Filed 11/10/05 In re Jose S. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JOSE S., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JOSE S., Defendant and Appellant.	G034984 (Super. Ct. No. DL018504) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard Behn, Judge. Reversed.

Gregory Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Chris Beesley, Deputy Attorney General for Plaintiff and Respondent.

* * *

Defendant Jose S., appeals from a final judgment declaring him a ward of the court, which was entered after he admitted to possessing methamphetamine and marijuana. Before Jose admitted the allegations, the court denied his motion to suppress the drugs. Jose contends the court wrongly denied his motion because the police found the drugs during an illegal stop of the car in which Jose was a passenger. We conclude the traffic stop was an illegal detention, because no articulable facts reasonably suggested the driver violated the Vehicle Code or any other law. We further conclude the illegal traffic stop was not justified by the fact Jose happened to be a juvenile on probation. Thus, the drugs should have been suppressed. We reverse.

FACTS

Two Orange Police Department officers patrolling a shopping mall parking lot at 11:30 p.m., on a Saturday night, saw a blue Honda Civic make a right turn into the parking lot without signaling. The car then turned right again without signaling. The officers turned on their cruiser's emergency lights, and the car pulled over quickly. Officer John Mancini walked to the driver's window, while Officer Gary Nelson walked to the passenger's window. They may have had their weapons drawn as they approached the car. Officer Nelson stood close enough to the passenger's door that Jose would not have been able to open it without hitting the officer.

Officer Mancini questioned the driver. He asked whether anything illegal was in the car; the driver answered, No. He then asked the driver for permission to search the car, and the driver consented. He next asked the driver to get out of the car, and obtained permission to search him, but found nothing illegal.

Jose was fidgeting, sweating, and acting nervous. About 30 seconds after the driver was searched, Officer Mancini asked Jose to step out of the car. As Jose got out, Officer Nelson placed his hand on Jose's arm, and handcuffed him. He escorted Jose

back between the Civic and the police cruiser. Officer Nelson patted down Jose's clothing, finding nothing suspicious. Next, Officer Mancini asked Jose whether anything illegal was in the car, and Jose told him there was speed in the center console. Officer Mancini searched the car, finding methamphetamine, marijuana, and a glass pipe stashed in the center console. Jose admitted the drugs belonged to him. The officers placed Jose in the back of their cruiser, read him his *Miranda* rights, and drove him to the mall's police substation. They let the driver leave without citing him for any traffic violation.

The District Attorney filed a petition to declare Jose a ward of the court pursuant to Welfare and Institutions Code section 602, charging him with one count each of possessing a controlled substance (methamphetamine), possessing 28.5 grams or less of marijuana, and possessing drug paraphernalia. (Health & Saf. Code, §§ 11377, subd. (a), 11357, subd. (b), & 11364). Jose had already been declared a ward of the court five months earlier, and was still on probation. His probation conditions included submitting his "person, residence and property to search and seizure by any peace/probation officer/school official any time of day or night, with or without a warrant, probable cause or reasonable suspicion."

Jose moved to suppress the drugs and his statements to the officers. He contended no probable cause existed to stop the car, because no evidence suggested the driver's failure to signal affected traffic. (Veh. Code, § 22107 [requiring drivers to signal before turning "in the event any other vehicle may be affected by the movement"].) He further contended he had been subjected to an unreasonably prolonged detention, or an arrest made without probable cause. The District Attorney responded no probable cause or reasonable suspicion was needed to stop the car because he was a juvenile on probation, relying upon *In re Tyrell J.* (1994) 8 Cal.4th 68 (*Tyrell J.*). The District Attorney also contended Jose was reasonably detained, and not arrested.

The court denied Jose's motion to suppress. It stated, "The court agrees with the defense counsel that there probably was no probable cause. However, the court

believes that it's bound by *Tyrell*. And while [defense] counsel's argument was that there are a number of courts that are disagreeing with *Tyrell*, it's still the law of the state of California and the court is still bound by it." (Italics added.) Jose then admitted the charges in the petition. The court continued wardship on the condition Jose serve 35 days in custody and enter a drug treatment program.

DISCUSSION

"The rules for review of denial of a motion to suppress are well established. This court reviews the explicit and implicit factual findings to determine if they are supported by substantial evidence. [Citation.] We then exercise our independent judgment to determine if the facts found by the trial court establish a seizure in violation of the Fourth Amendment." (*People v. Hester* (2004) 119 Cal.App.4th 376, 385 (*Hester*).)

