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9 **SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF MERCED**

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12 PEOPLE OF THE STATE OF CALIFORNIA, ) Case No.: MF48336B  
13 )  
14 Plaintiff, ) **SUPPLEMENTARY POINTS AND**  
15 vs. ) **AUTHORITIES IN SUPPORT OF CURIUM**  
16 Curium Hurley, ) **HURLEY'S MOTION TO SUPPRESS**  
17 Defendant. ) **EVIDENCE**

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19 TO THE HONORABLE JUDGE OF THE ABOVE-ENTITLED COURT, AND TO LARRY  
20 MORSE, DISTRICT ATTORNEY FOR THE COUNTY OF FRESNO, AND TO MATTHEW  
21 MARTINEZ, DEPUTY DISTRICT ATTORNEY:

22 Defendant Curium Hurley, by and through her attorney of record Hayden Smith, respectfully  
23 submits the following Supplementary Points and Authorities in Support of Motion to Suppress.

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**QUESTION PRESENTED:**

Q: When a probationer has been seen at a residence other than his reported residence and admits to being "an occasional overnight visitor" there, is there probable cause to believe that the probationer resides at the residence such that the residence may be searched without a warrant?

A: No. When police know that a probationer is an occasional overnight visitor at a residence not reported to probation, they may not conduct a warrantless search of the premises without a further showing. The 4th Amendment interests of the actual resident demand that the police pursue the question with diligence. At the very least, here, the police should have attempted to locate the probationer at his reported residence and conducted more surveillance on the residence searched, and the probation officer contacted.

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**I.**  
**INTRODUCTION**

Curium Hurley is charged with possession for sale of ecstasy. The charges stem from a 2008 warrantless search of the residence she shared with her sister Corrine Hurley at 365 Brittany Way.

**II.**  
**TESTIMONY FROM PRELIMINARY HEARING**

After receiving an anonymous tip, police instituted surveillance at 365 Brittany Way. Johnson watched the residence twice. On one occasion, he saw Deion Perry pull into the residence's driveway, open the attached garage door, and park his car inside.

Officer Paul Johnson, the lone witness called by the prosecution testified that when he arrived on-scene, Curium Hurley and Deion Perry were detained (by other officers) outside of the locked residence. Johnson asked Perry and Hurley whether Perry was residing at the house, and was told that by both that Perry was no more than an occasional visitor.

Johnson asked Hurley for permission to search the residence for evidence of Perry's residence there. Hurley rebuffed Johnson, asserting that he would have to get a search warrant.

1 Johnson nevertheless entered 365 Brittany Way and searched the master-bedroom belonging to  
2 Hurley. On the floor, he found articles of male clothing. In the closet, which Johnson opened, he found a  
3 bag of pills.

4 The pills were later analyzed and found to contain Ecstasy.

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6 On-cross examination, Johnson admitted that he never attempted to determine whether Perry was  
7 living at his reported address. He never went to the address to see if Perry was there and never contacted  
8 Perry's probation officer to see whether he knew where Perry abode.  
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12 **III**  
13 **ARGUMENT**  
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16 **CANVASSING THE PRECEDENT: *Howard* : SEARCH THROWN OUT FOR WANT OF PC**

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18 In *US v Howard* , 447 F.3d 1257; 2006 U.S. App. LEXIS 13002, the search of an address not  
19 reported by a probationer was thrown out for want of probable cause.

20 Howard was convicted of bank robbery in 1996. On April 14, 2003, he was placed on supervised  
21 release, and Probation Officer Robert Aquino was assigned to monitor him. Howard's release was  
22 subject to a number of conditions, including a search clause allowing the warrantless search of his  
23 residence, person, property, and automobile at any time to ensure that he was complying with the  
24 conditions of his supervised release and that he not associate with any persons engaged in criminal  
25 activity or convicted of a felony. Howard reported to Aquino that his current residence was at 4879 East  
26 Owens in Las Vegas.  
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1 Howard met Tammi Barner on a bus, and the two started having a relationship. On May 14,  
2 2003, Barner met with Aquino to request permission to continue her relationship with Howard. Barner  
3 was a seven-time convicted felon, was on state probation, and was recovering from an addiction to  
4 cocaine. Since the conditions of Howard's supervised release prevented him from associating with  
5 known felons and Aquino and his supervisor determined that the relationship was not conducive to  
6 Howard's rehabilitation, he informed Barner and Howard that they would have to terminate their  
7 relationship. Howard agreed that he would terminate his relationship with Barner.  
8

