Fourth Amendment Protections for the Juvenile Probationer After In Re Tyrell J.

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FOURTH AMENDMENT PROTECTIONS FOR
THE JUVENILE PROBATIONER
AFTER IN RE TYRELL J.

Justice should not be compromised by well-intentioned aims to correct transgressing youths, and the rehabilitative value of treating juveniles with fairness must not be underrated.¹

I. INTRODUCTION

Three gang members approached a uniformed police officer and a police detective, who were on patrol at a high school football game.² The officers noticed that, although it was a very warm night, one of the teenagers wore a heavy, quilted coat.³ The officers also knew that the boys' gang had been involved in a shooting incident the week before another football game.⁴ They suspected that the boy in the heavy coat might be carrying a weapon.⁵ A subsequent search of the boy revealed a large hunting knife.⁶ The officers asked all three boys to walk to a nearby fence.⁷

As one of the boys, Tyrell J., approached the fence, he adjusted his pants three times.⁸ Tyrell J. was a juvenile probationer.⁹ One of the conditions of his probation was that he "[s]ubmit to a search of [his] person and property, with or without a warrant, by any law enforcement officer, probation officer or school official."¹⁰

³. Id. at 522.
⁴. Id. at 521-22.
⁵. Id. at 522.
⁶. Id.
⁸. Id.
⁹. Id. at 521. Tyrell J. was declared a ward of the court on May 21, 1991, after he committed a battery on school grounds. Id.
¹⁰. Id. (alterations in original). This particular condition of probation will be referred to throughout the comment as "probationary search condition" or "search condition."
The uniformed police officer lacked probable cause to search Tyrell J., and he was also unaware of Tyrell J.'s probationary search condition. Nonetheless, he conducted a pat search of Tyrell J. and discovered that he was hiding a bag of marijuana in his pants.

A petition was filed alleging that Tyrell J. came within the provisions of California Welfare and Institutions Code section 602, in that he possessed marijuana for the purpose of selling it. Tyrell J. denied the allegation and moved to suppress the evidence of the marijuana. At the hearing on the motion to suppress, Tyrell J. testified that his belt and his pants become undone, and that when he was walking toward the fence, he was simply trying to refasten his pants. He claimed that the marijuana was obtained as the result of an unlawful search.

The juvenile court denied the motion to suppress, but the court of appeal reversed. It reasoned that "the fortuity of [Tyrell J.'s] search condition did not validate the otherwise improper search." However, the California Supreme Court reversed the court of appeal decision, holding that the search was constitutional despite the officer's ignorance of Tyrell J.'s search condition. Significantly, on April 17, 1995, the United States Supreme Court denied certiorari. Thus, warrantless searches of juvenile probationers who have probation conditions are constitutional in California, even where

11. Id. at 522 n.1. The officer's lack of probable cause was not disputed by either party in the court below. Id. Therefore, the California Supreme Court did not reach the argument, raised by amicus curiae, that the officer actually did have probable cause to detain and search Tyrell J. Id.


13. Id.

14. Id. The code provides that

any person who is under the age of 18 years when he violates any law of this state . . . defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

CAL. WELF. & INST. CODE § 602 (West 1984).


16. Id.

17. Id.

18. Id.

19. Id.

20. In re Tyrell J., 876 P.2d at 522

21. Id. at 521.

the searching officer has no knowledge of the juvenile's probationary condition.

This comment examines the purposes behind the Fourth Amendment and the accompanying exclusionary rule to determine whether the bag of marijuana should have been admissible evidence against a juvenile probationer.23 The comment then discusses other parole and probation cases that the California Supreme Court relied upon in reaching its decision to admit the marijuana as evidence.24 Finally, it examines whether the goals of the Fourth Amendment and the "special needs" of the juvenile probation system can be harmonized so as to rehabilitate juvenile probationers and deter future misconduct, while respecting the juvenile's basic constitutional rights.25

This comment proposes that a juvenile probationer's search condition must be known to the police officer before he or she conducts a valid warrantless search.26 Furthermore, sufficient proof of that knowledge must be made before anything discovered during the search can be admitted into evidence at trial.27

II. BACKGROUND

A. The Fourth Amendment, the Exclusionary Rule, and Exceptions

1. The Fourth Amendment and the Exclusionary Rule

The Fourth Amendment states that the "right of the people to be secure in their persons . . . against unreasonable searches and seizures . . . shall not be violated, and no [w]arrants shall issue, but upon probable cause, supported by oath or affirmation . . . ."28 The Fourth Amendment thus proscribes governmental intrusions into peoples' lives unless a judicial process has been followed and a warrant has been obtained.29 This constitutional right is enforced by an exclu-
sionary rule, which generally prohibits admission at trial of evidence that is obtained in violation of the Fourth Amendment. The exclusionary rule applies to adult proceedings as well as to juvenile proceedings which are, as in Tyrell J., filed pursuant to Welfare and Institutions Code section 602.

2. Probation as an Exception to the Exclusionary Rule

The United States Supreme Court, however, has recognized exceptions to the Fourth Amendment warrant requirement in "circumstances in which special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." In such circumstances, courts balance governmental and privacy interests to evaluate the practicality of the Fourth Amendment warrant and probable cause requirements.

In Griffin v. Wisconsin, the Court asserted that a state's "probation system . . . presents 'special needs' beyond normal law enforcement that may justify departures from the usual warrant and probable-cause requirements." Specifically, the Griffin Court highlighted the supervision element of probation, which exists to assure that conditions of probation are fulfilled.

The Court noted recent research which suggested that more intensive supervision could reduce recidivism. Additionally, research indicated that the importance of supervision had grown as probation had become a more common sen-

30. "[T]he [exclusionary] rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." United States v. Calandra, 414 U.S. 338, 348 (1974). The main purpose of the exclusionary rule is to deter unlawful police conduct. Id. at 347. Additionally, it assures "all potential victims of unlawful government conduct . . . that the government [will] not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government." Id. at 357.

37. Id. at 875.
38. Id. (citing Joan Petersilia, Probation and Felony Offenders, 49 Fed. Probation 9 (June 1985)).
tence for people convicted of serious crimes. Thus, the Court reasoned, “supervision . . . is a ‘special need’ of the state permitting a degree of impingement upon privacy that would not be constitutional if applied to the public at large.”

The Fourth Amendment’s warrant and probable cause requirement is the rule; dispensing with this rule is the exception. Probation falls under the category of exceptions to the Fourth Amendment’s requirements. Its supervision element justifies flexibility in obtaining a warrant based on probable cause, and it justifies impinging upon a person’s privacy. In fact, the emphasis on supervision as a means of reducing recidivism is so strong that courts have fashioned it into one of the terms of probation: the search condition.

B. The Constitutionality of Probation Search Conditions

1. Upholding a Warrantless Search Because of Probation Condition

The existence of a probation search condition has been used to justify a warrantless search of a probationer, and to allow evidence found during the search to be used later at trial. For example, in Griffin v. Wisconsin, one condition of the petitioner’s probation was that any probation officer could conduct a warrantless search of the probationer’s home, as long as the officer’s supervisor approved and there were reasonable grounds to believe that contraband was present. During the course of such a warrantless search, a gun was

39. Id.
40. Id.
41. See supra text accompanying notes 28-34.
42. See supra text accompanying note 36.
43. See supra text accompanying notes 37-40.
44. See supra text accompanying note 10; see also infra parts II.B.1 and II.E. In People v. Bravo, the California Supreme Court acknowledged that “[t]he purpose of an unexpected, unprovoked search . . . is to ascertain whether [the defendant] is complying with the terms of probation; to determine not only whether he disobeys the law, but also whether he obeys the law.” People v. Bravo, 738 P.2d 336, 342 (Cal. 1987) (quoting People v. Kern, 71 Cal. Rptr. 105, 107 (Ct. App. 1968)), cert. denied, 485 U.S. 904 (1988). Information obtained during these searches would give a good measure of the effectiveness of the supervision and the defendant’s amenability to rehabilitation. Id.
47. Griffin, 483 U.S. at 871.
The gun was later used as the basis for the petitioner's conviction on a state weapons offense. In a close decision, the United States Supreme Court held that the "search of Griffin's residence was 'reasonable' within the meaning of the Fourth Amendment because it was conducted pursuant to a valid regulation governing probationers." The Court reasoned that probationary "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." Probationers, therefore, have a diminished expectation of privacy because of the terms of their probation.

