Filed 6/23/03 P. v. Stancil CA1/3

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

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| THE PEOPLE,<br>Plaintiff and Appellant,<br>v.<br>SCOTT BLANE STANCIL et al.,<br>Defendants and Respondents. | A098670<br><br>(Solano County<br>Super. Ct. No. FC189715) |

The People appeal from an order setting aside an information pursuant to Penal Code section 995 on the ground that the only evidence presented at the preliminary hearing was obtained in violation of defendants' Fourth Amendment rights. The People contend the detention and search were permissible under *In re Tyrell J.* (1994) 8 Cal.4th 68 and *People v. Reyes* (1998) 19 Cal.4th 743. We agree, and vacate the trial court's order.

## FACTUAL AND PROCEDURAL BACKGROUND

On March 5, 2001, defendants Scott Stancil and Ronald Newhauser were both on parole, and subject to search and seizure at any time of the day or night by any law enforcement officer, with or without cause or consent. At approximately 11:00 p.m., a Fairfield Police Department patrol officer saw their car make a lane change and a right

turn without signaling.[1] Thinking defendants had violated the Vehicle Code, the officer pulled the car over and made contact with Newhauser, the driver, and Stancil, the passenger. When he contacted dispatch, the officer was informed that Newhauser was on parole. After confirming his parole status with Newhauser, the officer searched him, finding needles, syringes, and plastic baggies containing methamphetamine. A second officer pointed out another large package of baggies on the rear floorboard of the car, which also contained methamphetamine. A search of the rest of the car uncovered an electronic scale and additional clean baggies in the front driver's door, along with cameras, phones, and other equipment in the trunk.

After defendants were arrested, police learned Stancil was also on parole.[2] A search of his person uncovered a WalMart receipt and a room key to the Fairfield Holiday Inn. In the motel room, police found, inter alia, a loaded handgun, currency, a digital scale, several compact discs which matched Stancil's WalMart receipt, and more methamphetamine.[3]

Charged with various narcotics and firearm offenses, both defendants pled not guilty. Newhauser's motion to suppress, heard in conjunction with the preliminary hearing, had been denied, although the magistrate found no violation of the Vehicle Code.[4] Defendants' subsequent motion to set aside the information was granted, however, with the court concluding that the initial detention of defendants' vehicle violated their Fourth Amendment rights in the absence of an "articulable suspicion of

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**1** An officer from the SOLNET task force had told the patrol officer "that they were doing an operation" and asked him to stop the vehicle "if they did some type of violation." SOLNET had received information from a confidential informant that someone was dealing controlled substances out of an unspecified room at the Holiday Inn in Fairfield, and defendants' car had apparently been seen in the vicinity. On cross-examination, the patrol officer who stopped defendants' vehicle acknowledged that traffic was light and no other drivers were impacted by defendants' failure to signal.

**2** Stancil had initially provided a false identity to police.

**3** The motel manager did not identify Stancil as the person who had rented the room.

**4** Vehicle Code section 22107 provides: "No person shall turn a vehicle from a direct course or move right or left upon a roadway until such movement can be made with reasonable safety and then only after the giving of an appropriate signal in the manner provided in this chapter *in the event any other vehicle may be affected by the movement*." (Italics added.)

wrongdoing to focus on this car," and rejecting the magistrate's conclusion that the stop was valid under *Tyrell J.*, *supra*. The People timely appealed.

**DISCUSSION**

In reviewing the lower court's ruling, we accept all express and implied factual findings supported by substantial evidence, but independently evaluate those facts to determine whether the search was reasonable within the meaning of the Constitution. (*People v. Woods* (1999) 21 Cal.4th 668, 673-674; see also *People v. Laiwa* (1983) 34 Cal.3d 711, 718.) We examine the totality of the circumstances in balancing the intrusion on the individual's privacy and the promotion of legitimate governmental interests, including defendants' parole search condition as "a salient circumstance" that "informs both sides of that balance." (*United States v. Knights* (2001) 534 U.S. 112, 118-119 (*Knights*).)

