

Children's Law Center of Indiana



Delinquency

03/27/2007

In ***T.S. v. State***, 863 N.E.2d 362 (Ind. Ct. App. 2007), the Court affirmed the juvenile court's adjudication of the juvenile as a delinquent child for committing an act which would be the crime of possession of marijuana, a Class A misdemeanor, if committed as an adult. The Court's affirmation was based on its conclusion that, contrary to the juvenile's contention, the procedure through which the evidence against the juvenile was obtained did not violate the juvenile's federal or state constitutional rights. In October 2005, a sergeant (Sergeant) of the Indiana Public Schools Police (IPSP) received an anonymous phone call in the Broad Ripple High School (BRHS) IPSP office. The female caller indicate that a student at BRHS, [the juvenile], had marijuana in his right front pant pocket, but she did not indicate how she knew this. Sergeant went to the juvenile's gym class, and told the juvenile to accompany him to the locker room. Regarding what occurred next the testimony of Sergeant and the juvenile differ somewhat. According to Sergeant, after arriving at the locker room, (1) at Sergeant's direction, the juvenile changed from his gym uniform to his street clothes; (2) then Sergeant asked the juvenile if "he had anything on him that he shouldn't have;" (3) the juvenile pulled a small plastic baggie containing marijuana out of his front pocket and handed it to Sergeant; and (4) Sergeant then reached into the juvenile's pocket and pulled out another small baggie of marijuana. According to the juvenile, (1) when they reached the locker room, Sergeant told the juvenile about the anonymous tip, put his hand on the juvenile's chest, and said that he knew the juvenile had some marijuana because his heart was beating quickly; (2) the juvenile told Sergeant that he did have marijuana, walked over to his locker, and opened it; and (3) Sergeant then grabbed the juvenile's pants out of the locker, went through the pockets, and pulled out the two baggies of marijuana. Regarding the juvenile's version, Sergeant testified that he did not recall placing his hand on the juvenile's chest and that the juvenile handed him the first baggie of marijuana. On March 20, 2006, the juvenile filed a motion to suppress the evidence obtained during the encounter with Sergeant. The juvenile court did not rule on the motion prior to the delinquency hearing, and at the hearing, the juvenile objected at all relevant times to the introduction of physical and testimonial evidence regarding the encounter. The juvenile court overruled the objections and allowed the evidence to be admitted. Following the hearing, the juvenile court entered a true finding as to the juvenile's delinquency, and ordered the juvenile to continue probation. The juvenile appealed, raising "the sole issue of whether the trial court erred in denying [the juvenile's] motion to suppress evidence he claims was obtained in violation of Article I, Section 11 of the Indiana Constitution, and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution." *Id.* at 365.

“Although a reviewing court should deferentially review trial court findings of historical fact, giving due weight to inferences drawn from those facts, the determinations of reasonable suspicion and probable cause for warrantless searches is to be determined on a

de novo standard on appeal.” Myers v. State, 839 N.E.2d 1154, 1160 (Ind. 2005).
T.S. at 366-67.

The seminal case regarding searches and seizures that occur in schools, New Jersey v. T.L.O., 469 U.S.325 (1985), left open many questions with which courts still struggle regarding alleged violations of the Fourth Amendment. This case “raises three questions undecided by T.L.O.: (1) the level of cause required for an IPSP officer who initiates an encounter with a student without the involvement of other school officials; (2) whether the encounter between [Sergeant and the juvenile] constituted a seizure; and (3) the standard for determining the constitutionality of a seizure occurring in a school.” T.S. at 367. The Court stated that T.L.O. at 341 held that the Fourth Amendment does not apply to school searches and seizures, but that:

The accommodation of the privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.

T.S. at 367. The Court noted that T.L.O. “developed a two prong test for determining the reasonableness of a search: (1) whether the action was justified at its inception; and (2) whether the search ‘was reasonably related in scope to the circumstances which justified the interference in the first place.’ [T.L.O. at 341] (quoting Terry v. Ohio, 392 U.S.1, 20 ... (1968)).” The Court continued:

The first prong will be satisfied if “there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.” [T.L.O. at 341]. The second prong will be satisfied if “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.” Id. In T.L.O., the Court explicitly left open the question of whether the exclusionary rule applied to school searches. Id. at 333 n.3.... However, the decisions of Indiana courts subsequent to T.L.O. indicated that the exclusionary rule is the remedy for Fourth Amendment violations occurring in schools. See Myers, 839 N.E.2d at 1161 (holding that trial court properly denied defendant’s motion to suppress because search conducted by school officials was reasonable); D.I.R. v. State, 683 N.E.2d 251,253 (Ind. Ct. App. 1997) (reversing defendant’s delinquency adjudication because evidence was discovered during unreasonable search in a school).

T.S. at 367.

