

COMMENT

Fourth Amendment Protection for Juvenile Probationers in California, Slim or None?: *In re Tyrell J.*

By LIDIA STIGLICH*

Table of Contents

I. Introduction	893
II. Background	895
A. <i>In re Tyrell J.</i> : The Facts	895
B. The Majority Opinion	897
1. United States Supreme Court Precedent.....	897
2. The Relevance of Consent: <i>People v. Bravo</i>	899
3. Reasonable Expectation of Privacy	900
C. The <i>Tyrell</i> Dissent	904
III. Analysis.....	905
A. The Good, the Bad, and the Ugly: an Analysis of the Court's Reasoning in <i>Tyrell</i>	905
1. United States Supreme Court Precedent: The <i>Griffin</i> Debacle	905
2. <i>Bravo, Martinez, and Gallegos</i> : the Applicability of Consent	906
a. <i>People v. Bravo</i>	907
b. <i>People v. Gallegos</i>	908
IV. Conclusion	913

I. Introduction

The Fourth Amendment to the United States Constitution provides that the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"¹ In its Fourth Amendment juris-

* J.D., University of California, Hastings College of the Law, 1995; B.S., University of California, Berkeley, 1992.

1. U.S. CONST. amend. IV.

prudence, the United States Supreme Court has developed a hierarchy of types of searches, each of which must be supported by a different level of suspicion. At the top end of the hierarchy are searches of the person, home, or personal effects that must be supported by a warrant and probable cause.²

At the opposite end, the Court has permitted searches without any individualized suspicion.³ The searches in this category “deal neither with [full-blown] searches nor with the sanctity of private dwellings, ordinarily afforded the most stringent Fourth Amendment protection.”⁴ Such searches may only be employed where the intrusion is minimal,⁵ the danger sought to be avoided is of substantial and demonstrable proportions,⁶ and it is demonstrated that the searches are “sufficiently productive to qualify as a reasonable law enforcement practice under the Fourth Amendment.”⁷

In between these two extremes, are searches permitted only on a showing of “reasonable grounds” or “reasonable suspicion.” As the Court has explained:

Although we usually require that a search be undertaken only pursuant to a warrant (and thus supported by probable cause, as the Constitution says warrants must be), we have permitted exceptions when “special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.”⁸

In this category, the Court has permitted searches on less than probable cause where the government has demonstrated a substantial interest unrelated to law enforcement. One such interest observed by the Court is the need to rehabilitate convicted felons through the probation system.⁹ However, while the United States Supreme Court has placed probation searches in this middle category, in a recent opinion

2. *Payton v. New York*, 445 U.S. 573 (1980).

3. *E.g.*, *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (border stops); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (sobriety checkpoints); *National Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989) (drug testing of custom agents).

4. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976).

5. *Id.* at 562.

6. *E.g.* *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976) (illegal immigration); *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444 (1990) (drunk driving fatalities).

7. *Delaware v. Prouse*, 440 U.S. 648, 660 (1979) (holding law enforcement practice of randomly stopping motorists to check registration to be in violation of the Fourth Amendment).

8. *Griffin v. Wisconsin*, 483 U.S. 868, 873 (1987) (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985)).

9. *Griffin v. Wisconsin*, 483 U.S. 868 (1987). For others *see, e.g.*, *O'Connor v. Ortega*, 480 U.S. 709 (1987) (government employers may conduct work-related searches of employees' desks and offices on less than probable cause); *New Jersey v. T.L.O.*, 469 U.S. 325 (1985) (school official may search students and their property on reasonable suspicion).

the California Supreme Court seems to have shifted them to the far end of the spectrum.

In its opinion in *In re Tyrell J.*,¹⁰ the California Supreme Court would effectively permit random, suspicionless searches of juveniles in order to ferret out those juvenile probationers subject to search clauses.¹¹ This Comment will not focus on the search clause itself, rather it will focus on the application of the search clause by the searching entity. In the instant case, can the searching officer rely on the search condition of probation if he is unaware of the condition at the time of the search?

This Comment examines *In re Tyrell J.*¹² Part I of this Comment will set forth the factual and procedural history of *Tyrell*, Part II will summarize the majority and dissenting opinions by the California Supreme Court, and Part III will provide a critical analysis of the court's opinion. Finally, Part IV will conclude that the decision in *Tyrell* is insupportable in fact and law.

II. Background

A. *In re Tyrell J.*: The Facts

While attending a high school football game with two companions, Tyrell, a minor, was searched by a Fresno police officer.¹³ The officer believed Tyrell and his two companions were gang members and approached them after noticing one of Tyrell's companions was

10. 876 P.2d 519 (Cal. 1994).

11. This Comment will discuss both probation and parole. A short explanation of each follows.

Probation is both a punishment and a grant of leniency. It is a form of criminal sanction imposed by a court upon an offender after verdict, finding, or plea of guilty. GEORGE G. KILLINGER ET AL., *PROBATION AND PAROLE IN THE CRIMINAL JUSTICE SYSTEM* 14 (1976); see also, 18 U.S.C. 3651. The defendant has the right to refuse probation and undergo sentence if the defendant feels that the terms of probation are harsher than the sentence imposed by law. *People v. Caron*, 171 Cal. Rptr. 203 (Cal. Ct. App. 1981).

Due to their status, probationers do not enjoy the absolute liberty to which every citizen is entitled, but only conditional liberty properly dependent on observance of special restrictions.

Parole is a period of conditional, supervised freedom imposed on all prisoners on their release from prison. Parole provides a testing period for the reintegration of the prisoner into society, *In re Carabes* 193 Cal. Rptr. 65, 68 (Cal. Ct. App. 1983), and benefits society by reducing the costs of the correctional process. *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972). Although a parolee is no longer confined in prison, a parolee's status during parole requires and permits supervision and surveillance under restrictions that may not be imposed on the public.

The significance of these differences as it relates to the application of a search condition will be the topic of this Comment.

12. 876 P.2d 519 (Cal. 1994).