Justice Blackmun dissented in Griffin, arguing that in holding as it did, the Court was taking "another step that diminishes the protection given by the Fourth Amendment." The dissent acknowledged the need for supervision of probationers to assure compliance with the terms of probation. However, that need did "not also justify an exception to the warrant requirement, and [the dissent] would retain this means of protecting a probationer's privacy." While the dissent approved of a lower standard of review for issuing search warrants for probationers with search conditions, it stated

48. Id. at 870.
49. Id.
50. The decision was 5-4. Id. at 869.
51. Id. at 880.
52. Griffin, 483 U.S. at 875.
53. Id. at 872. "[I]t is always true of probationers (as . . . [is] true of parolees) that they do not enjoy 'the absolute liberty to which every citizen is entitled, but only . . . conditional liberty properly dependent on observance of special [probation] restrictions.'" Id. at 874 (quoting Morrissey v. Brewer, 408 U.S. 471, 480 (1972)).
54. Id. at 881 (Blackmun, J., dissenting).
55. Id. at 882 (Blackmun, J., dissenting).
56. Id. (Blackmun, J., dissenting).
57. Griffin, 483 U.S. at 883 (Blackmun, J., dissenting). The Fourth Amendment requires that probable cause exist before a warrant will be issued. U.S. Const. amend. IV. See also supra text accompanying note 28. However, the Griffin majority declined to adopt a "reasonable grounds" standard, as the lower court had done. Griffin, 483 U.S. at 872. A reasonable grounds standard of review for obtaining a search warrant is a lower threshold than the probable cause requirement. Id. The dissent noted that "extensive inquiry may be required to gather the information necessary to establish probable cause that a violation has occurred, [but] a 'reasonable grounds' standard allows a probation agent to avoid this delay and to intervene at an earlier stage of suspicion." Id. at 883 (Blackmun, J., dissenting). The dissent believed that a reasonable grounds standard was consistent with the amount of supervision necessary to
that "a reduced need for review does not justify a complete removal of the warrant requirement."\textsuperscript{58}

Griffin upheld the constitutionality of search conditions which permit warrantless searches of adult probationers.\textsuperscript{59} However, the Griffin majority expressly declined to address whether any warrantless search was permissible if based on reasonable grounds alone.\textsuperscript{60} Similarly, certain California Supreme Court cases have held that even where search conditions were in effect, the conditions alone did not justify the warrantless search of probationers.\textsuperscript{61}

2. Previous California Cases Have Held that Search Conditions Do Not Justify a Warrantless Search

a. People v. Gallegos

In People v. Gallegos,\textsuperscript{62} police officers conducted an illegal search of the defendant's apartment.\textsuperscript{63} The search disclosed heroin and marijuana, as well as instruments used in administering drugs.\textsuperscript{64} At the time, the adult defendant was on parole for a narcotics violation.\textsuperscript{65} However, the record did "not disclose and no claim [was] made that [the defendant] protect the public and aid in the probationer's rehabilitation." \textit{Id.} (Blackmun, J., dissenting).

\begin{itemize}
  \item \textsuperscript{58.} Griffin, 483 U.S. at 886 (Blackmun, J., dissenting).
  \item \textsuperscript{59.} \textit{Id.} at 880.
  \item \textsuperscript{60.} \textit{Id.}
  \item \textsuperscript{61.} See infra notes 62-76 and accompanying text.
  \item \textsuperscript{62.} 397 P.2d 174 (Cal. 1964).
  \item \textsuperscript{63.} Gallegos, 397 P.2d. at 177. The police officer acted on a tip from an informant, of unknown reliability, who had just been found in his car, unconscious from a heroin overdose. \textit{Id.} at 175. While still under the influence of heroin, the informant told police that he had purchased the drug from the defendant, whom the informant knew only by nickname. \textit{Id.}
  \item \textsuperscript{64.} \textit{Id.} at 176.
  \item \textsuperscript{65.} \textit{Id.} at 175. Under the California Penal Code, "[p]risoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the [enclosure] of the prison." \textit{Cal. Penal Code} \$ 3056 (West 1982). Furthermore, \textit{People v. Denne} held that a parolee's place of residence could be searched by parole officers in the same manner as the search of a prisoner's cell. \textit{People v. Denne}, 297 P.2d 451, 457 (Cal. 1956). Therefore, although Gallegos was an adult prisoner on parole, his "status" was effectively the same as a juvenile probationer with a search condition. See infra part IV.C; see also \textit{People v. Burgener}, 714 P.2d 1251 (Cal. 1986) (acknowledging that a search condition is imposed on an adult parolee, and that the adult parolee does not voluntarily consent to this condition).
\end{itemize}
was detained as a possible parole violator or that his premises were searched for that reason.\textsuperscript{66}

The California Supreme Court held that where "the status of the defendant as a parolee was not relied upon by the arresting officer . . . [the fruits of an illegal search] could not be utilized in justification of the arrest."\textsuperscript{67} Although \textit{Gallegos} did not question the constitutionality of a warrantless search condition, it firmly stated that the fortuity of such a condition, and the fruits obtained during the search, could not be introduced to justify an arrest.\textsuperscript{68}

b. \textit{In re Martinez}

Similarly, in \textit{In re Martinez},\textsuperscript{69} police officers conducted a full search of the defendant's home without a search warrant, and later introduced evidence obtained during that search at trial.\textsuperscript{70} At the time of the search, the defendant, an adult, was on parole, subject to a search condition.\textsuperscript{71} The California Supreme Court held that the evidence seized need not be excluded from parole revocation proceedings because the Fourth Amendment's accompanying exclusionary rule is inapplicable to such proceedings.\textsuperscript{72} However, the court noted that the investigation involved suspected criminal activity, and not parole violations.\textsuperscript{73} Therefore, "the officers [could not] undertake a search without probable cause and then later seek to justify their actions by relying on the defend-

\textsuperscript{66} People v. Gallegos, 397 P.2d 174, 175 (Cal. 1964).
\textsuperscript{67} Id. at 176.
\textsuperscript{68} Id. at 176, 177.
\textsuperscript{69} 463 P.2d 734 (Cal.), cert. denied, 400 U.S. 851 (1970).
\textsuperscript{70} \textit{In re Martinez}, 463 P.2d at 736. The police discovered heroin during the search, and the defendant was subsequently convicted and sentenced to state prison for possession of heroin. \textit{Id.} That conviction, in turn, led to a formal revocation of the defendant's parole, in a hearing before the Adult Authority. \textit{Id.}
\textsuperscript{71} Id. at 738.
\textsuperscript{72} Id. at 740. The court considered the social consequences of imposing the exclusionary rule upon the Adult Authority and concluded that "an agency whose delicate duty is to decide when a convicted offender can be safely allowed to return to and remain in society is in a different posture than the court which decides his original guilt." \textit{Id.} However, in declining to apply the exclusionary rule to parole revocation proceedings, the court did "not, of course, intimate that these exclusionary rules are not applicable to other administrative proceedings." \textit{Id.} at 741.
\textsuperscript{73} Id. at 738. The record from the lower court "made clear that the officers were not aware of defendant's [parole] status, but were merely performing their normal investigatory activities." \textit{Id.} at 737 n.4.
ant's parole status, a status of which they were unaware at the time of their search.\footnote{74}{Id. at 737.}

Although probationary search conditions themselves are constitutional,\footnote{75}{Griffin v. Wisconsin, 483 U.S. 868 (1987).} the California Supreme Court acknowledged in both \textit{Gallegos} and \textit{Martinez} that search conditions could not be used as after-the-fact justification for police misconduct.\footnote{76}{See supra text accompanying notes 62-74.}

