

Search and Seizure

1. *New Jersey v. T.L.O.*, 469 U.S. 325, 83 L.Ed.2d 720 (1985)

The Facts: A New Jersey high school teacher found a 14-year-old student smoking in the bathroom. Under questioning from an assistant principal, the student denied smoking. Not believing the student, the principal opened the student's purse and found a pack of cigarettes and cigarette rolling papers. The principal kept searching, and also found a small amount of marijuana, a pipe, a number of empty plastic bags, a lot of one-dollar bills, an index card listing other students who owed the student money, and letters that implicated the student as a marijuana dealer.

The Holding: In short, the U.S. Supreme Court held that the pivotal question in any search and seizure case involving a student in school is: was the search conducted by a police officer or a school official? School officials are still subject to some theoretical limits under the Fourth Amendment, but not the same ones that police officers are.

More specifically, the majority held that for school officials, "the legality of the search of a student should depend simply on the reasonableness, under all the circumstances, of the search ... Under ordinary circumstances, a search of a student by a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. Such a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction."

Notes:

Recent North Carolina Cases

1. *In re Jason Patrick Murray*, 136 N.C. App. 648, 525 S.E.2d 496 (2000)

The Facts: A student told a middle school assistant principal that the defendant had something in his book bag that he shouldn't have at school. The principal questioned the defendant, who first told her he didn't have a bag and then denied that there was anything inappropriate in his bag. The defendant would not let the principal search the bag, and asked to call his father. The assistant principal contacted the dean of students and the school resource officer. The officer cuffed the defendant when he still refused to turn over the bag, and the principal opened the bag and found a pellet gun. At this point, the principal called the defendant's father.

The Holding: In applying *T.L.O.* to these facts, the Court of Appeals decided that the search was conducted by a school official (the principal) and not a police officer (the resource officer). As such, the Court applied the *T.L.O.* "reasonableness" standard and upheld the search because the tip from the other student, combined with the defendant's lie claiming that he did not have a bag, provided "sufficient grounds for a reasonable person" to believe that searching the bag would yield evidence that the defendant had "broken a school rule or law"

Significantly, the Court noted that the resource officer "acted to enable [the principal] to obtain the bag and search it. He did not search the bag himself, nor did he conduct any investigation of the bag on his own."

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2. ***In re D.D.*, 146 N.C. App. 309, 554 S.E.2d 346 (2001)**

The Facts: A substitute teacher overheard students say that a group of girls was coming onto campus to fight at the end of the school day. The substitute told the school's principal. About ten minutes before the end of the school day, the principal contacted the school resource officer and they positioned themselves at opposite ends of the school building. The principal saw four female students, including one of his students, standing in the parking lot.

The principal then "gathered" the resource officer and two other uniformed officers and approached the girls. The officers had guns. In the parking lot, the principal asked the students why they were there, and the defendant said she was waiting to catch a bus to an appointment at the public bus stop in the parking lot. The students tried to walk away from the principal and the officers, and officers "told them to 'hold on.'" The principal asked the girls their names, and called other schools to try to find out what school they attended.

The school resource officer asked one of the students for permission to search her purse. The student testified that he officer grabbed the purse before she could give it to him. The officer found a box cutter in the purse. The principal took the students to the office and asked the girls to empty their pockets. The defendant had a knife in her pocket. The principal and one of the officers (not he resource officer) testified that they both made the decision to charge the defendant.

The Holding: The Court determined that the *T.L.O.* "reasonableness" standard applied, not only to searches by school officials, but also to searches where police officers work "in conjunction with" school officials, so long as they do so "to maintain a safe and educational environment." The Court applied the reasonableness standard and found that the search was both "justified at its inception" and "reasonably related in scope to the circumstances which justified the interference in the first place."

Further, the Court held that the officers' involvement was "minimal" relative to the principal's. The Court held that the officers did not initiate the investigation, nor did they direct the principal's actions. The Court believed that the officers simply held the girls in place so that the principal could act.

The Court also noted that the school resource officer performed the function of "maintaining a safe and proper educational environment."