13. *Tyrell*, 876 P.2d at 522.

wearing a "heavy, quilted coat" on a warm night.¹⁴ The officer first approached Tyrell's companion, pulled up his coat, and observed a knife.¹⁵ The officer then instructed all three of the minors to walk to a fence about 15 to 20 feet away.¹⁶ As Tyrell complied with the officer's instructions, the officer noticed Tyrell make several adjustments in the area of his crotch.¹⁷ The officer pat-searched Tyrell, including his crotch area and "felt a soft object approximately three inches in diameter and twelve inches long . . . part [of which] protruded from the minor's pants."¹⁸ Although the officer did not believe the object was a weapon, he retrieved what he believed to be a bag of marijuana.¹⁹

Unknown to the searching officer, Tyrell was subject to a search condition as part of his probation for misdemeanor battery.²⁰ The search condition required Tyrell to "[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."²¹

A petition was filed against Tyrell in juvenile court, alleging that he possessed marijuana for the purpose of sale.²² Tyrell denied the allegation and moved to suppress²³ the evidence of the marijuana.²⁴ At the suppression hearing, the officer admitted he was unaware of Tyrell's search condition at the time of the search.²⁵ Tyrell testified that his pants and belt had come undone, and that he had been trying to refasten them when the officer approached.²⁶ The juvenile court referee denied the motion to suppress.²⁷

The Fifth District Court of Appeal reversed the trial court.²⁸ The court reasoned, "the matter of fortuity that appellant was subject to a juvenile probation search condition did not justify [a] search which

14. *Id.* It is undisputed that the officer did not have probable cause to search the minor. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* at 521.

21. *Id.* at 521.

22. *Id.* at 522. Possession of marijuana for sale constitutes a violation of California law. CAL. HEALTH & SAFETY CODE § 11359 (West 1991 & Supp. 1995).

23. CAL. WELF. & INST. CODE § 700.1 (West 1984 & Supp. 1995).

24. *Tyrell*, 876 P.2d at 522.

25. *Id.*

26. *Id.*

27. *Id.* The juvenile court concluded, as both *In re Marcellus L.*, 279 Cal. Rptr. 901 (Cal. Ct. App. 1991), and *In re Binh L.*, 6 Cal. Rptr. 2d 678 (Cal. Ct. App. 1992), had concluded, that a probationer who is subject to a search condition has effectively and completely waived any Fourth Amendment challenge to a search.

28. *In re Tyrell J.*, 14 Cal. Rptr. 2d 22 (1992). The Fifth District is to date the only appellate court in California to have reached this conclusion.

otherwise violated the Fourth Amendment.”²⁹ The People appealed to the California Supreme Court, and their petition for review was granted.³⁰

B. The Majority Opinion

In a 5-2 decision,³¹ the California Supreme Court upheld the trial court’s decision that the marijuana was admissible at trial against Tyrell.³² In so doing, the court resolved an issue that had previously divided California Courts of Appeal. For example, the Fifth District in *In re Tyrell J.* held that an officer must have advance knowledge of a search condition of probation before conducting a search unsupported by probable cause or a warrant.³³ However, published opinions issued from the First³⁴ and Sixth³⁵ Districts expressly rejected that position.

The California Supreme Court divided its discussion of the lower court’s opinion of *Tyrell* into three components: United States Supreme Court precedent on the issue of probation searches,³⁶ the applicability of consent under *People v. Bravo*,³⁷ and a probationer’s reasonable expectation of privacy.

1. United States Supreme Court Precedent

The only United States Supreme Court case to address the constitutionality of probation searches is *Griffin v. Wisconsin*.³⁸ *Griffin* involved an adult probationer subject to the following search condition: “[A]ny probation officer [may] search [Griffin’s] home without a warrant as long as [the probation officer’s] supervisor approves and as long as there are ‘reasonable grounds’ to believe the presence of contraband—including any item that the probationer cannot possess

29. *Id.* at 29.

30. *Tyrell*, 876 P.2d 519, 522.

31. Chief Justice Lucas, writing for the majority, was joined by Justices Arabian, Baxter, George, and Strankman. *Id.* at 532. Justice Kennard was joined by Justice Mosk in dissent. *Id.* at 538.

32. *Tyrell*, 876 P.2d at 532.

33. *In re Tyrell J.*, 14 Cal. Rptr. 2d 22 (Cal. Ct. App. 1992).

34. *In re Marcellus L.*, 279 Cal. Rptr. 901 (Cal. Ct. App. 1991).

35. *In re Binh L.*, 6 Cal. Rptr. 2d 678 (Cal. Ct. App. 1992).

36. Since the passage of Proposition 8 and its amendment of Article I, section 28(d), of the California Constitution, the exclusionary rule is not applied unless federally compelled. *In re Lance W.*, 694 P.2d 744 (Cal. 1985). Accordingly, because the California Constitution would forbid the exclusion of evidence as a remedy for an unreasonable search and seizure unless the federal Constitution as interpreted by the United States Supreme Court would require that remedy, the California Supreme Court looked first to whether the high court had spoken on the topic. *Tyrell*, 876 P.2d at 522-23.

37. 738 P.2d 336 (Cal. 1987).

38. 483 U.S. 868 (1987).

under the probation conditions.”³⁹

In response to a tip and in compliance with the provisions of the search condition, probation officers searched Griffin’s home without a warrant and discovered a gun.⁴⁰ The Court in a 5-4 decision⁴¹ upheld the warrantless search of Griffin’s home because it was carried out pursuant to state administrative regulations⁴² which satisfied the Fourth Amendment’s reasonableness requirement.⁴³ While acknowledging that a probationer’s home is normally protected by the Amendment’s requirement that searches be “reasonable”⁴⁴ and undertaken only pursuant to a warrant,⁴⁵ the Court also recognized exceptions when “special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable.”⁴⁶

The Court in *Griffin* observed that restrictions on probationers serve two primary purposes. First, restrictions assure that the probationer serve a period of genuine rehabilitation by deterring the probationer from re-offending.⁴⁷ The Court recognized that a warrant requirement would reduce the deterrent effect of expeditious searches because the “delay inherent in obtaining a warrant would make it more difficult for probation officials to respond quickly to evidence of misconduct.”⁴⁸

These restrictions also provide the secondary purpose of protecting the community from the probationer while the probationer is in the community. The *Griffin* Court stressed that a probationer is not an average citizen, but a person who has already been convicted of a crime.⁴⁹ Since there is a high rate of recidivism among probationers,⁵⁰ supervision of a probationer’s activities through unannounced searches and seizures by probation officers is one means of combating

39. *Id.* at 870-71.

40. *Id.* at 871. The probation officers were aware of the fact that Griffin was subject to a search condition of probation at the time of the search and attempted to contact Griffin’s own probation officer prior to effectuating the search. *Id.*

41. Justice Scalia, writing for the majority, was joined by Chief Justice Rehnquist and Justices White, Powell, and O’Connor; Justices Blackmun, Marshall, Brennan, and Stevens dissented. *Id.* at 869.