\section{The Relevance of Consent}

\subsection{Consent as an Exception to the Fourth Amendment Warrant Requirement}

In addition to special circumstances beyond the normal needs of law enforcement which may justify an exception to the constitutional requirement of a search warrant,\footnote{77}{See supra text accompanying notes 33-36.} another exception is consent.\footnote{78}{Schneckloth v. Bustamonte, 412 U.S. 218, 219 (1973); see also People v. Bravo, 738 P.2d 336 (Cal. 1987), cert. denied, 485 U.S. 904 (1988). "A search conducted pursuant to a valid consent does not violate the Fourth Amendment unless the search exceeds the scope of the consent." \textit{Bravo}, 738 P.2d at 338. Where there is valid, voluntary consent, the only issue is the scope of the person's consent. \textit{Id}.} When an adult agrees to probation, the adult loses some Fourth Amendment protections in exchange for limited freedom.\footnote{79}{Bravo, 738 P.2d at 341.}

The California Supreme Court addressed the issue of an adult probationer consenting in advance to a warrantless search in \textit{People v. Bravo}.\footnote{80}{738 P.2d 336 (Cal. 1987), cert. denied, 485 U.S. 904 (1988).} There, an anonymous caller informed police that Bravo, an adult probationer, might be dealing drugs.\footnote{81}{Id. The police officers confirmed this by obtaining a copy of Bravo's probation conditions. \textit{Id}. The officers interpreted the search condition as an apparent waiver of Bravo's Fourth Amendment rights. \textit{Id}. Bravo did not claim that the waiver was not voluntary or that the search condition was unreasonable. \textit{Id}.} Although police surveillance of Bravo's home revealed nothing suspicious, the police discovered that Bravo was on probation and could be subjected to a warrantless search.\footnote{82}{Id.} Thereafter, the police conducted a warrantless search of Bravo's home, which led to the discovery and
seizure of cocaine, firearms, and cash.\textsuperscript{83} This evidence was used to convict Bravo of various criminal offenses.\textsuperscript{84}

Bravo argued unsuccessfully that, notwithstanding his probation search condition, a rule of reasonableness should apply, permitting a warrantless search only if police had reasonable cause to believe that Bravo was involved in criminal activity.\textsuperscript{85} However, an adult probationer "consents to the waiver of his Fourth Amendment rights in exchange for the opportunity to avoid service of a state prison term."\textsuperscript{86} Thus, the court held that "a search condition of probation that permits a search without a warrant also permits a search without 'reasonable cause,' as the former includes the latter."\textsuperscript{87}

The majority explained that the "purpose of an unexpected, unprovoked search of [a probationer] is to ascertain whether he [or she] is complying with the terms of [his or her] probation . . . ."\textsuperscript{88} Therefore, conditioning "warrantless probation searches upon reasonable cause would make the probation order superfluous and vitiate its purpose."\textsuperscript{89}

The court stated that waiving Fourth Amendment rights as a condition of probation does not permit searches undertaken for harassment, or searches for arbitrary or capricious reasons.\textsuperscript{90} Additionally, warrantless searches of probationers should only be conducted for reasons related to the rehabilitative and reformative goals of probation, or other legitimate law enforcement purposes.\textsuperscript{91} Therefore, if there was an advance waiver of the probationer's Fourth Amendment rights, police officers needed neither a search warrant nor probable cause to search the probationer's home.\textsuperscript{92}

\textsuperscript{83.} \textit{Id.}
\textsuperscript{84.} \textit{Id.} Bravo was charged with possession of cocaine, possession of cocaine for sale, and possession by a convicted felon of a concealable firearm. \textit{Id.}
\textsuperscript{85.} \textit{Id.}
\textsuperscript{86.} \textit{Bravo,} 738 P.2d at 341.
\textsuperscript{87.} \textit{Id.} at 342-43. The court observed that "if a sentencing judge believes that a 'reasonable cause' requirement is warranted in the particular case . . . he has the discretion to place such language in the probation search condition. Absent such express language, however, a reasonable-cause requirement will not be implied." \textit{Id.} at 340 n.6.
\textsuperscript{88.} \textit{Id.} at 342 (quoting People v. Mason, 488 P.2d 630, 632 (Cal. 1971), cert. denied, 405 U.S. 1016 (1972)).
\textsuperscript{89.} \textit{Id.} (quoting People v. Bravo, 211 Cal. Rptr. 439, 445 (Ct. App. 1985) (Sonenshine, J, dissenting)).
\textsuperscript{90.} \textit{Id.}
\textsuperscript{91.} \textit{Bravo,} 738 P.2d at 342.
\textsuperscript{92.} \textit{Id.} at 342-43.
2. A Juvenile Probationer Cannot Refuse Consent

Probation for an adult is "not a matter of right but rather . . . an act of grace and clemency . . . . Its purpose is reform and rehabilitation . . . ."93 While an adult probationer can choose to waive his or her Fourth Amendment rights in order to avoid a state prison term, and thus consent in advance to governmental intrusions, a juvenile probationer has no such choice.94

A juvenile court has a variety of options once it determines that a minor is a ward of the court.95 Under the California Welfare and Institutions Code, when a juvenile court places a minor on probation, it "may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced."96 Furthermore, nothing in the California Welfare and Institutions Code "shall be construed to limit the authority of [a juvenile] court to . . . provide conditions of probation."97

The goals of both adult and juvenile probation are reformation and rehabilitation of the offender.98 In the juvenile setting, however, probation is not "an act of leniency in lieu of statutory punishment; it is an ingredient of a final order for the [minor]."99 Probation conditions are deemed necessary for the dual purposes of reformation and rehabilitation, and the juvenile offender is given no choice to accept or reject them.100 Such a choice would be "inconsistent with the juvenile court's determination of the best manner in which to facilitate rehabilitation of a minor."101

An adult probationer can choose to waive his or her Fourth Amendment rights, and thereby consent in advance to

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95. Id.
96. CAL. WELF. & INST. CODE § 730(b) (West Supp. 1995).
97. Id. § 729.6(i).
99. Id. (quoting In re Ronnie P., 12 Cal. Rptr. 2d 875, 882 (Ct. App. 1992)).
100. Id. at 527. However, the court did note that a minor can object to particular conditions of probation as being "improper or unwarranted." Id. at 527 n.3.
101. Id. at 527.
a warrantless search.\textsuperscript{102} Since a juvenile probationer is not given a choice, a juvenile probationer cannot be said to truly consent in advance to a warrantless search.\textsuperscript{103}

D. Reasonable Expectation of Privacy


The California Constitution enumerates privacy as one of a person's inalienable rights.\textsuperscript{104} The Fourth Amendment to the United States Constitution implies a right of privacy, in that it protects against unreasonable searches and seizures.\textsuperscript{105} It is a well-settled principle that "any warrantless search is unreasonable per se within the contemplation of the Fourth Amendment unless it is conducted pursuant to one of the few, narrowly drawn exceptions to the constitutional requirement of a warrant."\textsuperscript{106} In considering the reasonableness of a search, one must determine whether the person being searched can be said to have a reasonable expectation of privacy in the first place.\textsuperscript{107}

In \textit{Katz v. United States},\textsuperscript{108} the United States Supreme Court posited a two-part inquiry to determine whether a person's Fourth Amendment rights have been violated.\textsuperscript{109} First, a court asks whether the individual manifested a subjective expectation of privacy in the object of the challenged search.\textsuperscript{110} Second, a court determines whether society is willing to recognize that expectation as reasonable.\textsuperscript{111}

\textsuperscript{103} In re Tyrell J., 876 P.2d at 526.
\textsuperscript{104} \textsc{Cal. Const.} art I, § 1. The California Constitution provides that all "people are by nature free and independent and have inalienable rights. Among these are . . . pursuing and obtaining safety, happiness, and privacy." \textit{Id.}
\textsuperscript{105} See supra text accompanying note 28.
\textsuperscript{108} 389 U.S. 347 (1967).
\textsuperscript{109} \textit{Katz}, 389 U.S. at 361 (Harlan, J., concurring).
\textsuperscript{110} \textit{Id.} (Harlan, J., concurring).
\textsuperscript{111} \textit{Id.} (Harlan, J., concurring).
2. In re Marcellus L.