3. *In re J.M.F. and T.J.B.*, 168 N.C. App. 143, 607 S.E.2d 304 (2005)

The Facts: A school resource officer (also a Forysth County sheriff's deputy) was investigating a fight at school involving T.B. When he saw T.B. leaving the school, the officer told T.B. to stop, but she did not listen. Later, at about 3 pm, the officer saw T.B. standing at a bus stop on school grounds. The officer told T.B. to come back to the school office to talk to the school administrator about the fight and find out if she would be suspended. T.B. refused, and her sister told the officer to get his hands off her. T.B. ran, and the officer grabbed her sister, J.M., who resisted and then also ran. The two sisters were apprehended a short time later.

The Holding: Relying heavily on *D.D.*, the Court held that the *T.L.O.* "reasonableness" standard applies to cases where "a resource officer, acting in conjunction with a school official, detains a student on school premises."

In so holding, the Court noted that the officer was still on duty and on school property (the bus stop) when he attempted to detain T.B. The Court also held that the officer's sole purpose in detaining T.B. was to bring her to the school administrator.

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4. *In re S.W.*, 171 N.C. App. 335, 614 S.E.2d 424 (2005)

The Facts: S.W. was walking through the hall of his school with another student. When he passed by the school's resource officer (a Durham County sheriff's deputy), the officer noticed the smell of marijuana. The officer stopped S.W., took him from the hallway to the school's weight room, and asked him "if he had anything on him." S.W. said he did not, and the officer asked "do you mind if I search?" S.W. said he did not mind. There were two assistant principals present, but they did not question or search S.W. The officer found marijuana when he searched S.W.

The Holding: In light of the above cases, the real questions here were whether the officer was acting as a law enforcement officer, as a school official, or at the direction of a school official. The Court held that the officer was "not an outside officer conducting an investigation" into a non-school crime. The Court applied the *T.L.O.* standard, and upheld the search based on the odor of marijuana.

In reaching the conclusion that *T.L.O.* applied, the Court noted that the officer was an employee of the Durham County Sheriff's Department, but that he "assisted school officials with school discipline matters and taught law enforcement related subjects." Also, the officer "was exclusively a school resource officer, who was present in the school hallways during school hours and was furthering the school's educational related goals when he stopped the juvenile."

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5. *In re: I.R.T.*, ___ N.C. App. ___, 647 S.E.2d 129 (2007)

The Facts: Juvenile I.R.T. was standing in a group of people outside an apartment building on Beamon Street in Durham when two patrol officers approached. One of the officers testified that IRT turned his head away when the officer approached him. The officer asked IRT if he lived in the building, and IRT said no. The officer testified that he thought IRT turned his head away so that the officer could not see that his mouth did not move when he talked, as though he had something inside his mouth he was trying to hide. The officer told IRT to spit out whatever was in his mouth, and IRT spit out a rock of crack-cocaine wrapped in cellophane.

The Holding: For the purpose of determining whether a “seizure” took place, the juvenile’s age was a relevant factor in determining whether a reasonable person in his position would have felt free to leave. In this case, “there were two officers present, both of whom arrived in marked police cars. Second, the guns they were carrying were visible. Third, the officers had a gang unit emblem on their shirt. Fourth, juvenile was fifteen years old at the time of the alleged offense. Given this show of authority, the officer's "request" could have been construed by a reasonable person of juvenile's age as an order, compliance with which was mandatory. Under these circumstances, we do not believe that a reasonable person would feel free to leave.”

Here the Court held that there was reasonable suspicion to stop IRT because he acted suspiciously in a high-crime area and that there was probable cause to conduct the search. The Court did remand on the adjudication for possession with intent to sell or deliver because of the amount of cocaine and cash recovered was relatively small.