In *In re Tyrell J.*, *supra*, our Supreme Court upheld a warrantless search of a juvenile probationer, finding irrelevant the police officer's ignorance of the minor probationer's search condition. (8 Cal.4th at pp. 73-74, 84-86 (*Tyrell J.*).) The court concluded that "a juvenile probationer subject to a valid search condition does not have a *reasonable* expectation of privacy over his or her person or property." (*Id*. at p. 86.) The court declined to reach the minor's argument that he had been improperly detained "because the premise of the argument is flawed. The detention and pat-search of the minor did not intrude on a *reasonable* expectation of privacy, that is, an expectation that society is willing to recognize as legitimate. Accordingly, [the officer] did not act in violation of the Fourth Amendment." (*Id*. at p. 89.)

In *People v. Reyes*, *supra*, the Court extended the reasoning of *Tyrell J.* to adult parolees, holding that a parole search need not be supported by reasonable suspicion that the parolee is violating the law or a condition of parole.[5] (19 Cal.4th at pp. 753-754.) The Supreme Court explained: "The rationale of *Tyrell J.* can be stated succinctly.

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**5** While *Reyes* extended the reasoning of *Tyrell J.* to adult parolees, its facts did not present the issue of a searching officer's ignorance of the search clause before the search took place.

When involuntary search conditions are properly imposed, reasonable suspicion is no longer a prerequisite to conducting a search of the subject's person or property. Such a search is reasonable within the meaning of the Fourth Amendment as long as it is not arbitrary, capricious or harassing." (*Id*. at p. 752.) Thus no individualized or particularized suspicion is required. (*Id*. at pp. 750, 753.)

Defendant Newhauser cites *Knights*, *supra*, 534 U.S. 112, which upheld a warrantless search of a probationer's home that was supported by reasonable suspicion. The *Knights* court declined to decide, however, whether a probation search conducted without individualized suspicion would satisfy the reasonableness requirement of the Fourth Amendment. (*Id*. at p. 120, fn. 6.) The precedential value of *Reyes*, *supra*, is therefore undiminished. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) And while defendant Newhauser contends the holding of *Tyrell J.* is "fatally undermine[d]" by *Knights*, *supra*, we reject "[t]his dubious logic—that an opinion upholding the constitutionality of a particular search implicitly holds unconstitutional any search that is not like it." (534 U.S. at p. 117.) The case of *U.S. v. Crawford* (9th Cir. 2003) 323 F.3d 700 is not binding and is also distinguishable, because the court there emphasized that the invasion of the defendant's *home* weighed heavily in the evaluation of whether the parole search conducted in that case was reasonable absent individualized suspicion. (*Id*. at pp. 706-710.)

Defendants also rely on *In re Martinez* (1970) 1 Cal.3d 641, 646, decided more than 30 years ago, in which the court determined that the search of a parolee could not be upheld when the officers were unaware that the person was subject to a search condition. That holding, however, "can no longer be regarded as controlling." (*People v. Lewis* (1999) 74 Cal.App.4th 662, 668.) As the Supreme Court subsequently noted in *Tyrell J.*, *supra*, "at the time [the *Martinez*] decision was rendered, there existed no automatic search condition imposed on parolees, inclusive of searches to be performed either by

parole officers or law enforcement officers."[6] (8 Cal.4th at pp. 88-89.) Now, however, search conditions are automatically imposed on every parolee. (*Lewis*, *supra*, at p. 668.) As defendant Stancil candidly acknowledges, "[t]he implication in this *Tyrell J.* dicta is that *Martinez*'s underlying premises are no longer viable."