The Traffic Stop Was an Unreasonable Detention; the Drugs Must Be Suppressed

Our focus here is on the initial traffic stop of the car in which Jose was riding. "Temporary detention of individuals during the stop of an automobile by the police constitutes a detention under the Fourth Amendment." (*Hester*, *supra*, 119 Cal.App.4th at p. 386.) "'A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity.'" (*Ibid*.) Thus, a traffic stop survives Fourth Amendment scrutiny "*only* if the facts and circumstances known to the officer support at least a reasonable suspicion that the driver has violated the Vehicle Code or some other law." (*People v. Miranda* (1993) 17 Cal.App.4th 917, 926 (*Miranda*).)

Before we determine whether the traffic stop constituted an unreasonable detention, we must determine whether Jose may challenge the legality of the traffic stop. A split of authority exists as to whether a passenger is seized by a traffic stop at all. (Compare *People v. Cartwright* (1999) 72 Cal.App.4th 1362, 1368 (*Cartwright*) ["A typical traffic stop . . . does not by itself implicate the Fourth Amendment rights of a passenger in the stopped vehicle"] with *People v. Bell* (1996) 43 Cal.App.4th 754, 765 (*Bell*) ["We believe the better and clearer approach is to recognize that . . . the typical traffic stop *does* result in the detention of any passenger in the vehicle"].)

This split of authority exists even within our own division. Five years after *Cartwright*, was decided another panel of our division came to the opposite conclusion in *People v. Lamont* (2004) 125 Cal.App.4th 404, review granted March 30, 2005, S131308 (*Lamont*): "at the time of the initial traffic stop, the passenger is seized within the meaning of the Fourth Amendment. Consequently, the passenger can challenge the legality of the traffic stop because the passenger is asserting his or her own legal right to be free from an unlawful seizure." (*Id*. at p. 411.)

The California Supreme Court granted review of *Lamont* and deferred briefing pending its disposition of two other appeals also raising the issue of whether a passenger is seized by a traffic stop. (See *People v. Brendlin* (2004) 115 Cal.App.4th 206, review granted Apr. 14, 2004, S122133; see also *People v. Saunders* review granted Apr. 14, 2004, S122744 [nonpub. opn.].) These appeals were fully briefed as of October 2004, but oral argument has not been scheduled yet. In light of the Supreme Court's grants of review, these Court of Appeal opinions have no value as precedent. (Cal. Rules of Court, rules 976(d) & 977(a).)

Nonetheless, in the absence of any contrary binding authority, we re-adopt our recent conclusion that passengers *are* detained by traffic stops and may challenge the legality of those stops. (See *Bell, supra*, 43 Cal.App.4th at p. 765; accord *U.S. v. Twilley* (9th Cir. 2000) 222 F.3d 1092, 1095 ["'a passenger may challenge a stop of a vehicle on

Fourth Amendment grounds even if she has no possessory or ownership interest in the vehicle"]; see also 4 Witkin & Epstein, Cal. Criminal Law (3d ed. 2000) Illegally Obtained Evidence, § 262, p. 918 [noting that *Bell* "adopt[ed] the majority view that a traffic stop results in the detention of a passenger as well as a driver"].) Thus, Jose may contend the traffic stop was an unreasonable detention that violated his Fourth Amendment rights, even though he was only a passenger in the car.

We next determine whether the traffic stop unreasonably detained Jose. The court impliedly so found, stating, "I agree with the defense counsel that there probably was no probable cause" for the stop. The Attorney General so concedes, by failing to argue the officers had probable cause or reasonable suspicion to stop the car. And we so conclude. The officers testified the only reason they pulled over the car in which Jose was riding was because the driver failed to signal before turning, but the applicable Vehicle Code section requires signaling only "in the event any other vehicle may be affected by the movement." (Veh. Code, § 22107; accord *Cartwright, supra*, 72 Cal.App.4th at p. 1366, fn. 6 ["The failure to signal a lane change does not always violate the Vehicle Code" because a "signal [is] required only when another vehicle may be affected by the movement"].)

No evidence showed the car's two unsignaled right turns affected any other vehicle. Neither officer testified any other cars were in or near the parking lot when the car turned. Nor did their testimony establish the car's turns affected their own police cruiser, as neither officer testified about the relative locations of the car and the cruiser, or whether the cruiser was even in traffic. (See *U.S. v. Mariscal* (9th Cir. 2002) 285 F.3d 1127, 1131 [officer lacked reasonable suspicion to stop car for violating Arizona statute requiring turn signal "'in the event any other traffic may be affected by the movement,'" where "there was not a shard of evidence that any vehicle other than the [turning car] itself was affected by the right turn"]; cf. *Miranda, supra,* 17 Cal.App.4th at p. 930 [unsignaled turn affected the police car, at least].) Indeed, the officers did not cite the

driver for failing to signal. Thus, the officers lacked a reasonable suspicion the driver violated Vehicle Code section 22107 or any other law, rendering the traffic stop an unreasonable detention. (See *Miranda*, *supra*, 17 Cal.App.4th at p. 926; see also *Hester*, *supra*, 119 Cal.App.4th at p. 386.) Accordingly, the drugs seized and statements made as a result of that stop must be suppressed under the "fruit of the poisonous tree" doctrine. (See *Wong Sun v. United States* (1963) 371 U.S. 471, 484-488; *People v. Medina* (2003) 110 Cal.App.4th 171, 178-179.)