42. *See, e.g.,* *Camara v. Municipal Court*, 387 U.S. 523, 538 (1967).

43. *Griffin*, 483 U.S. at 873.

44. *Id.*

45. *Id.* (citing *Payton v. New York*, 445 U.S. 573, 586 (1980)).

46. *Id.* (quoting *New Jersey v. T.L.O.*, 469 U.S. 325, 351 (1985) (Blackmun, J., concurring in judgment)).

47. *Griffin*, 483 U.S. at 875.

48. *Id.*

49. *Id.* at 882 (Blackmun, J., dissenting).

50. *Id.* at 875 (citing Joan Petersilia, *Probation and Felony Offenders*, 49 *FED. PROBATION* 4, 9 (1985)).

their potential renewed threat to the community.⁵¹

Therefore, the *Griffin* Court held that it was reasonable to dispense with the warrant requirement.⁵² The probable cause requirement also was held to unduly disrupt the probation system.⁵³

The majority in *Tyrell* reasoned that *Griffin* was inapplicable because: (1) in *Griffin* a state regulation mandated the search condition whereas in *Tyrell* a judge imposed the condition; (2) *Griffin*'s search condition required supervisory approval prior to the search and *Tyrell*'s did not; (3) the search in *Griffin* was effectuated by a probation officer, not a police officer as in *Tyrell*; (4) *Griffin* required reasonable cause to search and, under California law, *Tyrell* only required that the search not be arbitrary or intended to harass; and, "[m]ore important[ly]," (5) *Griffin* "involved a situation in which the probation officer was clearly aware of the [] search condition," whereas the police officer in *Tyrell* was not.⁵⁴

Based on these distinguishing factors, the majority in *Tyrell* reasoned that *Griffin* was not "directly on point," and did not control the question before it.⁵⁵ In the absence of binding United States Supreme Court authority on the issue, the majority was required to "fulfill [an] independent constitutional obligation to interpret the federal constitutional

2. *The Relevance of Consent: People v. Bravo*⁵⁶

The majority in *Tyrell* next considered the relevance of consent to the issue before it and concluded: "[a]s does the United States Supreme Court, we follow the rule that a warrantless search is considered unreasonable per se 'unless it is conducted pursuant to one of the few, narrowly drawn exceptions to the constitutional requirement of a warrant.' One recognized exception is consent."⁵⁷ The *Tyrell* majority relied *People v. Bravo* to guide its discussion on the issue of consent.⁵⁸

51. *Id.* at 875. Further, the Ninth Circuit has expanded *Griffin* from "home" searches to permit searches of the probationer without either probable cause or a warrant. It is the exercise of supervision to assure that restrictions are in fact observed that permits a "degree of impingement upon privacy that would not be constitutional if applied to the public at large." *Id.* at 875.

52. *Id.* at 876-77.

53. *Id.* at 878. *But see Griffin*, 483 U.S. at 881 (Blackmun, J., dissenting) ("In ruling that the home of a probationer may be searched by a probation officer without a warrant, the Court today takes another step that diminishes the protection given by the Fourth Amendment to the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.'").

54. *Tyrell*, 876 P.2d at 524.

55. *Id.* at 524.

56. 738 P.2d 336 (Cal. 1987).

57. *Id.* (quoting *Bravo*, 738 P.2d at 336).

58. *Id.* at 525.

In *Bravo*, the court examined the validity of a search conducted pursuant to a search condition⁵⁹ substantially similar to that imposed on Tyrell.⁶⁰ The *Bravo* court held that the search of a probationer's home by officers with knowledge of the probationer's search condition was permissible without probable or even reasonable cause.⁶¹ The *Bravo* court reasoned that where a defendant had given valid consent, the resulting search cannot violate the Fourth Amendment unless it exceeded the scope of that consent.⁶² "Our interpretation of the scope of appellant's consent in agreeing to the search condition of his probation is consistent with the dual purpose of such a provision 'to deter further offenses by the probationer and to ascertain whether he is complying with the terms of his probation.'"⁶³

The *Tyrell* majority emphasized the distinction between adult and juvenile probationers.⁶⁴ Juvenile probationers in California do not consent to probation; probation is imposed on the juvenile.⁶⁵ The *Tyrell* majority reasoned that the "advance consent" present in *Bravo* permitted the broad intrusion on the probationer's Fourth Amendment rights.⁶⁶ However, since that element is lacking with respect to juvenile probationers, the *Tyrell* majority concluded that it could not resolve the issue based on the consent rationale controlling in *Bravo*.⁶⁷

3. Reasonable Expectation of Privacy

Unable to find an answer in *Griffin* or *Bravo*, the majority turned to more generalized principles embodied in the Fourth Amendment.⁶⁸

The majority explained that Tyrell, due to his search condition of probation, lacked a reasonable expectation of privacy in his person and possessions.⁶⁹ Therefore, Tyrell's Fourth Amendment rights were not violated.⁷⁰ The majority relied on the United States Supreme Court holding in *California v. Ciraolo*⁷¹ for this position.⁷² In *Ciraolo*,

59. The search condition read as follows: "[The probationer must] submit his person and property to search or seizure at any time of the day or night by any law enforcement officer with or without a warrant." *Bravo*, 336 P.2d at 336-37.

60. *Tyrell*, 876 P.2d at 521.

61. *Bravo*, 336 P.2d at 342-43.

62. *Id.* at 338.

63. *Id.* at 342 (quoting *People v. Mason*, 488 P.2d 630, 632 (Cal. 1971)).

64. *Tyrell*, 876 P.2d at 527.

65. *Id.* at 526-27. See also *In re Nathaniel Z.*, 232 Cal. Rptr. 378, (Cal. Ct. App. 1986); *In re Wayne J.*, 159 Cal. Rptr. 106, (Cal. Ct. App. 1979).

66. *Tyrell*, 876 P.2d at 525.

67. *Id.* at 527.

68. *Id.*

69. *Id.* at 527-30.

70. *Id.* at 532.

71. 476 U.S. 207 (1986).

