Student Fourth Amendment Rights

Search and Seizure Issues

Presented to:

Cortland Area High School Principals

July 30, 2009

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I. SEARCH AND SEIZURE AND RELATED ISSUES

A. Fourth Amendment.

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

1. Generally, then, the police need warrants and probable cause before conducting most searches.

B. The Supreme Court held that the Fourth Amendment prohibition of unreasonable searches and seizures applies to searches conducted by public school officials, but they are held to a lesser standard than applies to police searches. (New Jersey v. T.L.O., 105 S.Ct. 733 [1985]).

1. School officials do not need a warrant or probable cause, but only "reasonable suspicion," in order to search a student.

2. The search must be reasonably justified in its inception, as well as in its scope, and must not be excessively intrusive, under the circumstances.

C. Cases Involving Issue of Reasonable Suspicion.

1. People v. Scott D., 34 N.Y.2d 483 (1974). The Court found a lack of reasonable suspicion where a student suspected of dealing drugs was observed twice within one hour entering the restroom with a fellow student and exiting within five to ten seconds, and was also seen with another student suspected of dealing drugs. The school district claimed it based its suspicion on a confidential source of undisclosed reliability. The Court concluded that the student's conduct was too equivocal and the nature of the information provided by the informant too vague to justify a search.

2. People v. Singletary, 37 N.Y.2d 310 (1975). The Court upheld the validity of search of a student by dean responsible for security in a New York City high school. The dean had received a tip from a student that another student was selling narcotics on school premises. The district was able to show that the student informer had successfully identified drug offenders on five previous occasions. The Court distinguished this case from People v. Scott D., saying that in this case "the dean acted upon the

basis of concrete, articulable facts supplied by an informant whose reliability had been proven by the accuracy of his previous communications." (37 N.Y.2d at 311).

3. Matter of Gregory M.,82 N.Y.2d 588 (1993). A 15-year-old student arrived at his high school without a student identification card. He was directed by a security officer to go to the dean and obtain a new card. In accordance with school policy, he was required to leave his book bag with the security officer. When he tossed the bag on a metal shelf, the officer heard an unusual metallic "thud." He then ran his fingers over the outer surface of the bag and felt the outline of a gun. The bag was then brought to the dean's office and opened by the head of school security, who found a small hand gun.

   In the subsequent litigation, the Court of Appeals, our state's highest court, upheld the constitutionality of each step of the search. The Court held that a less rigorous standard was justified to touch the outside of the bag. When the touching revealed the presence of a gun-like object, there was then reasonable suspicion to justify a search of the inside of the bag.

4. Juan C. v. Cortines, 89 N.Y.2d 659, (1997). The New York Court of Appeals upheld the suspension of a 15-year-old student who was caught carrying a loaded handgun on school grounds, even though a Family Court judge had ruled that the search was illegal.

   A school security aide, noticing a bulge in a student's jacket, gave chase to the student and grabbed him at the site of the bulge. Feeling a gun, the security aide announced a "code red," and, with the help of another aide, pulled a loaded handgun from the student's pocket. The student was handcuffed and taken to the dean's office for police questioning.

   At a subsequent juvenile delinquency proceeding in Family Court, the student filed a motion to suppress the evidence of the gun. The Court granted the motion, finding "the outline of the gun was not visible, the slight bulge was not in any particular shape or form and was not readily suspicious."

   At the school suspension hearing, however, the hearing officer found the seizure was justified because the security aide had reasonable suspicion to believe the student was carrying a gun. The superintendent approved the findings, and the student was suspended from school for one year.

The Court of Appeals upheld the student's suspension, finding school officials were not precluded from reviewing the legality of the search. The Court held that collateral estoppel, the doctrine that bars parties from re-litigating issues that have been decided in a prior action, did not apply because school officials were not parties to the Family Court proceeding.

5. Matter of Kevin P., 186 A.D.2d 199 (2nd Dept. 1992). The Appellate Division, Second Department upheld a school security officer's frisk of a student. The officer observed the student entering the school in an area designated as "off limits." The officer did not recognize the individual as a student and asked him to produce his student I.D. card. When the student was unable to produce the card, the officer took the student by his elbow in order to guide him to the security office. While he was guiding the student, his hand made contact with an object in the student's waistband which the officer believed to be a gun. The student was searched, the gun removed, and the student was arrested. Under these circumstances, the Court concluded that the officer had a right to frisk the student and the gun was admissible against the student in the criminal proceeding.