Jose's Probation Search Condition Does Not Justify the Illegal Traffic Stop

The Attorney General contends the traffic stop's legality is irrelevant because Jose was a juvenile on probation and subject to a search condition when the car was stopped. In *Tyrell J.*, our Supreme Court held a juvenile probationer lacks any reasonable expectation of privacy that society is willing to recognize as legitimate, and so may be searched by a police officer even if the officer has no idea the juvenile is on probation. (*Tyrell J*., *supra*, 8 Cal.4th at p. 86.) The court presumed the minor was aware of the search condition, and had not been "led to believe that only police officers who were aware of the condition would validly execute it. The minor certainly could not reasonably have believed [the officer] would *not* search him, for he did not know whether [that officer] was aware of the search condition." (*Ibid*.)

Our Supreme Court later appeared to retreat from *Tyrell J*. In *People v. Robles* (2000) 23 Cal.4th 789 (*Robles*), the court held a warrantless search could not be justified by the unknown search condition of a probationer who shared the searched premises with the defendant. (*Id*. at pp. 797-800.) The court observed, "The logic of *Tyrell J*. cannot be stretched to vitiate the illegality of the police action here. Even though a person subject to a search condition has a severely diminished expectation of privacy over his or her person and property, there is no doubt that those who reside with

such a person enjoy measurably greater privacy expectations in the eyes of society." (*Id*. at p. 798.)

The Supreme Court furthered its apparent retreat from *Tyrell J*. in *People v. Sanders* (2003) 31 Cal.4th 318 (*Sanders*). There, the court expanded its holding in *Robles*, concluding a warrantless search of premises shared by a parolee with a search condition and a roommate, violated *both* persons' Fourth Amendment rights because the police did not know about the condition before the search. (*Id*. at pp. 331-332.) It noted that "whether a parolee has a reasonable expectation of privacy is inextricably linked to whether the search was reasonable" (*id*. at p. 333), and that "whether a search is reasonable must be determined based upon *the circumstances known to the officer* when the search is conducted. (*Id*. at p. 334, italics added.) Thus, "if the officer is unaware that the suspect is on parole and subject to a search condition. . . . a search cannot be justified as a parole search, because the officer is not acting pursuant to the conditions of parole." (*Id*. at p. 333.) Similarly, the court opined, "if an officer is unaware that a suspect is on probation and subject to a search condition, the search is not justified by the state's interest in supervising probationers or by the concern that probationers are more likely to commit criminal acts." (*Ibid*.)

The *Sanders* court isolated *Tyrell J*. from other Fourth Amendment jurisprudence. It noted that *Tyrell J*. conflicted with preceding cases including *In re Martinez* (1970) 1 Cal.3d 641 (holding a defendant's unknown parole status did not justify a warrantless search as a parole search), and has been limited by subsequent cases including *Robles*. (*Sanders*, *supra*, 31 Cal.4th at pp. 322, 329, 332.) It also reported that "[o]ur holding in *Tyrell J*. . . . received a chilly reception" from commentators, who questioned *Tyrell J.'s* "'bizarre reasoning,'" lamented that it "'misapplied United States Supreme Court precedent'" and finally deemed it "'unsettling'" and "'insupportable in fact and law.'" (*Sanders, supra,* 31 Cal.4th. at pp. 328-329.) But because the searched persons in *Sanders* were adults, not juveniles, the court had no reason to expressly

overrule *Tyrell J.* (*Sanders*, *supra*, 31 Cal.4th at p. 335, fn. 5.) In Justice Kennard's concurring opinion, however, she stated, "I would draw no distinction between the warrantless search of an adult parolee and the warrantless search of a juvenile probationer. As to each, I would apply the same analysis: Neither search can later be justified by information such as the search condition in this case that was unknown to the searching officer." (*Sanders*, *supra*, 31 Cal.4th at pp. 337-338 (conc. opn. of Kennard, J.).)