72. *Id.*

the Court articulated the following two-part inquiry: "first, has the individual manifested a subjective expectation of privacy in the object of the challenged search? Second, is society willing to recognize that expectation as reasonable?"⁷³

Under the first prong of the test, the individual must show an "actual" manifestation of a subjective expectation of privacy.⁷⁴ The majority reasoned that because Tyrell did not openly display the bag of marijuana, but, in fact, attempted to hide it when confronted by police officers, he had manifested a subjective expectation of privacy.⁷⁵

However, the result in *Tyrell* ultimately rested on the majority's analysis of the second prong of the *Ciraolo* inquiry: whether or not society could or should be willing to recognize Tyrell's interests in privacy as reasonable. To answer this question, the *Tyrell* majority turned to two lower court opinions, *In re Marcellus L.*⁷⁶ and *In re Binh L.*⁷⁷ for guidance.⁷⁸

In *Marcellus*, a juvenile subject to a search condition of probation underwent a pat-search by a police officer, and the police officer discovered cocaine.⁷⁹ "Everyone, including th[e] court, agree[d] there were no articulable facts justifying the patsearch."⁸⁰ Marcellus moved to suppress the evidence as the "fruit of an unreasonable search."⁸¹ The juvenile court denied the motion on the grounds that Marcellus had given up his Fourth Amendment rights when he accepted probation.⁸² The court noted that the "community [was] entitled to the benefit of the fact that the minor had waived his right."⁸³ It would also serve "an insufficiently useful purpose to deny the People the right to use the evidence."⁸⁴

73. *Id.* at 211 (citation omitted).

74. The Fifth District in *Tyrell* gave the following examples of what could constitute this "actual" manifestation: "the suspect hides something instead of carrying it in the open, conveys his message by telephone instead of shouting it from the street, or takes something inside his house instead of leaving it out in his yard." 14 Cal. Rptr. 2d 22, 25 (Cal. Ct. App. 1992).

75. *Tyrell*, 876 P.2d at 527.

76. 279 Cal. Rptr. 901 (Cal. Ct. App. 1991).

77. 6 Cal. Rptr. 2d 678 (Cal. Ct. App. 1992).

78. *Tyrell*, 876 P.2d at 528. The Fifth District in *Tyrell* was of the opinion that both *Marcellus* and *Binh* were wrongly decided. *In re Tyrell J.*, 14 Cal. Rptr. 2d 22, 28-29.

79. *Marcellus*, 279 Cal. Rptr. at 903.

80. *Id.* The juvenile court agreed that "the search absent the search clause is unconstitutional." *Id.* at 902.

81. *Id.* at 902.

82. *Id.*

83. *Id.*

84. *Id.*

Over a strong dissent,⁸⁵ the First District affirmed the juvenile court's holding.⁸⁶ The *Tyrell* majority seized upon the reasoning employed by the First District in *Marcellus*, stating "[w]hat is critical is that the juvenile . . . 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."⁸⁷

In *Binh*,⁸⁸ the Sixth District Court of Appeal also employed a reasonable expectation of privacy analysis. Like the minor in *Marcellus*, *Binh* was subject to a search condition of probation.⁸⁹ *Binh*, a passenger in a car, was ordered out of the vehicle and patted down twice by an officer. The officer believed *Binh* to be "truant" although school had not yet started that morning.⁹⁰ The second pat search yielded a loaded pistol from *Binh*'s person.⁹¹ The appellate court characterized this as "[a] police officer, acting in apparent good faith but with neither probable cause nor knowledge of the preexisting probation search condition, search[ing] the minor's person and [finding] incriminating evidence."⁹² The appellate court upheld the search and relied on the seminal two-part test set forth by the United States Supreme Court in *California v. Ciraolo*.⁹³ The *Binh* court found that the officer's ignorance of the search condition was irrelevant. Because the juvenile was subject to a valid [court imposed] search condition, he had no reasonable expectation of privacy that the pistol he was carrying could be hidden from police.⁹⁴

The *Tyrell* majority agreed with the analysis of both *Marcellus* and *Binh*.⁹⁵ Since the juvenile in *Tyrell* was subject to a valid search condition of probation, he had no reasonable expectation of privacy.⁹⁶ The majority observed that probationers have a reduced expectation

85. *Id.* at 908 (Reardon, J., dissenting). Justice Reardon stated in his dissent, "[t]his holding takes us beyond *Bravo*, and represents an extension that is not only unsupported by, but is inconsistent with, *Bravo* and *Griffin v. Wisconsin* relied on by the majority." *Id.* (citations omitted).

86. *Id.* (Reardon, J., dissenting).

87. *Tyrell*, 876 P.2d at 528 (quoting *Marcellus*, 279 Cal. Rptr. at 907) (emphasis omitted).

88. 6 Cal. Rptr. 2d 678 (Cal. Ct. App. 1992).

89. *Id.* at 679. *Binh*'s probation condition was imposed as a result of his involvement in a car theft. *Id.*

90. *Id.* at 680. The officer was unaware of the search condition. *Id.* at 680-81.

91. *Id.* at 680.

92. *Id.* at 679.

93. 476 U.S. 207, 211 (1986) (quoting *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring)). The inquiry contains the following two parts: first, has the individual manifested a subjective expectation of privacy in the object of the challenged search, and second, is society willing to recognize that expectation as reasonable. *Id.*

94. *Binh*, 6 Cal. Rptr. 2d at 683-84.

95. *Tyrell*, 876 P.2d at 528.

96. *Id.* at 530.

of privacy, thereby rendering certain intrusions by governmental authorities reasonable.⁹⁷

The majority bolstered this argument with two United States Supreme Court cases it considered analogous: *Hudson v. Palmer*⁹⁸ and *Skinner v. Railway Labor Executives' Association*.⁹⁹

In *Hudson*, an inmate was charged with the destruction of state property when correctional officers uncovered a ripped pillow case in his cell during a warrantless "shakedown."¹⁰⁰ The Court rejected the inmate's Fourth Amendment challenge to the search and stated:

[W]e hold that society is not prepared to recognize as legitimate any subjective expectation of privacy that a prisoner might have in his prison cell and that, accordingly, the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell. The recognition of privacy rights for prisoners in their individual cells simply cannot be reconciled with the concept of incarceration and the needs and objectives of penal institutions.¹⁰¹

In *Skinner*, the Court upheld the constitutionality of blood and urine tests for railroad workers after they had been involved in accidents.¹⁰² The *Skinner* Court reasoned that the participation of the railroad workers in an industry that is the subject of pervasive regulation due to the compelling governmental interest in safe railroads permitted the intrusion on their Fourth Amendment rights.¹⁰³

The *Tyrell* majority found that *Hudson* and *Skinner*, like *Tyrell* involved circumstances in which society was not prepared to recognize an expectation of privacy.¹⁰⁴

The majority added that the deterrent effect of the search condition would be eroded by the application of a strict knowledge first requirement; "This important deterrent effect would be severely eroded if police officers were required to learn the names and memorize the faces of the dozens and perhaps hundreds of juvenile probationers in their jurisdiction."¹⁰⁵

Further, the majority rejected *Tyrell's* arguments that a body of parole search cases, which all require prior knowledge of a search condition before executing a parole search, should bind the court in this

97. *Id.* at 528-30.