Interrogation

1. *State v. Bunnell*, 340 N.C. 74, 455 S.E.2d 426 (1995)

The Facts: Bunnell, a fourteen-year-old boy, was charged with the first-degree murder of his father by shooting him in the back of the head after an argument. Bunnell lived with his mother, and his father was frequently drunk and abusive. After the killing, Bunnell and his girlfriend drove to Daytona Beach, where Bunnell got in a traffic accident and was arrested. Along the way, Bunnell disposed of some evidence at a South Carolina welcome center. An SBI agent questioned Bunnell in an airport office while he waited to fly back to North Carolina. The officers went over a “juvenile rights form” with Bunnell before they went to the airport. Bunnell made incriminating statements to the SBI agent. On appeal, Bunnell challenged the voluntariness of his statement.

The Holding: The Court held that one must look at the “**totality of the circumstances**” in evaluating the voluntariness of juvenile statements, including: (1) custody; (2) mental capacity; (3) physical environment; and (4), manner of interrogation. The Court found important that Bunnell could read at a ninth grade level (even though he had failed three grades in school), had apparently normal intelligence, was not deprived of food or sleep, and seemed familiar with his *Miranda* rights when they were administered by Florida police officers earlier. The Court also held that later statements are not tainted by problems with earlier, unlawful statements.

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2. ***In re Krystal Nicole Phillips*, 128 N.C. App. 732, 497 S.E.2d 292 (1998)**

The Facts: An assistant principal noticed that a school bank bag was stored under the office counter. The principal also saw Phillips in the office, while the secretary was not at the counter. When the secretary returned, Phillips left the office. The secretary found the bank bag was missing. When the assistant principal began to search for the money, he saw Phillips leave a women's bathroom. The principal and a female teacher searched the bathroom and found the bank bag in the trashcan. The principal asked the student to lead him to the money, and the student went in a bathroom stall and returned with the cash.

The Holding: The Court here did not cite *T.L.O.*, but used suspiciously similar reasoning to reach its decision in this case. The Court acknowledged that custodial statements obtained without *Miranda* warnings are inadmissible, and that a custodial interrogation may be conducted by an individual acting as an agent of the police.

However, the Court held that the defendant in this case was not "in custody" when she was questioned by the principal, because the principal was not acting as an agent of the law enforcement. The Court also noted that the principal did not question the defendant to "obtain information to use in criminal proceedings" but simply "for school disciplinary purposes."

Notes:

3. ***State v. Tydis Johnson*, 136 N.C. App. 683, 525 S.E.2d 830 (2000)**

The Facts: Johnson, a fifteen-year-old, was convicted of the first-degree murder and the robbery with a dangerous weapon of a cab driver. After two of Johnson's co-defendants implicated him in the murder, and he was asked to go with officers to the police department. When he refused, officers arrested him. Johnson was driven to the police department and advised of his *Miranda* rights in the presence of his mother. Johnson didn't want to talk to police, but his mother said that he would talk. Johnson then looked down and nodded to the officer. The officer then asked if Johnson would answer questions without a lawyer present, and Johnson signed a waiver of rights form. Johnson told officers that he wanted to talk without his mother present, and she was taken out of the room. Johnson told the officer that he was involved in the shooting. Five minutes later, Johnson made an incriminating statement to police in his mother's presence. On appeal, Johnson argued that §7A-595, the old statute, barred the admission of his statement.

The Holding: The Court held that although Johnson initially refused to answer questions, he rescinded that decision by nodding his head to the officer. "The crucial issue is who initiated the conversation in which the defendant made the incriminating statement." In this case, the Court held that Johnson initiated the conversation through that head nod, and that the officer only responded to that by asking Johnson if he would answer questions.

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4. *State v. Joseph Osmar Jones*, 147 N.C. App. 527, 556 S.E.2d 644 (2001)

The Facts: Jones, a thirteen-year-old boy, lived with his sixteen-year-old uncle, and his aunt (whose age was apparently irrelevant to resolving the appeal but was the uncle's sister). Jones was bound over to Superior Court, convicted of the first-degree murder, sex offense, and kidnapping of a ten-year-old girl, and sentenced to life in prison. At the time Jones was taken into police custody and questioned, Jones' uncle was also charged with the murder. In the presence of his aunt, Jones waived his rights and stated that he understood them. Jones made an incriminating statement. One officer testified that during the interrogation, Jones appeared to want to implicate his uncle, but that he would instead look at his aunt and fall silent. On appeal, Jones sought to suppress the statement because his aunt was not his "guardian", and he could not be questioned without a guardian present under §7A-595 (still the old statute).