9 On February 3, 2004, a confidential informant called Aquino. The CI identified himself or  
10 herself, claimed to know Howard, and told Aquino that Howard was staying at an apartment on 2221  
11 West Bonanza and that Howard had a firearm hidden there. Tammi Barner had previously told Aquino  
12 that she lived at 2221 West Bonanza in apartment 49. However, there are well over a hundred  
13 apartments in the West Bonanza complex, spread over three buildings; the CI did not know in which  
14 apartment, or even in which building, the gun was hidden. The CI also stated that he or she had not seen  
15 Howard for at least two weeks, and denied having any motive to lie. Aquino drove out to investigate at  
16 eight o'clock that evening, but he did not observe Howard's car at either the East Owens or the West  
17 Bonanza residence. The CI also mentioned a local tavern where the CI claimed Howard had spent time.  
18 Aquino drove by the tavern the following day, but did not see Howard's car there. Aquino did not  
19 otherwise attempt to verify the CI's information with anyone else.  
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22 The day after he received the CI's call, Aquino returned to the 2221 West Bonanza apartment  
23 complex and spoke with Bob, a manager there. Aquino showed Bob a picture of Howard, and Bob  
24 confirmed that he had seen Howard in the complex before. He also stated that he had seen a vehicle  
25 parked in the complex that matched the description of Howard's vehicle. Manager Bob directed Aquino  
26 to speak with Curtis Sanders, the president of the complex's condominium owner's association. Officer  
27 Aquino then spoke to Mr. Sanders, who confirmed that he had also seen Howard in the apartment  
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1 complex. Mr. Sanders also suggested that Howard had been there visiting Tammi Barner. Aquino then  
2 spoke by phone with Jim Jacobs, the owner of Barner's condominium. Jacobs confirmed that Tammi  
3 Barner was the legal occupant of apartment 49, and that he had contact with someone who, based on  
4 Aquino's description over the phone, might have been Howard.

5 Aquino was now concerned that Howard was not abiding by the terms of his supervised release,  
6 and that he might be using the West Bonanza residence, which Howard had not reported to Aquino, to  
7 engage in criminal activity. This concern was heightened by the fact that, during the course of his  
8 supervision, Aquino made ten visits to Howard at his East Owens address at early morning hours and  
9 only found him there twice. Aquino had chosen to make early morning visits because, based on his  
10 knowledge of Howard's work schedule, he concluded that this was the time at which Aquino was most  
11 likely to find Howard in his home.  
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14 Prior to receiving the tip from the CI, however, Aquino had not been concerned that Howard was  
15 living elsewhere. Aquino knew that a high percentage of his visits to his supervisees were unsuccessful,  
16 and Aquino had seen Howard at the East Owens residence on his most recent surprise visit. At that time,  
17 the residence appeared as if Howard was still living there; there were pictures on the walls and there  
18 were clothes and furniture in the house. Aquino also knew that one reason he might not have seen  
19 Howard more frequently on his surprise visits was because Howard's work schedule was subject to  
20 change, and that Howard was not obligated to report changes in his work schedule to him. Moreover, on  
21 three of Aquino's attempted visits to Howard at the East Owens residence, Aquino had spoken with one  
22 of Howard's neighbors, who confirmed that Howard was still living there. On one occasion, the neighbor  
23 told Aquino that he had just missed Howard; another time, he said that Howard was a very quiet guy.  
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26 After his visit to the West Bonanza complex, Aquino contacted local police to determine whether  
27 Howard was the subject of any investigations. Because Howard's file indicated that he was previously a  
28 member of the Bloods gang, Aquino spoke to the Las Vegas Metropolitan Police Department Gang

1 Unit. He also contacted the Repeat Offender Enforcement Squad. Neither group had any further  
2 investigations against Howard or information about his activities, but both groups said they would  
3 contact Aquino if they received any information implicating Howard's involvement in criminal activity.