98. 468 U.S. 517 (1984).

99. 489 U.S. 602 (1989).

100. *Hudson*, 468 U.S. at 519.

101. *Id.* at 525-26.

102. *Skinner*, 489 U.S. at 634.

103. *Id.* at 627.

104. *Tyrell*, 876 P.2d at 529. The majority admitted that the train wreck in *Skinner* and the jail cell in *Hudson* were "extreme examples." *Id.*

105. *Id.* at 530.

case.¹⁰⁶ The majority ruled that these cases were distinguishable because they did not deal with the issues relating to the parolee's reasonable expectation of privacy.¹⁰⁷

Finally, without detailed analysis, the majority concluded that Tyrell's expectation of privacy was unreasonable because society was unwilling to recognize it as legitimate.¹⁰⁸ Further, since the evidence would not have been admissible absent the search condition, the majority concluded the deterrent effect of the exclusionary rule remains intact.¹⁰⁹

C. The Tyrell Dissent

Unlike the majority, the dissent believed *Griffin* was directly on point.¹¹⁰ The dissent argued that the very facts the majority used to distinguish *Griffin* from *Tyrell* actually required the exclusion of evidence of drugs in *Tyrell*.¹¹¹ The dissent reasoned that in *Griffin*, the "special needs" of the probation system permitted "impingement" upon the probationer's Fourth Amendment rights.¹¹² Where those "special needs" are absent, a search for purposes unrelated to furthering the goals of the probation system would be unconstitutional.¹¹³ Therefore, if the officer was unaware of the minor's status as a probationer, the officer was not responding to the "special needs" of the probation system and the search would be invalid.¹¹⁴

Further, the dissent viewed the majority opinion as representing a break with long settled Fourth Amendment jurisprudence.¹¹⁵ No other case had even intimated that a search might be permissible in the absence of knowledge by the searching officer.¹¹⁶

The dissent drew on two parole cases cited by the majority that have prohibited reliance on a search condition of which the officer is unaware, *In re Martinez*¹¹⁷ and *People v. Gallegos*.¹¹⁸ Although the dissent recognized that *Martinez* and *Gallegos* both involved adult parolees and not probationers, it reasoned that for purposes of the Fourth Amendment, there are no significant differences between

106. *Id.* The cases are *In re Martinez*, 463 P.2d 734 (Cal. 1970), and *People v. Gallegos*, 397 P.2d 174 (Cal. 1964).

107. *Id.* at 531.

108. *Id.* at 532.

109. *Id.* at 531-32.

110. *Id.* at 532 (Kennard, J., dissenting).

111. *Id.* at 533-34.

112. *Id.* at 533.

113. *Id.*

114. *Id.* at 534.

115. *Id.*

116. *Id.*

117. 463 P.2d 734 (Cal. 1970).

118. 397 P.2d 174 (Cal. 1964).

search conditions imposed on juvenile probationers and those imposed on adult parolees.¹¹⁹

Therefore, because the court previously had required knowledge of a search condition prior to searching a parolee, the dissent reasoned that the court should require the same "prior knowledge" with relation to searches of juvenile probationers.¹²⁰

III. Analysis

A. The Good, The Bad, and The Ugly: an Analysis of the Court's Reasoning in *Tyrell*

In *In re Tyrell J.*,¹²¹ the California Supreme Court quickly revealed its position on Fourth Amendment protections for juvenile probationers; basically, the court ruled that there are none. In a seemingly result-oriented opinion, the court evinced both a disregard for precedent and the Fourth Amendment. A clear reading of the court's opinion in *Tyrell* reveals that the majority considered the search of Tyrell reasonable. In scrambling to find a rationale for their resolution, the court had to distinguish unfavorable United States and California Supreme Court precedent.¹²²

1. United States Supreme Court Precedent: The Griffin Debacle

Despite the majority's urging otherwise, whether an officer must have prior knowledge of a probationer's search condition is governed by the only United States Supreme Court decision that addresses the issue of probation search conditions, *Griffin v. Wisconsin*.¹²³

While *Griffin* upheld warrantless searches of a probationer, the decision in *Griffin* was clearly driven by the relationship between the probationer, the probation officer, and the "special needs" of the probation system.

The majority in *Tyrell* relied on the fact that none of the safeguards or special relationships present in *Griffin* were present in *Tyrell*, and it concluded on this basis that *Griffin* was not "directly on point."¹²⁴ However, a fair reading of the rationale in *Griffin* indicates that the differences between the two factual situations should *compel* a finding that the search of the minor in *Tyrell* was unconstitutional.¹²⁵

119. *Tyrell*, 876 P.2d at 536 (Kennard, J., dissenting).

120. *Id.*

121. 876 P.2d 519 (Cal. 1994).

122. *Id.* The cases are *Griffin v. Wisconsin*, 483 U.S. 868 (1987), *In re Martinez*, 463 P.2d 734 (Cal. 1970), and *People v. Gallegos*, 397 P.2d 174 (Cal. 1964).

123. 483 U.S. 868 (1987).

124. *Tyrell*, 876 P.2d at 524.

125. *Id.* at 533-34 (Kennard, J., dissenting).

The factors noted by the *Tyrell* court as distinguishing *Griffin* are as follows: in *Griffin* a state regulation mandated the search condition, supervisory approval was required prior to the search, the search was effectuated by a probation officer, reasonable cause supported the search decision, and, accordingly, the searching officer had knowledge of the probation condition.¹²⁶ In at least five separate statements in its opinion, the *Griffin* Court emphasized that it was only *because* of these factors that the search was permissible.

In fact, the *Griffin* Court expressly stated that the probation officer is *not* an ordinary police officer.¹²⁷ The relationship between the probation officer and the probationer is one that is not, or at least not entirely, adversarial.¹²⁸ Rather, in addition to protecting the public interest, the probation officer has the welfare of the probationer in mind.¹²⁹ This, coupled with all of the other safeguards, made the intrusion upon the probationer's Fourth Amendment rights permissible.¹³⁰

In distinguishing on these bases, the *Tyrell* majority disregarded the strong intimation by the United States Supreme Court that the result in *Griffin* would have been different if the search had been conducted by a police officer and in the absence of the other safeguards.¹³¹ What *Tyrell* seems to represent is a weak attempt by the majority to distinguish unfavorable, controlling authority.