The Holding: The Court noted that a defendant younger than fourteen can only be interrogated in the presence of his parent, guardian, custodian, or attorney." After determining that the aunt was not a custodian or parent, the Court decided that it needed to define "guardian." Using a *Black's Law Dictionary*, the Court held that a guardian was someone "who legally has responsibility for the care and management of the person, or the estate, or both, of a child during its minority." Using that definition, the Court noted that the aunt was responsible for Jones' room, board, education and clothing, and that both DSS and the school system gave the aunt authority over Jones. Government recognition of the guardianship seems to be an important factor.

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5. ***State v. Branham*, 153 N.C. App. 91, 569 S.E.2d 24 (2002)**

The Facts: Branham, who was sixteen at the time, lived with his mother and was accused of selling LSD to an undercover police officer. After the buy, officers searched his house with his mother's consent and found more drugs. Officers took Branham to the police station in handcuffs and questioned him. Branham's mother was in the building at the time of the interrogation, but not in the same room. Branham asked for his mother, but she refused to come into the interrogation because she thought that Branham was going to snitch on other drug dealers. On appeal, Branham challenged the admission of his statement based on §7B-2101.

The Holding: The Court held that Branham's mother did "not have the ability to, in effect, waive his right to have her present during interrogation."

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6. *State v. Jaamall Denaris Oglesby*, 361 N.C. 550, 648 S.E.2d 819 (2007)

The Facts: Oglesby, a sixteen-year-old, was accused of robbing and killing a man. Oglesby confessed to the robbery and murder in statements to police. Oglesby was advised of his *Miranda* rights and signed a waiver form. During the interrogation, Oglesby asked to speak to his aunt, but he did not ask for her to be present. Oglesby's aunt acknowledged that Oglesby never lived with her, she never had custody of him, and never signed school papers on his behalf. On appeal, Oglesby argued that the failure to have his aunt present during the questioning violated §7B-2101.

The Holding: Citing the holding in *Jones*, the Court here held that Oglesby's aunt was not his "guardian" according to the statute, and that he was not entitled to her presence during interrogation. The Court also noted that no "government entity" had conferred legal authority on the aunt as Oglesby's guardian.

In dissent, Justice Timmons-Goodson pointed out that in *Jones*, the Court held that an aunt was a guardian when it served the State, and that in *Oglesby* it held that an aunt was *not* a guardian when it served the State. Her dissent would be something to cite when arguing one of these issues.

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7. *In re W.R.*, ___ N.C. App. ___, 634 S.E.2d 923 (2006) (currently stayed)

The Facts: As a result of a phone call from a parent, the principal pulled W.R., a fourteen-year-old seventh grader, out of class. Two principals questioned W.R. in the assistant principal's office and repeatedly asked him if he had something at school that he should not have. W.R. repeatedly denied having anything. At some unknown point, the school resource officer joined in and made W.R. empty his pockets. After about thirty minutes of "on and off" questioning, W.R. admitted that he brought a knife to school the previous day.

The Holding: This holding in this case was stunning for a couple of reasons. First, the Court reviewed the claim as "plain error" and still found that the trial court should have suppressed W.R.'s admission. Plain error relief is extremely rare. The Court relied upon §7B-2101, and stated that the trial court must take into account the juvenile's age in its objective evaluation of whether a reasonable person would believe he was free to leave for the purpose of determining custody. Most stunningly, given the status of SROs in search and seizure cases, the court held, "the juvenile was questioned not only by the Principal and an Assistant Principal of the school, but also by Office Warren, the School Resource Officer, and officer of the Greensboro Police Department." Unfortunately, the Court does not explain what factors led to its conclusion that this SRO was a police officer, when others have been held to be "school officials" in search and seizure cases.

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