In In re Marcellus L., a juvenile probationer was said to have no reasonable expectation of privacy, and thus no standing to object to a violation of his Fourth Amendment rights. There, although a police officer lacked articulable facts to justify a search, he conducted a pat search of a teenager. The officer did not know that the boy was on probation which included a search condition. Cocaine base was found on the boy's person during the search, and that evidence was later used against the boy in a juvenile court proceeding.

The California Court of Appeal held that the teenager could not object to the search although the police officer was unaware of the probation search condition. It stated that this holding was "consistent with and in furtherance of the purposes of juvenile court law," and that suppressing the evidence would not be in the teenager's best interests.

The Marcellus L. court explained that "[w]hat is critical is that the juvenile probationer has been admitted to probation upon a legitimate search condition . . . and has absolutely no reasonable expectation to be free from the type of search here conducted . . . ."

Furthermore, the court refused to extend the juvenile's expectation of privacy to searches conducted by police officers who were ignorant of a juvenile's probationary status.

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113. In re Marcellus L., 279 Cal. Rptr. at 902.
114. Id. at 902-03. Around noon on a school day, the police officer saw Marcellus L. sitting in front of a "crack house." Id. at 902. The officer asked the minor his name and decided to investigate why Marcellus L. was not at school. Id. Marcellus L. did not do anything threatening, and the officer had no reason to believe Marcellus L. was armed or dangerous; nonetheless, the officer decided to conduct a pat search for "safety reasons." Id. at 902-03.
115. Id. at 903. The general search clause read as follows: "Submit person, any vehicle under minor's control, [and] residence to search [and] seizure by a peace officer at any time of the day or night with/without a warrant." Id. at 902 n.1.
116. Id. at 903.
117. Id. at 908.
118. In re Marcellus L., 279 Cal. Rptr. at 908.
119. Id. at 907 (emphasis added) (citation omitted).
120. Id. at 908. The majority stated:

[Marcellus L] was placed on probation subject to being searched by a peace officer without a warrant; he was frisked by a peace officer without a warrant; his condition was not that he was subject to search by a peace officer who knew of the search condition; hence the peace officer's
3. In re Binh L.

The California Court of Appeal also found that a juvenile probationer had no reasonable expectation of privacy in In re Binh L. 121 There, as in Marcellus L., a police officer with neither probable cause nor knowledge of the minor's preexisting probation search condition, found incriminating evidence122 during a search of the minor's person.123

The Binh L. court asked "whether the manner in which the officer conducted himself was so gross as to invade any residual expectation of privacy the minor might have had in light of his [probation condition]."124 The court then found that the officer's ignorance of the search condition was irrelevant because the juvenile lacked a reasonable expectation of privacy.125 Therefore, the juvenile's Fourth Amendment rights had not been violated.126

Thus juvenile probationers, like adult probationers, have a diminished expectation of privacy.127 Adult probationers consent to a diminished expectation of privacy by waiving their Fourth Amendment rights.128 A juvenile probationer, on the other hand, has a diminished expectation of privacy because of the mere fact of being on probation and having an imposed condition.129 The policies behind imposing a diminished expectation of privacy in the juvenile setting are discussed below.130

E. The Juvenile Probation Scheme

1. The Special Needs of Juvenile Probation

Under the California Welfare and Institutions Code, minors "under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall . . . receive care, treatment

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lack of knowledge extended appellant's expectation of privacy not one whit.

Id. 121. 6 Cal. Rptr. 2d 678 (Ct. App.), cert. denied, 506 U.S. 959 (1992).
122. The incriminating evidence was a loaded pistol. In re Binh L., 6 Cal. Rptr. 2d at 680.
123. Id.
124. Id. at 684-85.
125. Id. at 684.
126. Id. at 685.
127. See supra text accompanying notes 112-25.
128. See supra text accompanying notes 79, 86, 102.
129. See supra text accompanying note 119.
130. See infra part II.E.1.
and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances.\textsuperscript{131} Importantly, juvenile courts and those charged with administering juvenile court law must consider the safety and protection of the general public.\textsuperscript{132} In a sense, probation exists as a means of retaining public confidence in the juvenile justice system.\textsuperscript{133}

California's juvenile probation system is designed to rehabilitate juvenile offenders and deter future misconduct.\textsuperscript{134} It operates on the assumption that a minor is given special protections, but at the same time, lacks certain privileges and rights accorded adults.\textsuperscript{135}

The function of probation is subject to different interpretations.\textsuperscript{136} Juvenile probationers may consider it punishment for their wrongdoing, or as a framework for accomplishing a social rehabilitation.\textsuperscript{137} Alternatively, it may be interpreted as neither rehabilitation nor punishment, but rather as a social plan which focuses on the welfare of the juvenile probationer and the community.\textsuperscript{138}

2. The Special Role of the Probation Officer

Juvenile probation requires that the minor control his or her behavior in certain ways\textsuperscript{139} and live within the law.\textsuperscript{140} It is designed to help the juvenile make an adequate readjustment to society with the help of a probation officer.\textsuperscript{141}

The probation officer is one "institution" charged with enforcing, interpreting, and administering juvenile court law, including ensuring that the conditions of probation are fulfilled.\textsuperscript{142} On the one hand, the probation officer serves as an

\begin{footnotes}
\footnote{132. \textit{Id.} § 202(b).}
\footnote{135. W. Vaughan Stapleton \\& Lee E. Teitelbaum, \textit{In Defense of Youth} 15 (1972).}
\footnote{136. Edward Eldefonso, \textit{Law Enforcement and the Youthful Offender} 242 (2d ed. 1973).}
\footnote{137. \textit{Id.}}
\footnote{138. \textit{Id}.}
\footnote{139. \textit{Id}.}
\footnote{140. \textit{Id.} at 247.}
\footnote{141. \textit{Id.} at 242.}
\end{footnotes}
arm of the court; on the other, he or she is a correctional social worker.\textsuperscript{143} The probation officer, in effect, represents the law-abiding citizen.\textsuperscript{144} He or she helps the juvenile “internalize new value systems [and] achieve perceptions of nonviolent [lifestyles] as being inherently more appealing and satisfying.”\textsuperscript{145}

The United States Supreme Court highlighted the special role of the probation officer in \textit{Griffin v. Wisconsin}.\textsuperscript{146} The majority opinion noted that a probation officer “is an employee of the [s]tate . . . who, while assuredly charged with protecting the public interest, is also supposed to have in mind the welfare of the probationer . . . .”\textsuperscript{147}

In the probation context, there is an ongoing supervisory relationship between the probationer and the probation officer, which allows for some flexibility with the Fourth Amendment warrant requirement.\textsuperscript{148} According to the \textit{Griffin} majority, the circumstances of probation require that in some cases, including those involving drugs or weapons, a probation officer “must be able to act based upon a lesser degree of certainty than the Fourth Amendment would otherwise require in order to intervene before a probationer does damage to himself or society.”\textsuperscript{149} In deciding when effective rehabilitation demands intervention by a probation officer, the probation office “must be able to proceed on the basis of its entire experience with the probationer, and to assess probabilities in the light of its knowledge of his life, character, and circumstances.”\textsuperscript{150}

However, the \textit{Griffin} dissent failed to see how the probation officer’s role in fostering the growth and development of the probationer was enhanced “the slightest bit” by the ability to search a probationer without meeting the Fourth Amendment’s warrant and neutral magistrate require-

\begin{itemize}
\item \textsuperscript{143} Eldefonso, supra note 136, at 242.
\item \textsuperscript{144} Id. at 247.
\item \textsuperscript{145} Shireman, supra note 133, at 143.
\item \textsuperscript{146} 483 U.S. 868, 875 (1987). Although \textit{Griffin} involved probation in the adult context, its comments on the role of a probation officer are equally applicable to the discussion at hand.
\item \textsuperscript{147} Griffin, 483 U.S. at 876.
\item \textsuperscript{148} See id. at 879; see also People v. Bravo, 738 P.2d 336 (Cal. 1987), cert. denied, 485 U.S. 904 (1988).
\item \textsuperscript{149} Griffin, 483 U.S. at 879.
\item \textsuperscript{150} Id.
\end{itemize}
ment.\textsuperscript{151} Furthermore, the dissent argued that, if anything, giving the probation officer the power to decide to search would be a barrier to establishing any amount of trust between the probation officer and the probationer.\textsuperscript{152}