That the majority in *Tyrell* seeks to ignore the applicability of *Griffin* to the facts at hand is further evidence that the desired result in *Tyrell* was driving the rationale. The *Tyrell* court's contention that "there is . . . no United States Supreme Court decision that *directly upholds the constitutionality* of [the officer's] search of the minor in this case," is accurate.¹³² The *Griffin* reasoning would not uphold the constitutionality of the search in this case; it would require instead that the search be held unconstitutional and that the evidence be suppressed. Therefore, the majority had to look elsewhere for support.

2. *Bravo, Martinez, and Gallegos: the Applicability of Consent*

In its discussion of the relevance of consent, the majority addressed and dismissed *People v. Bravo*,¹³³ the lead California case on probation searches. Later in its opinion, almost as an afterthought,

126. *Id.* at 524.

127. *Griffin*, 483 U.S. at 876.

128. *Id.* at 879.

129. *Id.* at 876.

130. *Id.* (the safeguards include a requirement of reasonable suspicion, prior supervisory approval, and effectuation of the search by a probation official, to name a few).

131. *Id.* at 878-79.

132. *Tyrell*, 876 P.2d at 524 (emphasis added).

133. 738 P.2d 336 (Cal. 1987).

the majority addressed *People v. Gallegos*¹³⁴ and *In re Martinez*,¹³⁵ two parole cases that should properly be included in the majority's discussion of consent. That the majority declined to deal with *Gallegos* and *Martinez* in their proper context is additional evidence of the majority's result-oriented approach.

a. *People v. Bravo*

The majority dealt with *Bravo* in the same conclusory fashion that it dealt with *Griffin*,

[b]ecause a minor has no choice whether or not to accept a condition of probation that subjects him to a warrantless search, we cannot find that he consented to the condition. Consequently, it would be improper to resolve the issue in this case by simple reliance on the "advance consent" rationale in *Bravo*.¹³⁶

The only "impropriety" in the application of *Bravo* is that a fair reading of *Bravo* would deny the majority their desired result.¹³⁷

The majority appropriately observed that adult probationers and juvenile probationers are different under the "consent" rationale set forth in *Bravo*.¹³⁸ Because of the voluntary consent by the adult probationer to the search condition of probation, the adult probationer can only complain if the search is conducted for harassment or in an unreasonable manner.¹³⁹ In *Bravo*, it is the acceptance of probation by the adult probationer that constitutes "consent" and permits the Fourth Amendment intrusion.¹⁴⁰ However, the *Bravo* court made it clear that "searches of probationers may [not] be conducted for reasons unrelated to the rehabilitative and reformatory purposes of probation or other legitimate law enforcement purposes."¹⁴¹

The majority is correct that Tyrell did not consent to probation and, therefore, is not similarly situated to the adult probationer in *Bravo*.¹⁴² The majority, however, completely ignores the discussion of adult parolees in *Bravo*. Like juvenile probationers, adult parolees do not "consent" to the imposition of parole; rather, it is imposed on them.¹⁴³ And the court in *Bravo* made it unequivocally clear that

134. 397 P.2d 174 (Cal. 1964).

135. 463 P.2d 734 (Cal. 1970).

136. *Tyrell*, 876 P.2d at 527, (citing *Bravo*, 738 P.2d at 336).

137. This is not to imply that the police should be able to validate illegal searches of adult probationers. However, it is ironic that the juvenile, who in no way consents to the imposition of probation, is provided less Fourth Amendment protection than the adult who gives "broad" consent.

138. *Id.* at 527.

139. *Bravo*, 738 P.2d at 340.

140. *Id.*

141. *Id.* at 342.

142. *Tyrell*, 876 P.2d at 526-27.

143. *Bravo*, 738 P.2d at 341.

“consent” was the key distinction between the adult probationer and the adult parolee.¹⁴⁴ It was the “consent” that made broad impingement on the rights of the adult probationer permissible and the absence of “consent” that provided the parolee with greater Fourth Amendment protection.

The majority in *Tyrell* identifies no compelling reason to treat juvenile probationers differently than adult parolees with respect to their search conditions. However, if the majority were to recognize this position as valid, they would have to concede that *Martinez* and *Gallegos* control the question of whether in the juvenile context the officer must have knowledge of the search condition prior to the search.¹⁴⁵

Thus, the *Tyrell* majority is unwilling to recognize the parallels between the adult parolee and the juvenile probationer because under *Gallegos* and *Martinez*, it is long settled in the parole context that *the officer must have knowledge of the search condition prior to the search.*

b. *People v. Gallegos*

The majority in *Tyrell* differentiated *Gallegos* in the same dubious fashion as it differentiated *Griffin*. The majority observed that the searching officer in *Tyrell* was unaware of the search condition prior to *Tyrell*'s search, unlike the searching officer in *Gallegos*.¹⁴⁶ Based on this distinction, the *Tyrell* court concluded that *Gallegos* is inapplicable to the case at hand.¹⁴⁷ However, the majority overlooks that the court in *Gallegos* did not state merely that knowledge was required, but rather that knowledge was not enough.¹⁴⁸

The *Gallegos* court reasoned that even though the searching officer was aware of the search condition of parole at the time of the search, because the officer was not acting pursuant to the authority granted by the search condition, the subsequent search was invalid.¹⁴⁹ More specifically, since the officer was acting pursuant to his general law enforcement duties and not for purposes related to *Gallegos*' parole status,¹⁵⁰ the officer could not rely on the search condition of *which he was aware* to validate an otherwise illegal search.¹⁵¹

144. *Bravo*, 738 P.2d at 340-41.

145. *See also* *People v. Gastelum*, 46 Cal. Rptr. 743 (Cal. Ct. App. 1965).

146. *Tyrell*, 876 P.2d at 531.

147. *Id.*

148. *Gallegos*, 397 P.2d at 174-76.

149. *Id.*

150. As *Griffin* makes clear, in order to be subjected to a lesser standard of suspicion, the search of the probationer must be for purposes related to the “special needs” of the probation system. *Griffin*, 483 U.S. at 875.

151. *Gallegos*, 397 P.2d at 174-76.