4 An officer with the Gang Unit later called Aquino to inform him that a reliable confidential juvenile  
5 informant had reported that Howard was a gun dealer and that he might possibly be among the leaders  
6 of the West Coast Bloods.  
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8 On February 7, 2004, the CI called Aquino again at approximately 4:30 a.m. and informed him  
9 that Howard's vehicle was at the West Bonanza address. Aquino then drove to the West Bonanza  
10 address and observed Howard's vehicle there at roughly 5:00 a.m., parked in the lot right below  
11 apartment 49.  
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13 Meanwhile, in response to the information that Aquino had received from the Gang Unit, he  
14 enlisted the help of other law enforcement to surveil Howard, both at the West Bonanza residence and at  
15 the East Owens residence. Surveillance began on February 10; as of February 20, Aquino affirmatively  
16 knew that police had not seen Howard at the West Bonanza residence. Surveillance continued for  
17 roughly two weeks, until roughly March 8; Aquino did not receive any reports from the surveilling  
18 officers stating that Howard had been observed at the West Bonanza residence at this time, but he did  
19 not know for certain whether Howard had been observed there. On March 17th, Aquino returned to the  
20 leasing office at West Bonanza to ask whether the leasing agent had seen Howard in the complex. The  
21 agent told Aquino that he had not seen Howard there in at least a week and a half.  
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23 Aquino then secured an order from the probation department to search both the West Bonanza  
24 and the East Owens residences. He arrived at the East Owens complex at 6:00 a.m. on March 30, more  
25 than seven weeks after surveillance began, but he did not see Howard's car in the parking lot. He then  
26 proceeded to the West Bonanza complex, where he observed Howard's car parked below Barner's  
27 apartment at roughly 6:30 a.m. Aquino remained in his car and watched the West Bonanza apartment  
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1 until the rest of the search team arrived, which was between 7:45 and 8:00 a.m. While Aquino watched  
2 the apartment, he saw Howard come out and stand in the doorway with no shirt on. Howard stood in the  
3 doorway and stretched for approximately ten or fifteen minutes, then returned to the apartment, shutting  
4 the door behind him.

5           Howard and Barner subsequently left the West Bonanza apartment and began walking in  
6 different directions. After they had separated, Aquino and another member of the search team  
7 confronted Barner, while other officers detained Howard. The officers told Barner that they were going  
8 to conduct a search of her apartment based on Howard's presence there. Barner stated that Howard did  
9 not live in the West Bonanza residence and that he did not have a key, and she refused to consent to a  
10 search of the apartment. Aquino and the other officer then brought Barner over to where Howard was  
11 being held. En route, Barner continued to insist that Howard did not live at the West Bonanza apartment,  
12 but acknowledged that he had a few personal belongings, such as some clothing, in her apartment.

13           Meanwhile, out of concern for officer safety, Howard had been handcuffed by other members of  
14 the search team, who had also read him his *Miranda* rights. Aquino informed Howard that the West  
15 Bonanza apartment was going to be searched. Howard admitted that he had stayed at the West Bonanza  
16 apartment before, but denied living there and told officers that he did not have a key to the apartment.  
17 After again denying officers permission to enter her apartment, a furious Barner was given permission to  
18 leave the scene, and did so. The officers took Howard's keys and attempted to use them to gain entry to  
19 the search site, but none of Howard's keys fit the lock on the West Bonanza apartment.

20           Jim Jacobs, the owner of Barner's apartment, then approached the officers and offered to use his  
21 keys to let them into her apartment. Aquino was also approached by another resident of the complex,  
22 who stated that she had seen Howard there "at least eighty to ninety percent of the time." Jacobs then let  
23 the officers into the apartment; they conducted a search and found a gun in a closet, wrapped in a hat.  
24 Howard acknowledged that the gun was his. The only other items belonging to Howard that were found  
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1 in the West Bonanza residence were Aquino's business card, found next to an alarm clock in the  
2 bedroom, and a prescription with Howard's name on it.

3 After his indictment in May 2004, Howard challenged the constitutionality of the police search.  
4 He also sought to suppress the incriminating statements he made after the search (i.e., admitting the gun  
5 was his) as fruit of the poisoned tree. Following an evidentiary hearing, the magistrate entered findings  
6 and recommendations concluding that the search was constitutional and the incriminating statements  
7 were voluntary. The district court adopted these findings and recommendations. Howard subsequently  
8 entered a conditional plea of guilty to charges that he had knowingly received a stolen firearm while  
9 reserving the right to appeal the validity of his probation search. Howard was sentenced to 120 months  
10 followed by a term of supervised release of three years. His appeal followed.

