position after the Supreme Court's decision in *Samson*. Essentially, the Attorney General was arguing that juvenile probationers were like incarcerated prisoners – the only group deemed to have no reasonable expectation of privacy because of their status. (See *Hudson v. Palmer* (1984) 468 U.S. 517) And although a prisoner has no reasonable expectation in his/her prison cell, the prisoner retains a limited expectation of privacy in his person.

when the search is conducted. When the officer has neither reasonable suspicion of any criminal activity, nor advance knowledge of the individual's probation search condition, he searches without perceived justification, and his conduct can aptly be characterized as arbitrary.

For attorneys and legal scholars who have been following this issue for the last several years, the Supreme Court's opinion in *Jaime P.* was not unexpected. As noted, the Court's shift in analysis and its acknowledgment of widespread dissatisfaction with the *Tyrell J.* retroactive justification rule was evident in *Robles*, and even more so in *Sanders*. Moreover, the Court showed no inclination to grant review in the many Court of Appeal cases that extended the *Sanders* rule beyond its facts – to searches of adult probationers. However, the near unanimity of the Court in *Jaime P.* is somewhat surprising and worth noting. Also it is interesting that language and reasoning from the United States Supreme Court's recent decision in *Samson v. California* (a prosecution victory) helped persuade the California high court that *Tyrell J.* needed to be overruled.[5]

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[5] In *Samson v. California* (2006) 547 U.S.____, 126 S.Ct. 2193, the Supreme Court held that an officer does not need reasonable suspicion in order to search a parolee; a suspicionless search does not violate the Fourth Amendment. The Court affirmed the holding of the California Supreme Court in *People v. Reyes* (1998) 19 Cal. 4th 743 and the constitutionality of Penal Code section 3067(a) (requiring released parolees to agree in writing to be searched by a parole or police officer without a warrant or reasonable cause). As the California Supreme Court noted in *Jaime P.*, the nation's high court apparently approves of the *Sanders* holding requiring prior knowledge of the parole search condition before an officer may search without reasonable cause. Responding to dissenting Justice Stevens' criticism that "California's suspicionless search system gives officers unbridled discretion to conduct searches", the *Samson* majority noted that the California Supreme Court prohibits "arbitrary, capricious or harassing" searches. Specifically, "[u]nder California precedent,....an officer would not act reasonably in conducting a suspicionless search absent knowledge that the person stopped for a search is a parolee. See People v. Sanders, 31 Cal. 4th 318, 331-332 (2003)." (Samson v. California, supra., 126 S.Ct. at 2202, fn. 5)