

Recent Case Report

In re William R.

(2005) __ Cal.App.4th __ [2005 WL 2789449]

ISSUE

If officers discover evidence while conducting an illegal warrantless search of a suspect, can the evidence be suppressed if, unbeknownst to the officers, the suspect was on probation with a search condition?

FACTS

Los Angeles County sheriff's deputies were dispatched to a location on Figueroa Street where a young man was reportedly painting graffiti on a wall. Upon arrival, they detained a suspect, William R., who matched the description of the perpetrator. During the detention, they searched him and found a can of spray paint concealed under his sweatshirt. He was arrested for vandalism.

Afterward, the deputies learned that William was on probation and was subject to warrantless searches of his person.

DISCUSSION

William contended the search was unlawful because the deputies lacked grounds to search him. The trial court ruled that even if the search was unlawful, the evidence could not be suppressed because William was on probation with a search condition and, therefore, he did not have standing to challenge the search.

The court's ruling was based on the California Supreme Court's opinion in *In re Tyrell J.*¹ In *Tyrell*, the court ruled that a minor who was on probation with a search condition could not reasonably expect privacy as to places and things that were subject to warrantless search.² And because the minor lacked standing to challenge the search, it was immaterial that the officers were unaware of the search condition.

In the Court of Appeal, William argued that *Tyrell* was implicitly overruled in two subsequent decisions by the California Supreme Court, *People v. Robles*³ and *People v. Sanders*.⁴ In those decisions, the court ruled that a search of property belonging to an adult probationer and a parolee could not be upheld as a probation or parole search when the officers did not know of the search condition.

The court in *William R.* noted that although there is language in *Robles* and *Sanders* indicating that the Supreme Court was having second thoughts about *Tyrell*, it did not expressly overrule it. Consequently, it ruled that *Tyrell* is still good law, at least as it pertains to minors, and that the trial court was correct in refusing to suppress the evidence found in William's possession.

¹ (1994) 8 Cal.4th 68.

² *Id.* at p. 89.

³ (2000) 23 Cal.4th 789.

⁴ (2003) 31 Cal.4th 318.

COMMENT

As noted, *Robles* and *Sanders* have been interpreted to mean that a search of a person or his property cannot be upheld as a parole or probation search if the officers did not know the person was subject to a search condition. *Tyrell*, on the other hand, has been interpreted to mean that, even if the search was illegal, evidence discovered as the result cannot be suppressed because parolees and probationers cannot reasonably expect privacy as to things they knew could be searched per the terms of their release.

There is no apparent conflict between these interpretations. This is because the issue of the legality of a search (addressed in *Robles* and *Sanders*) is separate from the issue addressed in *Tyrell*; i.e., whether evidence discovered during an illegal search must be suppressed. Nevertheless, this is a subject that is causing much confusion.

The sources of this confusion are *Robles* and *Sanders* in which the court seemed to indicate (in five concurring opinions) that *Tyrell* was wrongly decided. But instead of trying to explain why, it punted, giving the lower courts the job of figuring it out.

The lower courts, having detected an unmistakable anti-*Tyrell* sentiment in *Robles* and *Sanders*, tried to oblige. But it's not easy to strike down a case that makes sense. Plus, the court neglected to provide them with any ideas on how they could write *Tyrell's* obituary. In fact, it seemed to acknowledge that it had nothing concrete to offer when it resorted to the fatuous observation that *Tyrell* had received a "chilly reception" from a certain liberal law professor, and that some law review articles were "unkind" to it,⁵ as if either was unexpected or mattered.

The court's only other attempt to address the issues backfired because it provided proof of *Tyrell's* soundness. In both *Robles* and *Sanders* the court expressed concern that *Tyrell* might have given officers an incentive to routinely conduct illegal searches of people in high-crime neighborhoods in hopes it would turn out the people were on probation or parole.⁵ This was absurd. As we said at the time, "We trust this does not reflect the court's opinion of the integrity of California law enforcement officers."

More to the point, we noted that the court offered no evidence to support its concern. On the contrary, because after-the-fact validation of probation and parole searches had been permitted in California since *Tyrell* was decided in 1994, and because the court did not cite any instances (much less a trend) in which *Tyrell* might have motivated an officer to conduct an illegal search, it is evident that the court's concern was groundless. Furthermore, there is a safeguard in place: it is generally understood that, despite the defendant's lack of standing, the evidence will be suppressed if the search was arbitrary or harassing.⁶

All of this must have been apparent to the lower courts because they didn't even try to make a convincing argument that *Tyrell* was wrongly decided. Instead, they attempted to distinguish it factually,⁷ or they just summarily wrote it off—saying such things as, *Robles*

⁵ *People v. Robles* (2000) 23 Cal.4th 789, 800; *People v. Sanders* (2003) 31 Cal.4th 318, 328.

⁶ See *People v. Bravo* (1987) 43 Cal.3d 600, 610; *People v. Cervantes* (2002) 103 Cal.App.4th 1404, 1408; *In re Tyrell J.* (1994) 8 Cal.4th 68, 87.

⁷ See *People v. Hester* (2004) 119 Cal.App.4th 376, 397 [The one exception to this analysis, *Tyrell J.*, is distinguishable because this case presents a different issue.].

and *Sanders* “dismantled the foundation and cornerstones of *Tyrell*,”⁸ or that they put into question “the continuing vitality” of *Tyrell*.⁹

So, as things stand now, no court has even attempted to provide a rational explanation of why society is willing to accept the idea that a parolee who is walking around the streets carrying a concealed handgun enjoys the same privacy rights as honest citizens, unless officers actually know he is on parole.

Consequently, we applaud the court in *William R.* for refusing to join the crowd taking pot shots at *Tyrell*. Instead, it apparently decided it is not the province of the lower courts to overrule decisions of the California Supreme Court, especially when the court could have—but did not—do so itself. Twice.

On August 31, 2005, the California Supreme Court granted review in a case, *In re Jaime P.*, in which this issue is presented once again. As the court reconsiders this issue, we hope it explores the possibility that maybe its decision in *Tyrell* was, in fact, correct.

POV

⁸ See *In re Joshua J.* (2005) 129 Cal.App.4th 359, 363 [“[The California Supreme Court] itself dismantled the foundation and cornerstones of *Tyrell, J.*”].

⁹ See *People v. Lazalde* (2004) 120 Cal.App.4th 858, 863 [“Justice Kennard noted in her concurrence in *Sanders* that ‘[l]eft open by the majority here is the continuing vitality of the majority opinion in *Tyrell J.*’”].