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13 The Ninth Circuit reviewed the evidence in the hands of the police and reversed the district court  
14 ruling that it was sufficient to establish probable cause. "We have," said the *Howard* Court," applied a  
15 relatively stringent standard in determining what constitutes probable cause that a residence belongs to a  
16 person on supervised release. **It is insufficient to show that the parolee may have spent the night**  
17 **there occasionally.** Instead, the facts known to the officers at the time of the search must have been  
18 sufficient to support a belief, in "a man of reasonable caution," that Howard lived at 2221 West  
19 Bonanza. *Texas v. Brown*, 460 U.S. 730, 742, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983) (internal  
20 quotation omitted); *Dawson v. City of Seattle*, 435 F.3d 1054, 1062 (9th Cir. 2006); *see also Illinois v.*  
21 *Gates*, 462 U.S. 213, 238, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). **This is a higher standard than a**  
22 **mere well-founded suspicion.** *See United States v. Martell*, 654 F.2d 1356, 1358 (9th Cir. 1981).  
23 (Emphasis added)." *Id. at 1262*.

1 **Dally: SEARCH UPHELD**

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3 The *Howard* Court addressed previous cases on the same issue. In *US v Dally 606 F.2d 861;*  
4 *1979 U.S. App. LEXIS 11420* , the police had strong evidence to conclude that Holiday was living with  
5 Dally. For starters, a federal agent who was also investigating Holiday had told Holiday's parole officer  
6 that he was living there. The police then conducted surveillance, during which they photographed  
7 Holiday taking out the trash, bringing in his laundry, and chatting with the neighbors. Officers returned  
8 a week later to find Holiday's car parked near the house with fogged windows, indicating it had been  
9 parked overnight; Holiday left the house the next morning, driving in a different car that had also been  
10 parked there overnight. He returned with dry cleaning, changed his clothes, and left the house again,  
11 carrying laundry. He later returned with more dry cleaning, and officers observed him use a key to open  
12 the door. Holiday had also failed to return a message left for him at his reported address. We upheld the  
13 search of the residence, finding that these facts were sufficient to establish probable cause.  
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17 **HARPER: SEARCH UPHELD, JUST BARELY**

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19 In *U.S. v Harper, 928 F.2d 894; 1991 U.S. App. LEXIS 4688,* an arrest warrant had been issued  
20 for parolee David Harper, but his parole officer did not have a current address for him and could not  
21 locate him. A tip focused the police's attention on 10 Manzanita, where Harper's brothers lived. After  
22 some surveillance, Harper's parole officer executed the warrant by entering the 10 Manzanita residence  
23 and arresting him. However, the warrant only authorized the police to enter the residence of David  
24 Harper; it did not authorize entry into his brothers' residence. Therefore, the arrest was lawful only if the  
25 police had probable cause to believe that he lived at 10 Manzanita. The *Harper* Court wrote that:  
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1 Here, the police knew that the home at 10 Manzanita was leased to the Harper family and  
2 that Tommy and James Harper, two of David's brothers, lived there; an uncorroborated  
3 source had informed them that David lived there as well. Through intermittent  
4 surveillance, the police observed David entering the home with his own key once or  
5 twice during a three day period. The police also knew that David had lived with his  
6 family at another address immediately before he was incarcerated, suggesting that he had  
7 no independent residence and would resume living with them upon his release. In  
8 addition, the police saw cars belonging to known associates of David's parked at the  
9 Harper family home. **This information was sufficient to give the police probable cause  
10 to believe that David resided there--but just barely.** It would have been far more  
11 prudent for the police to have obtained a search warrant. (*Emphasis added.*) *Id.* at 896.

### 8 ***Watts*: SEARCH UPHELD**

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11 In *Watts v. County of Sacramento (Watts II)*, 256 F.3d 886 (9th Cir. 2001), officers searched the  
12 house of Sonia Lee on the basis that probationer Watts was residing in the house with her. The Ninth  
13 Circuit again found that the police had probable cause to believe that Watts lived with Lee, but only on  
14 very strong facts. In weekly visits to Watts's reported address, Watts's parole officer had located Watts  
15 there only once in fourteen months. On the one occasion that he found Watts at his reported address, the  
16 parole officer looked around the house and concluded that what was supposed to be Watts's bedroom  
17 lacked the usual signs of residency, such as clothing and personal belongings. A confidential reliable  
18 informant, who had provided information more than a dozen times and whose tips had resulted in  
19 multiple convictions, informed officers that Watts was living with Sonja Lee. Subsequent police  
20 surveillance confirmed both the details and the substance of the informant's tip. The police observed  
21 Watts enter Lee's house while he was under surveillance. Officers saw Watts go to the address Watts  
22 had claimed as his residence, knock on the door, then leave when no one responded, strongly suggesting  
23 that Watts did not live there. Finally, Sonja Lee told the police that Watts lived in her house with her.