6. C.B. v. Driscoll, 82 F.3d 383 (11th Cir. 1996). The Eleventh Circuit Court of Appeals upheld a student search which was based on a tip given to an administrator that the student was going to make a drug sale later that day at school. The informant did not have personal knowledge, but was relaying information he received from another student. The student was searched and "look-alike" drugs were found in his coat in violation of a school rule. The student commenced a Section 1983 action claiming that the school officials violated his constitutional rights by searching him. The Court ruled the tip from the student informant was provided to an administrator directly, not anonymously, and was thus more likely to be reliable because the informant faced disciplinary actions if the information was misleading. The Court also ruled that although the tip did not identify the student who had personal knowledge of the drug deal, information from an anonymous tip can provide reasonable suspicion. In addition, the informant indicated that the student would have a "big old coat," which corroborated the tip.

7. Thompson v. Carthage School District, 87 F.3d 979 (8th Cir. 1996). The Court ruled that the exclusionary rule does not apply to school disciplinary proceedings. In this case, a school bus driver informed the high school principal that there were fresh cuts in some of her bus seats. The principal, concerned that a knife or other cutting weapon was on school grounds, ordered all male students in grades 6 - 12 to be searched. After

the search began, students told the principal that there was a gun at the school that morning. The students were told to remove their jackets, shoes, socks, and to empty their pockets. The principal and a male teacher then checked the students with a metal detector. The male teacher patted down students if the detector went off. They also patted the students' coats and removed any objects in the pockets. Crack cocaine was found in a match box which was removed from one student's jacket. After a hearing, the student was expelled for the remainder of the school year. The student commenced a Section 1983 action against the district, the board of education, the principal and the teacher, claiming that the search and the expulsion violated his rights under the Fourth Amendment. The lower court ruled that the search was illegal because the principal did not have "individualized, particularized suspicion" that the student was carrying a weapon or other contraband and awarded the student $10,000 and attorneys' fees. The Eighth Circuit Court of Appeals ruled that the search of all male students was reasonable because the search was minimally intrusive and the school's interest in locating the weapon was strong. The Court further ruled that the exclusionary rule did not apply to student disciplinary proceedings. According to the Court, "To the extent the exclusionary rule prevents the disciplining of students who disrupt education or endanger other students, it frustrates the critical governmental function of educating and protecting children."8.

D. Strip Searches.

1. Bellnier v. Lund, 438 F.Supp. 47 (N.D.N.Y. 1977). The Court ruled that a strip search of an entire class of fifth grade students for $3.00, which was allegedly stolen, was illegal and violated the students' rights under the Fourth Amendment. In this case, school officials searched the students coats, ordered the students to empty their pockets and take off their shoes, and were then taken to the restrooms and ordered to strip down to their undergarments so that their clothes could be searched. The school officials then searched the students' desks and books. The money was never located. The Court ruled that the facts did not justify the search because school officials did not have reasonable suspicion that a particular student or students might have the money. Since there were no allegations that the actions taken by the school officials were taken in bad faith and that the law was previously unsettled, the Court granted the school officials immunity.

2. M.M. v. Anker, 607 F.2d 588 (2nd Cir. 1979). The Court ruled that two teachers conducted an illegal search of a student despite the following facts: (1) the student had a record of being theft-suspicious; (2) the

student was found alone in a classroom during a fire drill; (3) the student had taken posters from the classroom wall; and (4) the student had another student's bag in her possession. The student was ordered to dump the contents of her book bag on a table. A teacher claimed she saw a pipe or holder for smoking marijuana among the student's possessions, which the student allegedly took and tucked into her pants. The student was then strip searched. A jury ruled that the teacher had reasonable suspicion to search the student's book bag and that the subsequent conduct of the student raised a further suspicion, which justified the strip search. The Court disagreed with the jury verdict and ruled that the teachers did not have the requisite reasonable suspicion to search the student's book bag, or for the strip search. According to the Court, "To justify searching a high school child for a possible stolen object, it is indispensable that there be a reliable report that something is missing, and not a report, however reliable, that the student had an opportunity to steal." Since there was no report that anything was stolen, the teachers should not have searched the student's book bag. The Second Circuit upheld the lower court's determination, and added that "when a teacher conducts a highly intrusive invasion, such as a strip search, in this case, it is reasonable to require that probable cause be present." The amount of damages owed to the student was scheduled for a subsequent trial date.