3. The Role of the Police Officer

A police officer, unlike a probation officer, has no ongoing supervisory relationship with a juvenile probationer.\textsuperscript{153} Yet, a police officer is one of the law enforcement officials who may search a juvenile probationer without a warrant.\textsuperscript{154} Even if it is a police officer who searches the juvenile probationer, the purposes of the search are still rehabilitation and deterrence.\textsuperscript{155}

Since warrantless searches may be conducted by police officers as well as by probation officers, a juvenile probationer must assume that every law enforcement officer could stop and search him or her at any time.\textsuperscript{156} It is precisely this fear that is supposed to provide a deterrent effect upon the juvenile who may be tempted to return to a life of delinquency.\textsuperscript{157}

Both police and probation officers serve important roles in rehabilitating and reforming juvenile probationers.\textsuperscript{158} They administer, enforce, and represent the law.\textsuperscript{159} Although a probationary search condition allows for warrantless searches by any law enforcement official,\textsuperscript{160} the close relationship between the probation officer and the probationer gives the probation officer more information upon which he or she can base a warrantless search.\textsuperscript{161} But when a police officer conducts a warrantless search of a juvenile probationer, especially when the probationary search condition is unknown, there is a danger that social policies may conflict: "the need to enforce conditions to make probation effective for the community and meaningful for the probationer versus

\begin{itemize}
  \item \textsuperscript{151} \textit{Id.} at 886 (Blackmun, J., dissenting).
  \item \textsuperscript{152} \textit{Id.} (Blackmun, J., dissenting).
  \item \textsuperscript{153} See supra text accompanying note 148.
  \item \textsuperscript{154} See supra text accompanying note 142.
  \item \textsuperscript{155} See \textit{CAL. WELF. & INST. CODE} § 202(d) (West Supp. 1995).
  \item \textsuperscript{157} \textit{Id.} at 530.
  \item \textsuperscript{158} See generally text accompanying notes 154-55.
  \item \textsuperscript{159} See \textit{CAL. WELF. & INST. CODE} § 202(d) (West Supp. 1995).
  \item \textsuperscript{160} See supra text accompanying note 10.
  \item \textsuperscript{161} See supra text accompanying note 150.
\end{itemize}
the need to insure that peace officers are not ‘rewarded’ for unconstitutional behavior.”

F. The Tyrell J. Decision and Rationale

In *In re Tyrell J.*, the California Supreme Court held that since the juvenile was subject to a valid probationary search condition, which authorized searches by any law enforcement official, he had no reasonable expectation of privacy in the bag of marijuana that he was hiding in his pants. Since there was no reasonable expectation of privacy, the search was not unconstitutional despite the police officer’s ignorance of the probationary search condition.

In reaching its decision, the court examined “societal values and expectations governing the circumstances of juvenile probation.” It looked to other conditions of probation provided by the California Welfare and Institutions Code, which indicate the juvenile probationer’s diminished expectation of privacy over his person and conduct. The court then determined that juvenile probationers subject to valid search conditions do not have a reasonable expectation of privacy over their persons or property.

The court deemed the searching officer’s ignorance of the search condition to be irrelevant when it asserted that “imposing a strict requirement that the searching officer must always have advance knowledge of the search condition would be inconsistent with the special needs of the juvenile probation scheme.” Rehabilitation, reasoned the court, is an “arguably stronger goal [in juvenile probation] than [it is] in the adult context.” Thus, the special needs of juvenile

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165. Id.
166. Id. at 528.
167. Id. For instance, the juvenile may be required to attend school without absence, *Cal. Welf. & Inst. Code* § 729.2(a) (West Supp. 1995); attend counseling with his or her parents, *id.* § 729.2(b); respect a curfew, *id.* § 729.2(c); submit to drug testing, *id.* § 729.9; or participate in a drug rehabilitation program, *id.* § 729.10.
169. Id.
170. Id. at 530.
171. Id.
probation demand greater flexibility for the warrant and probable cause requirements.\textsuperscript{172} Although it was not necessary, the majority resolved another important issue concerning the effect of probationary search conditions which are imposed on juveniles.\textsuperscript{173} According to the majority, California law does not require reasonable cause in order for a police officer to invoke a probationary search condition.\textsuperscript{174} Instead, a police officer may search pursuant to a search condition without any cause whatsoever, as long as the decision to search the juvenile is neither arbitrary nor intended to harass.\textsuperscript{175} Thus, the searching officer need not even have a reasonable suspicion that the juvenile has violated a condition of probation or the law.\textsuperscript{176} The holding in \textit{Tyrell J.} leaves the juvenile probationer with very few Fourth Amendment protections, especially since the juvenile probationer is considered to lack a reasonable expectation of privacy.\textsuperscript{177} Furthermore, the holding opens the door to condoning, and possibly encouraging, police misconduct.\textsuperscript{178}

\section*{III. Identification of the Problem}

Based on the holding in \textit{In re Tyrell J.},\textsuperscript{179} any juvenile with a probationary search condition is now subject to a warrantless search by police officers who have absolutely no knowledge of the search condition.\textsuperscript{180} The existence of the search condition can then be used to justify an unconstitutional search, when justification of the search means that incriminating evidence can be introduced at trial.\textsuperscript{181} The police misconduct in \textit{In re Tyrell J.} is exactly the type of activity that the Fourth Amendment and the exclusionary rule are supposed to deter.\textsuperscript{182} Nonetheless, the California Supreme Court condoned the police misconduct be-

\begin{enumerate}
\item \textsuperscript{172} See supra text accompanying notes 166-71.
\item \textsuperscript{174} \textit{Id.} at 524.
\item \textsuperscript{175} \textit{Id.}
\item \textsuperscript{176} \textit{Id.} at 537-38 (Kennard, J., dissenting).
\item \textsuperscript{177} See \textit{id.} at 532 (Kennard, J., dissenting).
\item \textsuperscript{178} \textit{In re Tyrell J.}, 876 P.2d at 538 (Kennard, J., dissenting).
\item \textsuperscript{180} \textit{In re Tyrell J.}, 876 P.2d at 538 (Kennard, J., dissenting).
\item \textsuperscript{181} See \textit{id.} at 532, 538 (Kennard, J., dissenting).
\item \textsuperscript{182} \textit{Id.} at 538 (Kennard, J., dissenting).
\end{enumerate}
cause of its strong deterrent effect on juvenile misconduct.\textsuperscript{183} According to the majority's reasoning, the police activity aided in the rehabilitation and reformation of Tyrell J.\textsuperscript{184} However, inherent in juvenile probation is teaching a respect for the law.\textsuperscript{185} It is therefore difficult to understand how illegal police conduct helps to achieve the goals of juvenile probation.

IV. ANALYSIS

This analysis examines the California Supreme Court's basis for upholding the unconstitutional search of a juvenile probationer and for refusing to exclude evidence obtained from the illegal search.\textsuperscript{186} Additionally, it questions whether the court's decision achieves the goals of upholding the Constitution and rehabilitating the juvenile probationer.\textsuperscript{187} The police officer's conduct would not have been questioned had he known about Tyrell J.'s search condition.\textsuperscript{188} However, the police officer was ignorant of the search condition, and although the search of Tyrell J. was improper on its face, it was held permissible.\textsuperscript{189} Evidence obtained during the search was nonetheless admissible at trial.\textsuperscript{190} The court's decision is unsettling, as it erodes the credibility of Fourth Amendment protections.\textsuperscript{191}

A. Reliance on Griffin in In re Tyrell J.

The Tyrell J. majority based its argument for the legality of probation search conditions on Griffin v. Wisconsin.\textsuperscript{192} However, there are two significant differences which render Griffin inapplicable to Tyrell J.\textsuperscript{193} First, the search in Tyrell J. was conducted by a police officer, not by a probation of-

\textsuperscript{183} Id. at 530.
\textsuperscript{184} Id.
\textsuperscript{186} See infra parts IV.A, IV.F.
\textsuperscript{187} See infra parts IV.A, IV.B, IV.D-G.
\textsuperscript{189} Id. at 522.
\textsuperscript{190} Id. at 532 (Kennard, J., dissenting).
\textsuperscript{191} Id. (Kennard, J., dissenting).
\textsuperscript{192} Id. at 523-24.
\textsuperscript{193} In re Tyrell J., 876 P.2d at 533 (Kennard, J., dissenting).
Second, the searching officer in Tyrell J. had no knowledge of the probationer's search condition.