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26 "When presented with weaker facts," said the Ninth Circuit, "we have not hesitated to rule that  
27 officers could not justify a search for lack of probable cause. In, the police received an anonymous tip on  
28 the whereabouts of Chris Burgess, a suspected murderer for whom an arrest warrant had been issued.

1 The police officer assigned to investigate the tip was informed that: "(1) Burgess was a black male  
2 standing [6' 1"] and weighing 200 pounds; (2) there was a warrant for Burgess's arrest on a murder  
3 charge; and (3) Burgess was possibly located at a certain address with his girlfriend and two children."  
4 *Id.* at 888. Officers went to the residence and knocked on the door, which was opened by Chris Pryor.  
5 Pryor was wearing boxer shorts and he fit Burgess's general description. *Id.* The officers asked Pryor if  
6 his name was Chris; when he said that it was, they handcuffed him and performed a protective sweep of  
7 the house. *Id.*

9 Pryor and his girlfriend Watts then brought suit, alleging various state torts and civil rights  
10 claims. The district court dismissed Watts's claim for illegal entry because it found that officers had  
11 probable cause to believe that Burgess was a resident of the Pryor home.. We reversed. We held that the  
12 anonymous tipster's information had not been sufficiently corroborated, and that "the mere fact that  
13 Pryor answered the door of his girlfriend's home in his boxer shorts did not establish a reasonable belief  
14 that he lived there." *Watts II*, 256 F.3d at 890.

## 20 ***Conway*; SEARCH UPHELD**

22 In *United States v. Conway*, 122 F.3d 841 (9th Cir. 1997), the police searched a residence at  
23 1930 West College; Conway, a probationer, had not reported this as his address. The search revealed a  
24 gun and Conway pled guilty to being a felon in possession of a firearm while reserving the right to  
25 challenge the legality of the search. On appeal, he argued that the search was not permitted by the terms  
26 of his probation because, under the facts known to them at the time, the police did not have probable  
27 cause to believe that Conway lived at the West College address. The Ninth Circuit again approved the  
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1 search, but only on a similarly strong fact pattern. First, there was strong evidence to suggest that  
2 Conway was not actually residing at his reported address: Conway's probation officer "had been to  
3 [Conway's] reported address on 21 occasions, but had found [him] there only once." *Id.* at 842. The only  
4 possessions there that could be identified as belonging to him were a pair of socks. *Id.* at 843. The  
5 evidence tying Conway to the West College address was even more powerful:  
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7 A confidential informant told Turcin, Conway's parole officer, that a man who met Conway's  
8 description and who went by the name "Arab," Conway's known street moniker, often walked his dog at  
9 night outside the 1930 West College address. Turcin discovered independently that Conway had a dog.  
10 Police observed Conway leaving the 1930 West College home at 8:45 am. When Turcin told Conway  
11 that he wanted to go to 1930 West College, Conway said that "his" dog was there and would attack  
12 anyone who entered. At the residence, Conway opened the front door with his own keys. Turcin  
13 observed mail and notes addressed to Conway; Conway identified a bedroom in the house as "his," and  
14 Turcin saw clothes in the bedroom that Conway had worn on visits to Turcin's office.  
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17 ***Motley*: SEARCH UPHELD**  
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20 In *Motley v. Parks*, 432 F.3d 1072, 1080 (9th Cir. 2005) (en banc) the most recent development  
21 in this line of cases, officers were looking for a parolee at an apartment belonging to his girlfriend. The  
22 Ninth Circuit found that their belief that the parolee lived there was supported by probable cause..  
23 Everything was in her name and she paid the rent and all bills associated with the apartment; however,  
24 her address was the most recent address the parolee had reported to his parole officer. At the time of the  
25 search, the parolee was actually in state custody, but the officers conducting the search were not aware  
26 of this. When the officers knocked on the door, they were informed repeatedly by the parolee's  
27 girlfriend, who lived there with their infant son, that the parolee did not live there and that he was in  
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1 state custody. The police refused to listen and proceeded to search the residence. We affirmed the  
2 district court, holding that the officers were entitled to rely on their knowledge of the parolee's most  
3 recent address, as reported by the parolee to his parole officer.  
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### 7 **BACK TO *Howard*: Analysis**

8 After looking at *Dally*, *Harper*, *Conway* and *Watts*, the *Howard* Court returned to  
9 its analysis of the instant facts:

10 In considering the cases where this Court upheld the search of an address not reported by  
11 a parolee--i.e., *Dally*, *Harper*, *Watts*, and *Conway*--certain patterns clearly emerge.