3. Widener v. Frye, 809 F.Supp. 35 (S.D. Ohio 1992), aff'd. 12 F.3d 215 (6th Cir. 1993). A strip search of a high school senior was upheld where school officials detected what they believed to be a marijuana odor emanating from the student and observed that the student was acting sluggish and lethargic. The Court found the scope of the search reasonable in light of the age and the sex of the student. The student was removed from the classroom and asked to remove his jeans only and not his undergarments in the presence of two male security guards. He was also asked to pull his undershorts tight around his crotch area to determine if he was concealing drugs. The search did not uncover any drugs.

4. State Ex. Rel. Galford v. Anthony B., 189 W. Va. 538, 433 S.E. 2d 41 (1993). A school principal's strip search of a student who was suspected of stealing $100.00 from a teacher's purse, violated the Fourth Amendment. The money was found in the student's underwear. The Court determined the search was justified at its inception because school officials had reasonable grounds for focusing their attention on the student. The student had access to the empty classroom and was serving a two-year probation term for attempted burglary. However, the Court determined that the scope of the search was excessive. The Court noted that looking inside a student's underwear is an invasion of privacy which

should not be equated with searching a student's locker or other personal possessions. The Court found that the theft of money did not pose an immediate danger to others, which necessitated and justified a warrantless strip search.

5. Cornfield v. Consolidated High School District No. 230, 991 F.2d 1316 (7th Cir. 1993). The Court ruled that the strip search of a 16-year-old male student who was suspected of "crotching" drugs did not violate the Fourth Amendment. Reasonable suspicion was evident by relatively recent drug-related incidents involving the student as reported by various teachers and aides, as well as personal observations of an unusual bulge in the student's crotch area. The search was performed in the privacy of the boys' locker room by male administrators who visually inspected his naked body and physically inspected his clothes. No drugs were found.

6. Safford Unified School District #1 v. Redding, ___ U.S. ___., 129 S.Ct. 2633 (June 25, 2009), the United States Supreme Court held that the district had violated the student's Fourth Amendment rights when the school nurse conducted a strip search looking for prescription strength ibuprofen. A fellow student had been found, on the day in question, in possession of four ibuprofen tablets and one naproxen tablet in violation of the district's policy regarding prescription and over-the-counter drugs. The student, when questioned by the principal, indicated that she was given the pills by student, Savana Redding. The principal questioned Ms. Redding and she denied that the pills were hers and denied that she was in possession of any pills. The principal requested permission to search the student's back pack which the student granted. The search of the back pack did not reveal any contraband. The principal then instructed the assistant principal (a female) to escort Ms. Redding to the nurse's office. The nurse (a female) and the assistant principal instructed Ms. Redding to strip to her undergarments and to pull her bra and panties forward. The search failed to reveal any contraband.

E. Locker Searches.

1. People v. Overton, 24 N.Y.2d 522 (1969). The New York State Court of Appeals upheld the search of a jacket in a student's locker which produced marijuana cigarettes. In this case, the police obtained a warrant to search two students and their lockers at the high school. Upon questioning by the police, one of the students admitted to having drugs in his locker. The vice principal opened the student's locker with his master key and the police officer found marijuana in the student's jacket. The warrant the police had obtained was later ruled defective and the student argued that

the marijuana had to be suppressed because it was produced as a result of an illegal search. The Court ruled that the student had no reasonable expectation of privacy in his locker which was owned by the district. Significant to the Court's decision was the fact that students were notified that they only had exclusive possession over their locker vis-à-vis other students, were required to divulge their combination to their teachers, and school officials retained a master key for access to all lockers. Therefore, under these circumstances, the Court determined that searching a student's locker without consent was permissible.