1. Who Conducts the Search

Griffin stressed the fact that the search was conducted by a probation officer, and not by a police officer. The probation officer was authorized to conduct a warrantless search of the defendant probationer's home only if there were "reasonable grounds" to believe that contraband was present. The Court highlighted that the role of a probation officer was distinctly different from that of a police officer, who has a more adversarial relationship with the probationer.

2. Knowledge of the Search Condition

Griffin does not "support the proposition that a police officer may conduct an unreasonable search of an individual and have that search subsequently validated if the individual happens to be a probationer with a search condition, a fact unknown to the officer at the time of the search." Griffin only held that it was permissible to dispense with the Fourth Amendment's warrant requirement when a probationary search was conducted by the probation officer. Specifically, a probation officer must be able to act based on his or her entire experience with the probationer, assessing probabilities in light of his or her knowledge of the probationer's "life, character, and circumstances."

The police officer in Tyrell J. did not have an ongoing supervisory relationship with the juvenile probationer. The police officer was only working his beat. In fact, the officer did not even know that Tyrell J. was a probationer.

194. Id. (Kennard, J., dissenting).
195. Id. (Kennard, J., dissenting).
197. Id. at 871.
198. Id. at 879.
200. Griffin, 483 U.S. at 876-77.
201. Id. at 879.
203. Id. at 521.
204. Id. at 522.
officer merely knew that Tyrell J.'s gang had been involved in a shooting incident one week earlier.205

The Supreme Court's holding and reasoning in Griffin strongly suggest that when, as in In re Tyrell J., a search is conducted by a police officer who is entirely ignorant of the person's probationary status, the eventual discovery of a probationary search condition may not be used to justify a search.206 A police officer does not have an ongoing supervisory relationship with the probationer.207 Although the police officer may have society's best interests in mind, it is likely that the officer does not have the probationer's welfare in mind.208 Thus, the "special needs" of the probation system, articulated in Griffin, are inapplicable to In re Tyrell J.209

B. Federal Cases and Legal Commentators Suggest a Different Holding

No previous United States Supreme Court decision has directly upheld the constitutionality of the type of search conducted in In re Tyrell J.210 In fact, relevant federal cases have placed greater limitations on the prosecution's ability to use the existence of a probationary search condition as justification for a warrantless search.211 Ninth Circuit cases have held that "even when the searching police officer knows of the existence of a search condition, reliance on the condition is improper when the officer acted [as] an agent of the police, and the search was conducted for purposes of law enforcement, rather than for purposes related to probation or parole."212

Similarly, legal commentators support the view that police officers should not be allowed to undertake an illegal

205. Id. at 521-22.
206. Id. at 533-34 (Kennard, J., dissenting).
209. Id. (Kennard, J. dissenting).
210. Id. at 524.
211. Id. at 534 (Kennard, J., dissenting).
212. Id. (Kennard, J., dissenting). See United States v. Harper, 928 F.2d 894, 897 (9th Cir. 1991) (stating that "the police may not use a parole officer as a 'stalking horse' to evade the [F]ourth [A]mendments's warrant requirement"); United States v. Butcher, 926 F.2d 811, 815 (9th Cir.), cert. denied, 500 U.S. 959 (1991) (asserting that "under no circumstances should cooperation between law enforcement officers and probation officers be permitted to make the probation system 'a subterfuge for criminal investigations'") (citations omitted).
search for law enforcement purposes, and then seek to justify it by invoking the existence of a probationer's search condition. 213 A leading treatise on probation and parole explains that courts "must guard against subterfuge searches. A police officer lacking probable cause should not be able to ask a ... probation caseworker to conduct a search pursuant to the latter's general monitoring and supervisory authority." 214

In Tyrell J., the police officer's search was conducted pursuant to general law enforcement duties: he found a weapon on Tyrell J.'s friend, and he suspected that Tyrell J. might also be carrying a weapon. 215 According to previous Ninth Circuit cases, then, reliance on Tyrell J.'s search condition would have been improper even if the police officer had known about the probationary search condition. 216 The search would have been improper since the police officer conducted it for law enforcement, not probationary purposes. 217 Thus, the officer's lack of knowledge of the condition compels an even more restrictive holding than the relevant Ninth Circuit cases. "In the absence of [any] such knowledge, the objective of the search is simply unrelated to any proper probationary purpose." 218

Additionally, the legal commentary supports a more restrictive finding. The police officer in Tyrell J. lacked probable cause to search the juvenile; he merely had a "reasonable suspicion" that Tyrell J. might be carrying a weapon. 219 The police officer could neither ask the probation officer to conduct a search, nor purport to invoke the general supervisory and monitoring authority of the probation officer, because the police officer was completely ignorant of Tyrell J.'s probationary status. 220

Given the circumstances of Tyrell J., the weight of relevant federal cases and legal commentary mandate a more

214. Id. (Kennard, J., dissenting) (quoting NEIL P. COHEN & JAMES J. GOBERT, THE LAW OF PROBATION AND PAROLE 382 (1983)).
215. See supra text accompanying notes 5-8.
216. See supra text accompanying note 212.
217. See supra text accompanying note 212.
220. Id. at 534 (Kennard, J., dissenting).
limited finding. The prosecution should not be able to use the probationary search condition as after-the-fact justification for the warrantless search. Furthermore, the federal cases and legal commentators suggest that in holding as it did, the California Supreme Court made a major departure from settled Fourth Amendment doctrine.

C. Tyrell J.'s Probationary Status is Comparable to That of an Adult Parolee

Probation for the juvenile is different than probation for the adult. Unlike an adult probationer, a "minor who has been made a ward of the court does not have the option to decline probation . . . ." The California Supreme Court confronted the issue of a warrantless search of an adult parolee's residence in People v. Burgener. There, the defendant argued that parole was mandated for all prisoners who served a determinate prison term, and that there was no choice as to whether parole would occur. Without a choice, the defendant argued, "there can be no voluntary consent to inclusion of a warrantless search condition among the terms of the parole."

According to the court, parole helps to reintegrate the adult into society and to guide the adult toward positive citizenship. Parole supervision helps ensure public safety. The interest in supervision, in turn, justifies restrictions on the parolee's liberty and privacy interests. After balancing the parolee's interests against society's interest in public safety, the Burgener court concluded that "warrantless

221. See supra text accompanying notes 211-20.
222. See supra text accompanying notes 211-20.
223. See discussion supra part II.C.2.
225. 714 P.2d 1251 (Cal. 1986).
226. Burgener, 714 P.2d at 1266. The court noted that although the [Board of Prison Terms] must revoke parole if the prisoner refuses to sign the parole agreement . . . , the parolee's acceptance of parole under the determinate sentence law is in no sense pursuant to a voluntary agreement by which he has waived his right to privacy in exchange for release on parole.