The *Tyrell* majority seems somewhat perplexed by this holding. Considering their misapplication of *Griffin* however, their discomfort with *Gallegos* likely is genuine. In *Gallegos*, it was clear that the officer was not acting in any supervisory capacity, but rather, for general law enforcement purposes.¹⁵² Therefore, the *Gallegos* court properly reasoned, foreshadowing the United States Supreme Court's holding in *Griffin* over twenty years later, that where no special needs are present, impingement upon *Gallegos*' Fourth Amendment rights was impermissible.¹⁵³

The majority's handling of *Martinez* also is unjustifiable. The *Martinez* court was unequivocal in requiring knowledge by the police officer prior to the search:

[R]egular police officers undertook the search pursuant to their general law enforcement duties; the officers, at the time of the search, did not even know of defendant's parole status. The investigation involved suspected criminal activity, not parole violations. Under these circumstances the officers cannot undertake a search without probable cause and then later seek to justify their actions by relying on defendant's parole status, a status of which they were unaware at the time of their search.¹⁵⁴

In its attempt to avoid the plain meaning of *Martinez* the majority makes two assertions: (1) the language regarding the officer's knowledge was not strictly necessary to the holding of the case,¹⁵⁵ and (2) even if it was necessary, the opinion did not discuss how *Martinez* could have a reasonable expectation of privacy in his house when he knew he could be searched at any time.¹⁵⁶ Both of these assertions are incorrect.

The language regarding the officer's knowledge *was* strictly necessary to the holding of the case. The *Martinez* court specifically stated that one of the issues to be decided was whether the "Adult Authority, in exercising its broad authority over the parole system and parolees, [could] properly consider evidence which has been obtained by government officials . . . as a result of an unconstitutional search and seizure . . ." ¹⁵⁷ Further, the court stated that it was required to face the issue directly because "from the facts as related . . . the police authorities, in obtaining the extrinsic evidence . . . did indeed violate the defendant-parolee's Fourth . . . Amendment constitutional rights."¹⁵⁸

152. *Id.*

153. *Id.*

154. *Martinez*, 463 P.2d at 737.

155. *Tyrell*, 876 P.2d at 530-31.

156. *Id.*

157. *Martinez*, 463 P.2d at 737.

158. *Id.*

The second assertion by the majority, that the opinion does not discuss how the parolee in *Martinez* could have a reasonable expectation of privacy in light of his search condition,¹⁵⁹ also is incorrect. The *Martinez* court states: “[a]lthough past cases have sometimes declared that a parolee is in ‘constructive custody’ . . . [this] cannot change the reality of a parolee’s conditional freedom and cannot affect the constitutional protections surrounding his interest in that conditional freedom.”¹⁶⁰ Accordingly, the court asserted that like other administrative searches, searches by parole officers pursuant to their duties are subject to the broad reasonableness requirement of the Fourth Amendment.¹⁶¹ The *Martinez* court went on to specifically address the issue of the parolee’s reasonable expectation of privacy.

The conditional nature of a parolee’s freedom may result in some diminution of his reasonable expectation of privacy A diminution of Fourth Amendment protection, however, can be justified only to the extent actually necessitated by the legitimate demands of the operation of the parole process. When a police officer is not aware that a suspect is on parole, or is not investigating a parole violation, an intrusion into the parolee’s privacy cannot be properly justified by the needs of the parole system.¹⁶²

In fact, the *Martinez* court disapproved of a case¹⁶³ that suggested that a parolee is without any constitutional protection against unreasonable searches and seizures.¹⁶⁴

Although *Martinez* and *Gallegos* were decided many years prior to the United States Supreme Court decision in *Griffin*, it is clear that they represent the seeds of the “special needs” argument articulated in *Griffin*.

What is curious about the discussion by the *Tyrell* majority regarding *Martinez* and *Gallegos* is the fact that they are parole cases. The majority could simply have observed this distinction—*Tyrell* is a juvenile probationer and *Gallegos* and *Martinez* involve adult parolees. The majority had observed similarly meaningless distinctions in its differentiation of *Griffin*. However, as even this majority must have recognized, and as the dissent correctly concluded, there are no significant differences between juvenile probationers and adult parolees for Fourth Amendment purposes.¹⁶⁵ Therefore, since the majority could not find a means to distinguish between the juvenile proba-

159. *Tyrell*, 876 P.2d at 531.

160. *Martinez*, 463 P.2d at 737-38 (citing *Rose v. Haskins*, 388 F.2d 91, 98 n.2 (6th Cir. 1968) (Celebrezze, J., dissenting)).

161. *Id.* at 738 n.6.

162. *Id.* (citations omitted).

163. *People v. Goss*, 14 Cal. Rptr. 569, 571 (Cal. Ct. App. 1961).

164. *Martinez*, 463 P.2d at 738 n.5.

165. *Tyrell*, 876 P.2d at 536 (Kennard, J., dissenting).

tioner and the adult parolee, it instead trampled over twenty years of California Supreme Court precedent to achieve the result it desired. The majority simply acknowledges that juvenile probationers are not similarly situated to adult probationers and proceeded with an analysis of the probationer's reasonable expectation of privacy under *California v. Ciraolo*.¹⁶⁶

Why the *Tyrell* majority decided that it must reject a knowledge first requirement despite the contrary authority is unknown. It seems apparent, however, that the majority felt the search of *Tyrell* was reasonable. Therefore, instead of looking first to case law for the answer, the majority seems to have decided the answer first and worked backward. From that perspective, it is not surprising that the majority had to rely on *Ciraolo* to support its opinion. *Ciraolo* provides the most subjective test and, thus, gives the court the most leeway in supporting its conclusion. Even under *Ciraolo*, however, the court's analysis is sparse.

While purporting to rely on *Marcellus*¹⁶⁷ and *Binh* to show the minor lacked an objectively reasonable expectation of privacy, the majority never actually analyzed or applied the facts and reasoning underlying *Marcellus* and *Binh* to the facts in *Tyrell*. Instead, the majority merely adopted the conclusion in these cases as the analysis for its position.¹⁶⁸ The majority never actually analyzed why *Tyrell* had no reasonable expectation of privacy; it merely concluded that he did not. The reasoning is circular—*Tyrell*'s expectation of privacy is unreasonable because society is unwilling to recognize it as legitimate. The majority's conclusion is not based on its belief that society would not recognize as reasonable the privacy interests of juvenile probationers. Its perception of what society is prepared to recognize as reasonable is not based on any empirical data; rather it merely reflects the perception of the four Justices who joined the opinion of the Chief Justice.