2. In the Interest of Isiah B., 176 Wis.2d 639, 500 N.W.2d 637 (1993), cert. denied 510 U.S. 884 (1993). A high school student did not have a reasonable expectation of privacy in his school locker. Therefore, a random search (without individualized suspicion) of his locker was upheld as constitutional under both the federal and state constitutions. School officials investigated five incidents of gun-involved complaints in less than a month. Due to the risk of serious personal harm to students and staff, the principal ordered school security to begin a random search of student lockers as a preventive measure. The school handbook included a policy which stated "It is announced school policy that lockers are the property of the school system and subject to inspection as determined necessary or appropriate." A gun and some cocaine were found in a student's locker who argued at a criminal proceeding that the search was illegal because the school official did not have "particularized or individualized suspicion" that his locker would contain evidence of law or school rule violations. Since the student had no reasonable expectation of privacy in his locker, the Fourth Amendment protection did not apply, and the items were not suppressed.

F. Dog Sniff Cases.

1. Doe v. Renfrow, 631 F.2d 91 (7th Cir. 1980) cert. denied 451 U.S. 1022 (1981). The Court ruled that the use of specifically trained dogs to sniff students did not constitute a search and, therefore, did not implicate the Fourth Amendment. Significant to the Court's decision was the fact that, although police officers assisted in the procedure, they agreed not to arrest any students if drugs were in fact found. In addition, in the twenty days prior to the dog search, school officials documented 13 incidents of students found in possession of drugs or drug paraphernalia, or under the influence of drugs or alcohol. The Court further ruled that requiring a student to empty her pockets onto her desk after a dog "alerted," did not violate the Fourth Amendment. The "alert" of the dog constituted reasonable suspicion to believe that the student was concealing narcotics.

However, the Court ruled that a strip search of the student based on the continued "alert" of the dog alone, violated the student's rights under the Fourth Amendment. The Court refused to grant immunity to the school officials who participated in the strip search. According to the Court, "It does not take a constitutional scholar to conclude that a nude search of a thirteen-year-old student is an invasion of constitutional rights of some magnitude. More than that, it is a violation of any known principle of human decency." The dog alert was caused by the fact that the student had played with her own dog, which was in heat before coming to school.

2. Zamora v. Pomeroy, 639 F.2d 662 (10th Cir. 1980). The Court upheld the use of dogs to sniff student lockers and, once the dog "alerted," The subsequent search of a student's locker, which produced marijuana. The Court noted that the school had given notice to students that the school and the students owned the lockers jointly and that the lockers were subject to searches. Furthermore, school officials retained master keys to the student lockers.

3. Horton v. Goose Creek Independent School District, 690 F.2d 470 (5th Cir. 1982), cert. denied 463 U.S. 1207 (1983). The Court upheld the use of specially trained dogs to sniff student automobiles and lockers finding that a "dog sniff" of objects is not a search under the Fourth Amendment and, therefore, no level of suspicion is required. However, the Court refused to rule on whether a dog "alert" would permit a further search by school officials (i.e., opening the locker or automobile), because there was a question of fact as to the reliability of the dogs. In contrast, the Court ruled that the use of dogs to sniff students themselves did constitute a search under the Fourth Amendment. Significant to the Court's determination was the fact that the dogs actually put their noses against the students' bodies. The Court also ruled that the use of dogs to sniff students without individualized, reasonable suspicion that a particular student had contraband on his or her person, violated the Fourth Amendment.

4. Jennings v. Joshua Independent School District, 948 F.2d 194 (5th Cir. 1991), cert. denied, 504 U.S. 956 (1992). The Court ruled that a district policy which permitted the use of dogs to sniff search automobiles in the school parking lot did not violate the Fourth Amendment. If a dog "alerted," the school's policy was to contact the student responsible for the vehicle and ask for consent to search the vehicle. If consent was not given, the school officials contacted the student's parent. If the student's parent refused to consent to a search, then school officials would contact the police. In this case, both the student and her parents refused to give

their consent to search the vehicle. The police obtained a warrant and searched the car. No drugs were found. The student and her parents sued claiming that the search violated the Fourth Amendment. The Court ruled that the use of trained dogs to sniff cars does not constitute a search under the Fourth Amendment. The Court awarded attorneys' fees and sanctions against the parent and his attorney, finding that the lawsuit was frivolous given the Fifth Circuit's prior decision in Doe v. Renfrow (see above).