In *Tyrell J.* the Supreme Court approved the warrantless search of a probationer when the searching officer was unaware of a search condition. There is no reason that a different result should obtain in the case of a parolee. (*Lewis*, *supra*, 74 Cal.App.4th at pp. 668-669.) In *Reyes*, *supra*, the Supreme Court noted: "*Tyrell J.*'s reasoning applies with equal force to adults. In both cases the expectation of privacy is already reduced by the absence of the warrant requirement. As a convicted felon still subject to the Department of Corrections, a parolee has conditional freedom—granted for the specific purpose of monitoring his transition from inmate to free citizen. The state has a duty not only to assess the efficacy of its rehabilitative efforts but to protect the public, and the importance of the latter interest justifies the imposition of a warrantless search condition." (19 Cal.4th at p. 752.) Balancing the individual and governmental interests involved, the court further explained: "The level of intrusion is de minimis and the expectation of privacy greatly reduced when the subject of the search is on notice that his activities are being routinely and closely monitored. Moreover, the purpose of the search condition is to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches." (*Id*. at p. 753.)

Thus an individual's status as a probationer or parolee may be decisive in determining whether a search is reasonable under the Fourth Amendment. As the Supreme Court has emphasized, "one must *first* have a reasonable expectation of privacy *before* there can be a Fourth Amendment violation." (*Tyrell J.*, *supra*, 8 Cal.4th at p. 89.) Nor do *Woods*, *supra*, or *People v. Robles* (2000) 23 Cal.4th 789 require a different

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**6** The *Tyrell J.* court also noted that "although the defendant in *Martinez* might have been subject to search by his parole officer, he could reasonably expect to be free of arbitrary searches by police officers. [Citation.]" (*Supra*, 8 Cal.4th at p. 89.)

result. Both of those cases involved the Fourth Amendment rights of individuals who resided with or shared property with probationers subject to search conditions. Defendants here, by contrast, were personally subject to search conditions as a condition of parole, and therefore enjoyed significantly reduced privacy expectations under the Supreme Court's analytical approach in recent cases. (See, e.g., *Robles*, *supra*, at p. 798 [contrasting probationer's "severely diminished expectation of privacy" with "measurably greater privacy expectations" of those who share probationer's residence]; *Reyes*, *supra*, 19 Cal.4th at p. 753; *Tyrell J.*, *supra*, 8 Cal.4th at p. 85.) Defendants refer to an assertion in *Robles*, *supra*, that "searches that are undertaken pursuant to a probationer's advance consent must be reasonably related to the purposes of probation. [Citations.]" (23 Cal.4th at p. 797.) The United States Supreme Court, however, has recently rejected the view that probation searches must be limited by such a requirement. (*Knights*, *supra*, 534 U.S. at pp. 117-120.) The *Robles* court also emphasized the importance of the special issues at play in residential searches. (*Supra*, at pp. 799-800.) Those considerations are not applicable to the detention at issue here.[7]

Defendants contend that even though their expectations of privacy may have been reduced by their parole search conditions, they were nevertheless protected from arbitrary or capricious searches, including the detention of their vehicle under the circumstances presented here. We disagree. In *In re Anthony S.* (1992) 4 Cal.App.4th 1000, 1004, taking guidance from *People v. Bravo* (1987) 43 Cal.3d 600, 610, the court concluded a search conducted pursuant to a condition of probation is arbitrary if the officer's motivation "is unrelated to rehabilitative and reformative purposes or legitimate law

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**7** We are aware that Supreme Court review is presently pending in *People v. Sanders* (2000) 84 Cal.App.4th 1211, review granted February 28, 2001, S094088, which involves whether the holding of *Tyrell J.* should be reconsidered and whether it should be extended to adult parolees. The People concede that their argument in the present case is dependent on the continuing validity of *Tyrell J.*, *supra*, and *Reyes*, *supra*. While defendant Newhauser contends the Supreme Court should overrule the holding of *Tyrell J.*, *supra*, and defendant Stancil maintains the Court's subsequent decisions suggest the resurrection of the "knowledge-first" rule, we must follow current Supreme Court authority in deciding this appeal. (*Auto Equity Sales, Inc. v. Superior Court*, *supra*.) We also decline defendant Stancil's invitation to "count the votes" by inferring the possible positions of the individual Justices of the Supreme Court on this issue.