Indeed, one appellate district recently concluded that *Tyrell J.* is no longer good law. (*In re Joshua J.* (2005) 129 Cal.App.4th 359, review den. Aug. 17, 2005 (*Joshua J.*).) Instead, the *Joshua J.* court applied *Sanders* to the search of a juvenile probationer, holding the search was not justified by a search condition of which the officer was unaware. (*Joshua J.*, *supra*, 129 Cal.App.4th at p. 365.) It rejected the Attorney General's argument that it was bound by *Tyrell J.*, explaining: "In order for *Tyrell J.* to have binding effect, one would have to conclude that the California Supreme Court presently subscribes to the notion that, based on the special needs of juveniles under the doctrine of *parens patriae*, juvenile probationers are afforded less protection by the Fourth Amendment than adult probationers and parolees. However, the majority in [*Sanders*] noted this particular issue was left undecided in *Sanders* . . . . [¶] Because the high court itself dismantled the foundation and cornerstones of *Tyrell J.* [in *Sanders*], we reject respondent's argument that we are bound to follow *Tyrell J.*" (*Joshua J.*, *supra*, 129 Cal.App.4th at pp. 363-364.) Although the Supreme Court denied review of *Joshua J.*, only two weeks later it *granted* review in *In re Jaime P.*, a case factually similar to the instant case, but in which the Court of Appeal had concluded it was bound by *Tyrell J.* (*In re Jaime P.*, review granted Aug. 31, 2005, S135263 [nonpub. opn.] (*Jaime P.*).)

With the Supreme Court denying review in *Joshua J.*, and granting review in *Jaime P.*, a fortune teller would feel confident in predicting the court will overrule

Tyrell J. But we believe it is unnecessary to add our voice to the fray over the continued force of *Tyrell J*., or to predict its demise, because it is distinguishable. In *Tyrell J*., the juvenile was attending a high school football game. (*Tyrell J*., *supra*, 8 Cal.4th at p. 74.) He and two friends approached a group of three officers patrolling the stadium, one of whom recognized the juveniles and identified them as gang members. (*Ibid*.) One of the juvenile's friends was wearing a heavy, quilted coat, although the temperature was over 80 degrees. When an officer pulled away the heavy coat, a large hunting knife was revealed. When the officers directed the trio to a nearby fence to conduct a pat-search, the juvenile suspiciously adjusted his trousers in the crotch area. (*Ibid.*) As Justice Kennard noted in her dissent, "the searching officer unquestionably had a reasonable suspicion that the minor had violated the law: the officer had just discovered that the minor's friend was carrying a concealed weapon, and the minor's gestures suggested that he, too, might be concealing a weapon on his person." (*Id*. at p. 98 (dis. opn. of Kennard, J.) Thus, the officer in *Tyrell J*. did no more than search the juvenile consistent with the terms of his probation conditions, although the officer was unaware of those conditions. In contrast, the officers in this case *pulled over a car without reasonable suspicion of wrongdoing* — an unreasonable detention not authorized by Jose's probation conditions.

On similar facts, the court in *Hester* held *Tyrell J*., cannot justify an otherwise unreasonable traffic stop of a car occupied by a juvenile probationer. (*Hester*, *supra*, 119 Cal.App.4th at pp. 398, 404-405.) The court determined "*Tyrell J*., is distinguishable" because "[w]e are not concerned with whether a probation waiver can justify a search; the issue in this case is whether the stop of a lawfully operated vehicle can be justified because a passenger in the vehicle was on probation when the officers stopping the vehicle had no knowledge of the probation/parole status of any occupant in the vehicle." (*Hester*, *supra*, 119 Cal.App.4th at p. 398.) The court further distinguished *Tyrell J*., noting that "[u]nlike *Tyrell J*., this case did not involve the stop of a juvenile in

a public place. Instead, it involved the detention of a lawfully operated vehicle in which . . . [a] juvenile [was] riding. . . . The officers did not know if any of the occupants of the [car] were juveniles." (*Hester, supra*, 119 Cal.App.4th at p. 405.)

Having distinguished *Tyrell J.*, the *Hester* court concluded, "[w]e can envision no conduct more unreasonable than stopping a vehicle and then hoping the stop later can be justified if one of the occupants in the vehicle happens to be on probation or parole." (*Hester, supra*, 119 Cal.App.4th at p. 398.) We agree. A juvenile's search condition cannot give free license for police officers to stop a car in which the juvenile is riding without reasonable suspicion of a traffic violation or other criminal wrongdoing when the officers have no idea that the juvenile is on probation, or even that the juvenile is, in fact, a juvenile.

DISPOSITION

The judgment is reversed and the cause remanded to the juvenile court with directions to vacate the order denying the motion to suppress and to enter a new order granting the motion. Within 30 days after the remittitur is issued, Jose may move to vacate his admission of the allegations of the petition, and, if he does so, the juvenile

court is directed to grant the motion, reinstate the petition and proceed accordingly. If Jose does not move to vacate his admission, the court is directed to reinstate the original judgment.

IKOLA, J.

WE CONCUR:

O'LEARY, ACTING P. J.

MOORE, J.