Id. n.12.
227. Id. at 1266.
228. Id. at 1267.
229. Id. at 1268.
230. Id.
searches of parolees are not per se unreasonable if conducted for a purpose properly related to parole supervision.\textsuperscript{231}

The majority emphasized that when an adult parolee has a search condition, "his privacy interest is [not] so diminished that random searches or [those] unrelated to a proper parole supervision purpose are reasonable and constitutionally permissible."\textsuperscript{232} If a warrantless search was not related to a proper parole supervision purpose, the parole search would invade the parolee's reasonable expectation of privacy.\textsuperscript{233}

Furthermore, the Fourth Amendment's probable cause requirement need not apply to parole searches initiated for proper parole supervision purposes.\textsuperscript{234} Instead, parole searches are reasonable within the meaning of the Fourth Amendment if they are based on a reasonable suspicion standard.\textsuperscript{235}

In Burgener, the adult parolee did not consent to be searched.\textsuperscript{236} The search of Burgener, although conducted by a police officer, was authorized by the defendant's parole agent.\textsuperscript{237} The court thus found that the search was conducted for a proper parole purpose, and that evidence obtained during the search was properly admitted in the lower court.\textsuperscript{238}

Search conditions are imposed upon both juvenile probationers and adult parolees to effectuate rehabilitation and to deter future misconduct.\textsuperscript{239} For Fourth Amendment purposes, then, "there are no significant differences . . . between search conditions imposed upon adult parolees and those imposed upon juvenile probationers."\textsuperscript{240} It then follows that "the Fourth Amendment rights of juveniles can be restricted to no greater degree than the rights of adult parolees."\textsuperscript{241}

\textsuperscript{231} Burgener, 714 P.2d at 1268.
\textsuperscript{232} Id. at 1269.
\textsuperscript{233} Id.
\textsuperscript{234} Id.
\textsuperscript{235} Id. at 1270.
\textsuperscript{236} See supra note 226 and accompanying text.
\textsuperscript{237} People v. Burgener, 714 P.2d 1251, 1271 (Cal. 1986).
\textsuperscript{238} Id.
\textsuperscript{240} Id. (Kennard, J., dissenting) ("[L]ike a paroled prisoner, who has no right to reject release on parole, a juvenile has no choice but to accept the trial court's decision to place the juvenile on probation.").
\textsuperscript{241} Id. at 538 (Kennard, J., dissenting).
In Tyrell J., the juvenile probationer likewise did not truly consent to being searched at any time by a police officer, whether or not the officer had a warrant.242 The search was not authorized by the probation officer, but was conducted by a police officer who lacked knowledge of the probationary search condition.243 By treating Tyrell J.'s status like that of an adult parolee, it follows that evidence obtained during the search should have been suppressed.244

D. Gallegos and Martinez are Dispositive of the Issue in Tyrell J.

Previous California Supreme Court cases similarly support prohibiting the prosecution's use of a search condition to attempt to justify an illegal search when the police officer was ignorant of the search condition.245 For example, in People v. Gallegos,246 police learned that the adult defendant was on parole only after they began conducting a warrantless search of his house.247 Since the arresting officer did not rely on the defendant's parole status when he initiated the search, the search and the fruits of that search could not justify the arrest.248

Similarly, In re Martinez249 prohibited the existence of a search condition as justification for an illegal search.250 Police officers, who did not know of the adult defendant's parole status, and who undertook a search pursuant to general law enforcement duties, could not use the parole status to justify the illegal search.251

Both Gallegos and Martinez are dispositive of the issue in Tyrell J.252 They establish the rule that the prosecution may not rely on a defendant's search condition when the police officer conducting the search did not know of its existence

242. Id. at 526-27.
244. See supra text accompanying notes 240-43.
245. See supra part II.B.2.
247. Gallegos, 397 P.2d at 175-76.
248. Id. at 176.
250. In re Martinez, 463 P.2d at 737-38.
251. Id.
Although *Gallegos* and *Martinez* concerned searches of adult parolees, the distinction, as explained above, is inconsequential. The *Tyrell J.* court should have based its decision on established Fourth Amendment and exclusionary rule principles.

E. **A Probationary Search Condition Does Not Eviscerate a Juvenile’s Reasonable Expectation of Privacy**

The California Supreme Court upheld the search of *Tyrell J.*, despite its previous findings in *Gallegos* and *Martinez*, because it found that the search condition left the minor with no reasonable expectation of privacy.

Probationary search conditions are involuntarily imposed on the juvenile probationer. They are considered to be one of the conditions necessary for facilitating reformation and rehabilitation of the juvenile offender. The search condition authorizes supervision of the juvenile probationer that is consistent with the special needs of the juvenile probation system, and it allows for an impingement on privacy.

There is no express provision in the probationary search condition that the police officer have knowledge of the condition before initiating a search. However, the absence of such a provision does not limit the probationer’s expectation of privacy. Instead, “[w]hat is controlling is ‘what a reasonable person would understand from the language of the condition itself . . . .’” Specifically,

[a] reasonable person would understand the search condition to mean that he [or she] . . . consents to be searched without a warrant and without reasonable or probable cause. . . . [Furthermore,] if such a search is to be con-

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253. *Id.* (Kennard, J., dissenting).
254. *Id.* (Kennard, J., dissenting).
255. See *id.* at 532 (Kennard, J., dissenting).
256. See *supra* text accompanying note 164.
257. See discussion *supra* part II.C.2.
258. See *supra* text accompanying note 100.
259. See *supra* text accompanying notes 96-101.
262. *Id.* (Reardon, J., dissenting) (quoting People v. Bravo, 738 P.2d 336, 340 (Cal. 1987), cert. denied, 485 U.S. 904 (1988)).
ducted, it will be conducted *pursuant* to the search condition that defines the scope of his [or her] . . . consent.\(^{263}\)

The juvenile probationer "reasonably retains this minimal expectation of privacy, an expectation that the searching officer will have knowledge of the consent, and the scope thereof, as embodied in the search condition. . . . [S]uch an expectation . . . [is] reasonable."\(^{264}\) Tyrell J. retained the reasonable expectation that he would be searched only by a law enforcement officer who knew of his probationary search condition, and who knowingly invoked its terms.\(^{265}\)

**F. The Police Officer's Lack of Knowledge was Highly Relevant**

The *Tyrell J.* majority argued that since the juvenile's probationary search condition eviscerated his reasonable expectation of privacy, the officer's ignorance of the search condition was irrelevant.\(^{266}\) It asserted that its conclusion was consistent with the purpose of the Fourth Amendment's exclusionary rule.\(^{267}\) The police officer "took the chance" that the search of Tyrell J. would be improper.\(^{268}\) If Tyrell J. had not been subject to a search condition, the marijuana found during the search would have been inadmissible.\(^{269}\) Thus, the majority reasoned, police still have a "sufficient incentive to try to avoid improperly invading a person's privacy."\(^{270}\)

The majority believed that refusing to impose a "knowledge first" requirement for juvenile probation search conditions would not encourage the police to conduct warrantless searches.\(^{271}\) Additionally, such a rule "would be inconsistent with the special needs of the juvenile probation scheme."\(^{272}\)

Requiring that the police learn the names and memorize the faces of juvenile probationers in their jurisdictions would se-
verely erode the deterrent effect of probationary search conditions.\textsuperscript{273}

There are two problems with the majority's reasoning.\textsuperscript{274} First, the deterrent effect of probationary search conditions will not be severely eroded if a knowledge requirement is imposed.\textsuperscript{275} To the extent that a juvenile probationer subject to a “search condition is deterred from engaging in criminal activity because of the fear of being searched by any police officer at any time, such fear and deterrence will exist regardless of whether police officers must ‘learn the names and memorize the faces’ of juvenile probationers.”\textsuperscript{276} However, to argue that the deterrent effect of probation would be greater served if more police officers were allowed to conduct this type of search is to overlook the fact that this is police misconduct.\textsuperscript{277}

Second, refusing to impose a “knowledge-first” requirement does not safeguard the juvenile probationer’s constitutional right to be free from unreasonable searches and seizures.\textsuperscript{278} Allowing illegal searches by police officers who are ignorant of the search condition only promotes unreasonable searches.\textsuperscript{279} If a police officer is faced “with a situation where there might be something to gain, even where the possibility of gain is remote . . . the danger of the [officer] engaging in unconstitutional methods of law enforcement is acute.”\textsuperscript{280}

Tyrell J. was hiding an illegal drug in his pants.\textsuperscript{281} However, the exclusionary rule is designed for the exact purpose of excluding incriminating evidence that is obtained as a result of an illegal search by a police officer.\textsuperscript{282} The reformative and “rehabilitative foundations of the entire [juvenile probation] system can be completely undermined when a [probationer] observes his [or her] teacher, the government, violate

\begin{footnotesize}
\begin{enumerate}
\item 273. Id.
\item 274. See id. at 537 (Kennard, J., dissenting).
\item 275. In re Tyrell J., 876 P.2d at 537 (Kennard, J., dissenting).
\item 276. Id. (Kennard, J., dissenting).
\item 277. Id. (Kennard, J., dissenting).
\item 278. Id. (Kennard, J., dissenting).
\item 279. Id. at 538 (Kennard, J., dissenting).
\item 281. See supra text accompanying note 13.
\item 282. See supra text accompanying notes 30-32.
\end{enumerate}
\end{footnotesize}
the law with apparent impunity." 283 Thus, juvenile offenders cannot be expected to learn a respect for the law when police are allowed to search people in violation of the Constitution. 284