The majority's misplaced reliance on *Hudson* and *Skinner* as "examples" only reinforces the impression that the majority is searching for a rationale to support its conclusion. The United States Supreme Court made extensive findings in both *Hudson* and *Skinner* regarding why society found the expectation of privacy unreasonable. The thrust of *Hudson* was that society was not prepared to recognize a prison cell as a place that cannot be invaded.¹⁶⁹ The relationship between a person's expectation of privacy in a prison cell while incarcer-

166. 476 U.S. 207 (1986).

167. *In re Marcellus L.*, 279 Cal. Rptr. 901 (Cal. Ct. App. 1991).

168. *Tyrell*, 876 P.2d at 528.

169. *Hudson*, 468 U.S. at 527-28.

ated and a person's expectation of privacy while out of custody certainly is very weak.

Likewise, the decision in *Skinner* offers little support. In *Skinner*, both the circumstances justifying the drug testing and the permissible limits of such testing were defined narrowly and specifically in the regulations that authorized them, and were likely known to covered employees.¹⁷⁰ Further, minimal discretion was vested in those charged with administering the program.¹⁷¹

Instead, the majority in *Tyrell* focused on the minor's unreasonable expectation of privacy in the marijuana.¹⁷² However, it is the place to be searched, not the item recovered, that must drive this inquiry. One could only imagine what would remain of the Fourth Amendment under a constitutional inquiry that provided otherwise. The inquiry is not whether society is prepared to recognize the possession of marijuana as legitimate, but rather, whether the Tyrell's crotch should be afforded some privacy.¹⁷³

In its conclusion the majority maintained that the deterrent effect of the search condition would be "severely eroded if police officers were required to learn the names and memorize the faces of the dozens and perhaps hundreds of juvenile probationers in their jurisdiction."¹⁷⁴ However, the majority fails to articulate exactly how the deterrent effect of a search clause would be severely eroded. Instead, the majority's simple conclusion is without analysis or explanation. As the dissent notes, this position is insupportable,

[t]o the extent that a minor subject to a probationary 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.¹⁷⁵

Interestingly, the majority does concede that knowledge of a search condition is not "undesirable," and that "advance knowledge helps ensure that the resulting search is not conducted 'for reasons unrelated to the rehabilitative and reformatory purposes of probation or other legitimate law enforcement purposes.'"¹⁷⁶ It is curious then

170. *Skinner*, 489 U.S. at 622.

171. *Id.*

172. *Tyrell*, 876 P.2d at 532.

173. The dissent's treatment of the reasonable expectation of privacy inquiry is notable in the sense that it does not discuss the issues in the context of *Ciraolo* to any degree. Presumably it did not reach the argument on which the majority rested its opinion because, in its view, *Griffin* controlled the case.

174. *Tyrell*, 876 P.2d at 530.

175. *Id.* at 537 (Kennard, J., dissenting).

176. *Id.* at 530, (citing *Bravo*, 738 P.2d at 342).

on what basis the majority relies. The majority does not “suggest that [the officer] was harassing the minor merely because he lacked probable cause to search him. Nor can [it] say on this record that the search was arbitrary or capricious.”¹⁷⁷

While the majority stated what was *not* the officer’s purpose in searching Tyrell, the majority never actually stated exactly what the officer’s purpose was. The officer certainly was not conducting the search for the “rehabilitative and reformatory purposes of probation,” because the officer was completely unaware of the minor’s probationary status. Nor can the officer claim any “legitimate law enforcement purpose,” since an illegal search presumably does not constitute a “legitimate law enforcement purpose.”

The majority concludes with the suggestion that dispensing with the “knowledge” requirement is “consistent with the primary purpose of the Fourth Amendment exclusionary rule.”¹⁷⁸ Since the officer was unaware of the search condition, he took a chance that the search was improper and, therefore, that the fruits of that search would be subject to the exclusionary rule. “Thus, under our interpretation, law enforcement officers still have a sufficient incentive to try to avoid improperly invading a person’s privacy . . . [O]ur reluctance to adopt a strict ‘knowledge-first’ rule for juvenile probation search conditions will not encourage police to engage in warrantless searches.”¹⁷⁹

Quite to the contrary, however, introducing an element of chance into the equation only will encourage police officers to gamble. In its discussion of *Binh*, for example, the majority omits the fact that there was a *group* of minors in the car. The officer searched all of them twice before he was rewarded by the discovery of contraband on Binh.¹⁸⁰ Thus it is not accurate to suggest that the only people affected by an improper search are the ones on whom contraband is discovered. This position ignores the dignity as well as the privacy rights of other minors in the car. As the dissent correctly observed, “[t]oday’s holding offers police officers an incentive to search any juvenile despite the lack of probable cause and a warrant, for if it later turns out that the juvenile has a probation search condition, the fruits of the search will be admissible in court.”¹⁸¹

IV. Conclusion

The California Supreme Court opinion in *In re Tyrell J.* represents a “startling departure from settled principles underlying the

177. *Id.*

178. *Id.* at 531.

179. *Id.* at 531-32.

180. *In re Binh L.*, 6 Cal. Rptr. 678, 680 (Cal. Ct. App. 1992).

181. *Tyrell*, 876 P.2d at 537 (Kennard, J., dissenting).

Fourth Amendment”¹⁸² The holding of *Tyrell* is insupportable and is contrary to the principles articulated by the United States Supreme Court in *Griffin v. Wisconsin*¹⁸³ and the precedent of the California Supreme Court in *People v. Bravo*¹⁸⁴ and *In re Martinez*.¹⁸⁵

The decision in *Tyrell* only will encourage fishing expeditions by police officers and validate the “end justifies the means” type of law enforcement which was expressly prohibited by the United States Supreme Court in *Terry v. Ohio*.¹⁸⁶ A search cannot be justified by what it discovers. In making the assessment of constitutional reasonableness “it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?”¹⁸⁷

The decision in *In re Tyrell J.* not only renders the Fourth Amendment a nullity for many members of the population, it may be the beginning of a trend that allows government agents to act first and look for justification later. As Justice Jackson once observed, “[t]here may be, and I am convinced that there are, many unlawful searches . . . of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing, and about which we never hear.”¹⁸⁸ After the court’s decision in *Tyrell*, there are sure to be more.

182. *Id.* at 532 (Kennard, J., dissenting).

183. 483 U.S. 868 (1987).

184. 738 P.2d 336 (Cal. 1987).

185. 463 P.2d 734 (Cal. 1970).

186. 392 U.S. 1, 21-22 (1968).

187. *Id.*

188. *Brinegar v. U.S.*, 338 U.S. 160, 181 (1949) (Jackson, J., dissenting).