

# Recent Case Report

## People v. Jaime P.

(2006) 40 Cal.4<sup>th</sup> 128

### ISSUE

Can a warrantless search of a minor be upheld as a probation search if officers didn't know he was on probation?

### FACTS

A Fairfield officer stopped the driver of a car for failing to signal before turning. In the course of the stop, he saw a box of ammunition on the floorboard. He then searched the car for weapons and found a loaded handgun under the back seat. The driver, Jaime P., was arrested.

### DISCUSSION

Jaime contended the gun should have been suppressed because the stop was unlawful. Prosecutors conceded that, because there was no evidence that other drivers were affected by the turn, Jaime's failure to signal had not violated the Vehicle Code.<sup>1</sup> Still, they argued the search was lawful because, although the officer didn't know it at the time, Jaime was on probation with a search condition.

In determining whether a search can be upheld as a probation search, the California Supreme Court previously distinguished between searches of adults and minors. Specifically, if the probationer was an adult, the search could not be upheld as a probation search unless the officers knew about the search condition beforehand.<sup>2</sup> But if the probationer was a minor, the officers' lack of knowledge didn't matter. This was mainly because, as the court explained in *In re Tyrell J.*, imposing a knowledge requirement "would be inconsistent with the special needs of the juvenile probation scheme."<sup>3</sup>

In *Jaime P.*, however, the court overturned *Tyrell* for essentially two reasons. First, the U.S. Supreme Court, in the post-*Tyrell* case of *Samson v. California*,<sup>4</sup> indicated (but declined to rule<sup>5</sup>) that probationers and parolees who are subject to search conditions might have some residual expectation of privacy from warrantless searches. Second, there had been some "lower court cases and scholarly comment critical of *Tyrell J.*"

The court then ruled that minors on probation have merely a "diminished" expectation of privacy which means, said the court, they cannot be subjected to "arbitrary" searches. It then ruled that warrantless searches are "arbitrary" if they were conducted with neither reasonable suspicion nor knowledge of the search condition.

Accordingly, the court ruled the gun in Jaime's car should have been suppressed.

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<sup>1</sup> See Vehicle Code § 22107 [violation occurs only if "any other vehicle may be affected by the movement"].

<sup>2</sup> See *People v. Sanders* (2003) 31 Cal.4<sup>th</sup> 318, 334-5.

<sup>3</sup> (1994) 8 Cal.4<sup>th</sup> 68, 86-7.

<sup>4</sup> (2006) 547 U.S. \_\_ [2006 WL 1666974].

<sup>5</sup> **NOTE:** In *Samson*, the Court noted that it had previously "left open" the issue of whether a search condition eliminates or merely diminishes a parolee's privacy expectations. And, because it was unnecessary to do so, it did not resolve the issue in *Samson*.

**COMMENT**

We can understand that a search cannot be upheld as a probation search if officers did not know the suspect was on probation. But we cannot comprehend how a probationer (or parolee) who is running around with a loaded handgun in his car or under his waistband can be said to *reasonably* expect that it would not be discovered by officers if he knew—he absolutely *knew*—that he and his car could be searched by officers at any time of the day or night, and for no reason whatsoever.

Another thing. The court noted there had been “a substantial body of scholarly commentary critical of our *Tyrell J.* analysis.” The “gist” of the scholars’ comments, said the court, was that *Tyrell* gave officers “an incentive to conduct a warrantless search, unsupported by reasonable suspicion of criminal conduct, in the bare hope that a search condition may exist.”

As we have said before, this allegation is absurd. Not only is there nothing to indicate that that had happened while *Tyrell* was the law, it is preposterous to think that officers would drive around randomly searching people on the street, hoping that those who happened to be carrying guns or drugs would also happen to be on probation with a search condition.

It seems to us that, if this is the best argument that the *Tyrell* critics can devise, maybe the court should reconsider this issue. POV