G. Automobile Searches.

1. Coronado v. State of Texas, 835 S.W.2d 636 (Tex. Cr. App. 1992). The Court ruled that the search of a student's car parked on school property was unconstitutional. Prior to the search at issue in the case, the assistant principal received information that the student had tried to sell drugs to another student. He conducted a pat-down search, had the student turn his pants' pockets inside out, remove his shoes, and pull down his pants. The search produced no weapons or contraband. When asked if he sold drugs, the student replied, "not on school grounds." One week later, the student lied to the assistant principal stating that he had to leave school grounds to attend his grandfather's funeral. Based on the student's lie and the prior information that the student attempted to sell drugs, the assistant principal conducted a pat-down search, asked the student to remove his shoes and socks and pull down his pants. No drugs were found. He then conducted a search of the student's locker, but no drugs were found. Finally, a search of the student's car was conducted and drugs were found. The Court ruled that the fact that the student violated school rules in his attempt to "skip" school justified a pat-down search of the student for safety reasons, but did not justify a search of the student's car. According to the Court, "the search of the appellant's vehicle was excessively intrusive in light of the infraction of attempting to skip school." Therefore, the student's motion to suppress the drug evidence at the criminal proceeding was granted.

2. State of Washington v. Slattery, 56 Wash. App. 820, 787 P.2d 932 (1990). The Court ruled that the search of a student's car was reasonable where an informant reported that the student was selling marijuana in the school parking lot. The use of drugs was a serious ongoing problem at the school and a search of the student revealed $230 in small bills and a slip of paper with a beeper number on it. The Court further upheld the search of the student's locked briefcase, which was located inside the student's car, without a warrant.

3. Shamberg v. State, 762 P.2d 488 (Alaska Ct. App. 1988). In this case, the search of a student's car was reasonable where a student's speech was

slurred, his eyes were glassy, he could not maintain his balance, his car was improperly parked on school grounds, and he was evasive about where he had driven his car during the previous lunch hour. Due to the extent of his intoxication, the school officials had reasonable suspicion that the student had ingested drugs, in addition to alcohol, during lunch period and thus, search of the ashtray in student's car was reasonable. Therefore, the cocaine found in the ashtray was not suppressed in the criminal proceeding.

H. Student Trips.

1. Kuehn v. Renton, 694 P.2d 1078 (Wash. 1985). The Supreme Court of the State of Washington ruled that school officials violated students' Fourth Amendment rights when they mandated submission to an across-the-board search of each students' luggage as a condition to participation in a band concert tour.

2. Webb v. McCullogh, 828 F2d 1151 (6th Cir. 1987) U.S. Court of Appeals for Sixth Circuit that high school principals search of students' hotel rooms during school trip was reasonable on basis of principal's "in loco parentis" authority. Hotel front desk had alerted him that students might have alcohol in rooms.

3. Desilets v. Clearview Board of Education, 627 A2d 667 (N.J. Super. AD 1993). New Jersey appellate court upholds Board policy of searching students' hand luggage prior to field trips. Policy was adopted as a response to a number of incidents in which students brought "contraband" on field trips.

4. Rhodes v. Guarricino, 54 F.Supp.2d 186 (S.D. NY 1999). U.S. District Court ruled that it was constitutionally reasonable for school principal chaperone to ask hotel security to open students' rooms and to search them during a school sponsored trip where students had signed a waiver promising not to use drugs or alcohol, had been specifically informed that room checks would be conducted, and where principal smelled strong odor of marijuana around a cluster of students outside one of their rooms.

I. Qualified Immunity.

1. Qualified immunity shields municipal employees from personal liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known", "or insofar as it was objectively reasonable for them to believe that their acts

did not violate those rights" (Harlow v. Fitzgerald, 457 U.S. 800 [1982]; Brown v. D'Amico, 35 F.3d 97 [2nd Cir. 1994]; Gardiner v. Incorporated Village of Endicott, 50 F.3d 151 [2nd Cir. 1995]; Rhodes v. Guarricino, 54 F.Supp 2d 186 [S.D.N.Y. 1999]).

2. If, at the time of the complained conduct the law of the U.S. Supreme Court or the applicable circuit has not clearly established that such conduct violates the Constitution, the official or employee is entitled to qualified immunity (Tonkovich v. Kansas Bd. of Regents, 159 F3d 504 [10th Cir. 1998]; Russell v. Scully, 15 F.3d 219 [2nd Cir. 1993]; Rhodes v. Guarricino, supra; and Safford Unified School District v. Redding, supra).