12 **First**, in each of these cases, the parolee did not appear to be residing at any  
13 address other than the one searched. In three of these four cases, the parolee had reported  
14 a different address, but officers had good reason to believe that he was not actually  
15 residing at the reported address. In *Dally*, the parolee did not return messages left for him  
16 at his reported address and the parole officer was unable to locate him there. In *Watts*, the  
17 parole officer had found the parolee at his reported residence only once after more than  
18 fifty prior visits to his reported address. On that one trip, the officer found that the  
19 "residence" "lacked the usual signs of residency, such as clothing and personal  
20 belongings." *Watts*, 67 F.3d at 795. Then, while conducting surveillance of *Watts*, the  
21 police observed him walk up to his reported address and knock on the door; when no one  
22 responded, he left, "strongly suggesting that *Watts* did not live there." *Id.* In *Conway*,  
23 after more than twenty visits, the officer had only found *Conway* at his reported residence  
24 once, and the only property there that could be identified as *Conway's* was a single pair of  
25 socks. Only in *Harper* did we uphold a search when police lacked grounds to believe that  
26 the parolee had reported a sham address--and in *Harper* the parolee did not have *any*  
27 reported address on file.  
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24 **Second**, in each of these four cases, the officers had directly observed something  
25 that gave them good reason to suspect that the parolee was using his unreported residence  
26 as his home base: In *Dally* and *Watts*, the police saw the parolee running errands to and  
27 from the residence. In *Harper*, the police saw *Harper* entering and leaving the house on  
28 his own multiple times in the days before the search; they also saw the cars of his known  
associates parked outside. In *Conway*, the officer saw mail and notes addressed to  
Conway at the address in question.

**Third**, in each of *Dally*, *Harper*, *Watts*, and *Conway*, the parolee had a key to the

1 residence in question. In three of these four cases--*Dally*, *Harper*, and *Conway*--the  
2 police saw the parolee use his key to enter the residence. In *Dally* and *Conway*, officers  
3 saw the parolee use his key on the same day that they searched the residence in question;  
4 Harper was observed entering with his key a few times over the three-day period  
5 preceding the search.

6 **Lastly**, in two of these cases, either the parolee's co-resident or the parolee  
7 himself identified the residence in question as that of the parolee. *Conway* referred to one  
8 of the bedrooms as "his," *Conway*, 122 F.3d at 843, and Sonja Lee, Watts's girlfriend and  
9 the legal occupant of the house in question, told police that she and Watts lived there  
10 together, *Watts*, 67 F.3d at 793. It will often be against a parolee's penal interests to admit  
11 to living at an unreported residence; such an admission is thus unlikely to be motivated  
12 by self-interest and is therefore entitled to some credibility. The same logic applies to a  
13 similar statement made by a co-resident of the parolee.

#### 14 APPLICATION OF PRECEDENT TO THE INSTANT CASE

15 **First Howard factor:** Probation had Deion Perry's reported address. Officer Johnson was aware  
16 of this. Neither Johnson or any other law enforcement personnel made a single attempt to visit, leave  
17 messages at, or find Deion Perry at that address.

18 There is no evidence that Johnson spoke to Perry's probation officer to ask whether *he* knew  
19 whether Perry was living at his reported address.

20 **Second Howard factor:** Officers in this case had some reason to believe Deion Perry was using  
21 the unreported address at 365 Brittany Way. Under surveillance, Perry had been observed at the 365  
22 Brittany Way address on a couple of times. This hardly suffices.

23 **Third Howard factor:** No evidence has been presented that Perry had a key to 365 Brittany  
24 Way. The District Attorney has the burden of proof.

25 **Fourth Howard factor:** Here, neither Perry or Hurley admitted that Perry lived at the address.  
26 They did admit to - to Perry's detriment for all they knew - that Perry was an occasional overnight  
27 visitor.

28 Thus, there was less evidence here - much less - than in *Howard*.

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**IV.**  
**CONCLUSION**

The court should find that police here had insufficient evidence to conclude that Deion Perry was residing at 365 Brittany Way.

Dated: April 6th, 2009

Respectfully Submitted,

\_\_\_\_\_  
Hayden Smith  
**Law Office of Hayden Smith**  
Attorney for Defendant