enforcement purposes."[8] (See also *People v. Cervantes* (2002) 103 Cal.App.4th 1404, 1408; *People v. Clower* (1993) 16 Cal.App.4th 1737, 1741-1742.) In *In re Anthony S.*, *supra*, police officers had executed probation searches at the homes of several gang members to look for contraband. They had no evidence or suspicion of criminal activity or violation of probation by the defendant or other gang members. (4 Cal.App.4th at p. 1002.) The court concluded the search was not arbitrary because the officers were motivated by a legitimate law enforcement purpose. (*Id*. at p. 1004.) In discussing the Supreme Court's decision in *Bravo*, *supra*, where the police had received an anonymous tip that an adult probationer was involved in the sale of narcotics but were unable to secure any corroboration, the *In re Anthony S.* court also observed: "While law enforcement efforts to obtain corroboration are to be lauded, corroboration is not required." (*Id.* at p. 1003, fn. 2.) The court rejected the argument that a random search of a probationer is arbitrary, noting that were such a definition adopted, "the exception would swallow the rule and there would be a requirement of some cause in addition to the 'consent search term.' " (*Id*. at p. 1004.)

We conclude that defendants may not reinstate the individualized suspicion requirement by characterizing this parole search as arbitrary. (See *Reyes*, *supra*, 19 Cal.4th at pp. 753-754 [parole search may be conducted randomly and without particularized suspicion].) In this context, a search does not become arbitrary simply because it is not based on specific suspicion. (*In re Anthony S.*, *supra*, 4 Cal.App.4th at pp. 1003-1004.) Nor have defendants shown the challenged search was unrelated to legitimate law enforcement purposes. Police had received information that drug dealing was occurring in an area where defendants' car had evidently been seen. The patrol officer stopped the vehicle after it failed to signal before changing lanes and making a right hand turn. While these facts may have been insufficient to demonstrate probable cause for the stop, no such particularized suspicion was required in this case because

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**8** Following Black's Law Dictionary, the court treated the terms "arbitrary" and "capricious" as synonymous. (*In re Anthony S.*, *supra*, 4 Cal.App.4th at p. 1004, fn. 3.)

defendants were subject to search as a condition of parole. (See *People v. Viers* (1991) 1 Cal.App.4th 990, 994 [probationer subject to search condition had waived right to complain detention was pretextual or lacked probable cause].)

Nor was there any evidence that the searches were motivated by personal animosity or were conducted in a harassing manner. (See *Clower*, *supra*, 16 Cal.App.4th at pp. 1741-1742; *Reyes*, *supra*, 19 Cal.4th at pp. 753-754.) "A mere legal or factual error by an officer that would otherwise render a search illegal, e.g., a mistake in concluding that probable cause exists for an arrest, does not render the search arbitrary, capricious or harassing. . . . It is only when the motivation for the search is wholly arbitrary, when it is based merely on a whim or caprice or when there is no reasonable claim of a legitimate law enforcement purpose, e.g., an officer decides on a whim to stop the next red car he or she sees, that a search based on a probation search condition is unlawful." (*Cervantes*, *supra*, 103 Cal.App.4th at p. 1408.)

In *Tyrell J.*, *supra*, it was undisputed on appeal that the officer acted without knowledge of the probationer's search condition and lacked probable cause to search him. (8 Cal.4th at p. 75, fn. 1.) The search was upheld, however, based on the validly imposed probation search condition and the probationer's consequent absence of a legitimate expectation of privacy. We conclude the parole condition at issue here was likewise sufficient to legitimate the detention of defendants. (See *Id*. at p. 89; *Cervantes*, *supra*, 103 Cal.App.4th at pp. 1407-1408.)

**DISPOSITION**

The order setting aside the information is vacated and the case is remanded to the trial court.

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Corrigan, J.

We concur:

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McGuiness, P.J.

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Pollak, J.