The holding in Tyrell J. provides police officers with an incentive to search any juvenile, despite the officer's lack of probable cause and a search warrant. 285 Contrary to the majority's beliefs, the decision does encourage police to search first, and ask questions later. 286 This type of policy renders the Fourth Amendment's exclusionary rule obsolete in juvenile court proceedings. 287

G. Police Officers Must Have at Least a Reasonable Suspicion to Conduct a Search

The police officer in Tyrell J. discovered that the juvenile's friend was carrying a concealed weapon. 288 This discovery gave the officer at least a reasonable suspicion that Tyrell J. had also violated the law. 289 However, the majority did not find that a reasonable suspicion of illegal activity justified the warrantless search, or even that it was required before the officer could initiate the search. 290 Rather, the majority held that a police officer may conduct a search for any reason whatsoever, even if the officer lacks a reasonable suspicion, as long as the search is not intended to harass the person being searched. 291

The court's holding is inconsistent with its previous decision in People v. Burgener. 292 Burgener stands for the proposition that for a warrantless search of an adult parolee who is subject to a search condition to be valid, there must be a reasonable suspicion, based on objective, articulable facts, that the person is engaged in conduct that violates the terms of parole. 293 Since there are no significant differences between

284. See id. (Peters, J., dissenting).
286. Id. (Kennard, J., dissenting).
287. See id. at 532, 538 (Kennard, J., dissenting).
288. See supra text accompanying note 6.
290. Id. (Kennard, J., dissenting).
291. Id. (Kennard, J., dissenting).
292. 714 P.2d 1251 (Cal. 1986).
293. In re Tyrell J., 876 P.2d at 538 (Kennard, J., dissenting).
search conditions imposed on adult parolees and those imposed on juvenile probationers,\textsuperscript{294} the Burgener holding is applicable to juvenile probationers.\textsuperscript{295} Thus a police officer must have at least a reasonable suspicion that the juvenile probationer is engaged in conduct which violates the terms of probation.\textsuperscript{296} A blanket rule that proscribes warrantless searches only when they are intended to harass, offers insufficient protection for the juvenile probationer.\textsuperscript{297}

To reach a conclusion contrary to, and broader than the reasonable suspicion holding in Burgener, the Tyrell J. majority relied on People v. Bravo.\textsuperscript{298} That reliance, however, is misplaced.\textsuperscript{299} Bravo held that an adult probationer could be searched with neither reasonable cause nor reasonable suspicion.\textsuperscript{300} The only reason that an adult probationer can be searched without reasonable cause or suspicion is because he or she consents in advance to a warrantless search.\textsuperscript{301} Thus, the court noted that adult probationers “have, as a condition precedent to receiving the court’s leniency, agreed in advance to waive their Fourth Amendment rights. To condition warrantless probation searches upon reasonable cause would make the probation order superfluous and vitiate its purpose.”\textsuperscript{302}

Tyrell J. was a juvenile probationer.\textsuperscript{303} He did not give advance consent to a warrantless search; allowing a choice in the matter is inconsistent with the juvenile probation scheme.\textsuperscript{304} Rather, the probationary search condition was involuntarily imposed on him, as part of the juvenile court’s “fi-
nal order." Thus, Tyrell J.'s Fourth Amendment rights should not be restricted any greater than those of adult parolees. Just as warrantless searches of adult parolees must be based on reasonable suspicion, so must searches of juvenile probationers who are subject to search conditions. Requiring this minimal amount of articulable suspicion offers more protection for the juvenile probationer than the majority's "no harassment" finding.

V. Proposal

The holding in Tyrell J. leaves the police with almost no limits when it comes to searching juvenile probationers, and it leaves juvenile probationers with no Fourth Amendment protections against the police or the courts. The police officer does not need to have knowledge of the juvenile's probationary search condition, since the mere fact of probationary status eviscerates the reasonable expectation of privacy. A search is only prohibited when the officer's sole purpose is to harass.

This comment proposes that courts should put greater restrictions on the prosecution's ability to introduce evidence obtained during the course of a warrantless search of a juvenile probationer. The prosecution should not be allowed to introduce evidence "through the back door." Specifically, probationary search conditions should only authorize warrantless searches by police officers who knowingly invoke the juvenile's probationary search condition. The police officer must know about the search condition and articulate a reliance on that condition before the officer can search and introduce incriminating evidence later on at trial.

Imposing a "knowledge first" requirement will not severely erode the deterrent effect of probationary search conditions. Instead, this prerequisite to conducting a warrantless search ensures that the provisions of the Fourth Amendment

305. See supra text accompanying note 99.
307. Id. (Kennard, J., dissenting).
308. See id. (Kennard, J., dissenting).
309. See id. (Kennard, J., dissenting).
310. Id. at 529.
312. Id. at 530.
are not violated. When the police officer has knowledge of the valid search condition, the warrantless search is not unreasonable; it is constitutional under *Griffin v. Wisconsin*, and the juvenile understands that the terms of his or her probation allow this type of police conduct. The knowledge first requirement only diminishes the juvenile's reasonable expectation of privacy to the extent that it allows a search by a police officer who knows and who relies upon the juvenile's probationary search condition.

A knowledge first rule is not inconsistent with the special needs of the juvenile probation scheme. Rather, the knowledge requirement reinforces the goals of probation. The juvenile probationer is more apt to learn a respect for the law when a police officer is similarly required to follow the law, and when incriminating evidence must be excluded if certain procedural requirements are not met.

Adhering to Fourth Amendment and established exclusionary rule doctrine would mean, as it often does, that evidence that could convict a defendant would be excluded. However, that is the consequence of the exclusionary rule as it exists today. Adhering to the exclusionary rule in the context of juvenile probation would serve to reinforce public confidence in the police and in the courts, that they will follow the rules. Although juveniles are not afforded the same privileges and opportunities as adults, basic constitutional protections, specifically freedom from unreasonable searches and seizures, belong to citizens of all ages.

Imposing a knowledge first requirement could come in the form of a provision in the California Welfare and Institutions Code. It would acknowledge that search conditions may be imposed on juvenile probationers, but it would limit the prosecution's ability to rely on the conditions. Specifically, it would require that the court not admit evidence that was obtained as the result of a warrantless search of a juvenile with a search condition, unless the searching officer knew in advance of the search that the juvenile was on probation and had a search condition. The provision could read as follows:

Probationary Search Conditions
The juvenile court may impose probationary search conditions upon wards of the court in order to assist in

the reformation and rehabilitation of wards of the court.

Knowledge First Requirement

A juvenile court must not admit evidence that is obtained during a warrantless search of a juvenile probationer, unless the searching officer proves that he/she personally possessed knowledge of the search condition in advance of the search which produced the incriminating evidence.

Ensuring adherence to the knowledge first requirement would, of course, be left to individual law enforcement jurisdictions or counties. It could include more police officers on a particular “beat,” or it could include more intensive training and case study. However, enforcing the knowledge first requirement is something that all California courts should — and must — do immediately, regularly, and consistently.

VI. CONCLUSION

The California Supreme Court’s recent holding in *In re Tyrell J.*314 was a departure from established Fourth Amendment and exclusionary rule doctrine. The court held as it did because it believed that excluding the evidence, and thus not holding the juvenile probationer responsible for his offense, was consistent with the juvenile probation scheme and was in the juvenile’s best interest. This comment has argued, however, that admitting the evidence was inconsistent with Fourth Amendment and exclusionary rule principles, as well as the needs of the juvenile probationer. Juvenile probationers must learn a respect for the law, and to do this, they must know that the law will respect them.

Kristin Anne Joyce

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