Regarding question 1 (above), the level of cause required for an IPSP officer who initiates an encounter with a student without the involvement of other school officials, the Court concluded that, inasmuch as Sergeant acted as a school resource officer acting to further educationally related goals, the reasonableness standard of T.L.O. applies. T.S. at 371. The Court concluded that the Myers court (at 1160) adopted a three-category approach to determining the standard to be applied to searches conducted by police officers on school property: (1) where school officials initiate the search or police involvement is minimal, the reasonableness standard is applied; (2) where the search is conducted by the school resource officer on his or her own initiative to further educationally related goals, the reasonableness

standard is applied; and (3) where “outside” police officers initiate the search of a student for investigative purposes, the probable cause and warrant requirements are applied. T.S. at 367-68. Therefore, the Court analyzed the facts of this case to determine whether Sergeant was an “outside” officer. The Court noted that in S.A. v. State, 654 N.E.2d 791, 795 (Ind. Ct. App. 1995) and C.S. v. State, 735 N.E.2d 273, 275 (Ind. Ct. App. 2000), it had held that employees of the IPSP who act in their capacity as security officers are considered school officials and that their conduct is therefore governed by T.L.O. T.S. at 369. Because the juvenile contended that, inasmuch as S.A. and C.S. were decided before Myers, they were superseded by Myers to the extent they determined the relevant standard for school police officers, the Court reexamined its analysis of relevant characteristics of the IPSP. The Court reviewed and analyzed cases from other jurisdictions, finding that (1) a Florida appellate court has explicitly held that all school searches conducted by school police officers are governed by the reasonableness standard, regardless of the involvement of other school administrators or the purpose of the search; (2) appellate courts in North Carolina and Pennsylvania have held that searches conducted by school police officers were governed by the reasonableness standard based on the rationale that by ferreting out drugs, the officers were working in the furtherance of educational goals; (3) appellate courts in North Carolina, Wisconsin, and Illinois have not based their holding solely on the officer’s status as a school police officer, but have examined the involvement of other school administrators in the officer’s action; and (4) appellate courts in North Carolina and New Mexico have found relevant the officer’s purpose in conducting the search. T.S. at 369-71. The Court concluded that Sergeant acted as school resource officer acting to further educationally related goals. With regard to this determination, the Court noted that (1) although he ultimately took the juvenile to the police station, Sergeant testified that, at the time he initiated the encounter, he intended to take the juvenile to the Dean’s office; (2) therefore, although he did not act in conjunction with other school officials prior to the initial contact with the juvenile, when he initiated contact, he had the intent to involve the school’s dean; and (3) such intent indicates that Sergeant was concerned with a possible violation of school rules, and not solely a criminal violation. The Court also stated that it agreed with the rationale of the North Carolina and Pennsylvania courts that the presence of drugs on school property presents a serious threat to a learning environment, and, therefore, Sergeant acted not only to ferret out criminal activity, but also to preserve an environment conducive to education. Id. at 371.

As to question 2, the Court concluded that the encounter between Sergeant and the juvenile constituted a seizure, and therefore implicated the Fourth Amendment. Id. at 373. The Court pointed out that, given its standard of review, it assumed that the juvenile handed Sergeant the first baggie of marijuana and, therefore it is not the search of the juvenile which is at issue, but the seizure of the juvenile. Id. at 371. The Court stated that under general Fourth Amendment principles, a seizure occurs “when, considering all the surrounding circumstances, the police conduct would have communicated to a reasonable person that the person was not free to decline the officers’ requests or otherwise terminate the encounter.” Bentley v. State, 846 N.E.2d 300, 305 (Ind. Ct. App. 2006), *trans. denied* (quoting Florida v. Poyer, 460 U.S.491,497 (1983) (plurality opinion)) T.S. at 371-72. The Court noted, with citations, that significant authority exists for the proposition that a security or school officer who compels or restrains a student’s movement seizes the student for Fourth Amendment purposes. The Court further stated:

We recognize that students inherently give up some freedoms when they pass through the school doors, and that students are not free to come and go as they please during school

hours. However, they still retain some freedom of movement. [The juvenile] may not have had the freedom to roam the school halls when [Sergeant] demanded that [the juvenile] leave gym class and accompany him to the locker room. However, we do not think it a stretch to state that [the juvenile] enjoyed greater freedom of movement while in his regularly-scheduled gym class than while in the company of [Sergeant]. Finally, no credible argument can be made that a reasonable student would feel free to disregard an armed officer's demand to leave class.

Id. at 372-73.

In answering question 3, the Court made the threshold findings that (a) the proper test for determining whether a school police officer was justified in removing a student from his or her class is whether such an intrusion was reasonable; (b) to be reasonable, such a seizure does not need the reasonable, articulable suspicion necessary to justify a Terry stop of a citizen in public; and (c) this holding contemplates that a seizure may be unreasonable without being arbitrary, capricious, or undertaken for the purpose of harassment.

T.S. at 375. The Court made these findings after analyzing federal and state court decisions. The Court stated that it based this holding on two principle factors: (1) Under traditional Fourth Amendment jurisprudence, the State is not required to have as high a level of suspicion to conduct an investigatory stop as it is to conduct a full-fledged search, and because under T.L.O., a search in a public school setting is justified upon reasonable suspicion, it follows that some lower standard should be required for an investigatory stop in a public school; and (2) Students enjoy a lesser expectation of privacy in a public school than they do in public, and because an investigatory stop in public may be justified upon reasonable suspicion, it follows that a lower standard should be required in the public school setting. T.S. at 375.

The Court noted that, although research disclosed no Indiana case explicitly applying T.L.O. and its progeny to student seizures, it did find United States Court of Appeals civil cases, all of which, seemed to be in general agreement that the reasonableness standard of T.L.O. applies to school seizures as well as searches. T.S. at 373. The Court also found, and analyzed, cases from five state courts that had addressed the applicable standard for student seizures when suppression of evidence is sought in a criminal case. Id. at 373-75. The Court observed that, although these state court cases differed in their determinations of what was "reasonable," all discussed cases, except possibly that of the California Supreme Court, indicated that the fundamental inquiry into school seizures was the two prong test of T.L.O. which is set forth above. The Court noted that the juvenile did not articulate an argument regarding the second prong, that the seizure exceeded its permissible scope, and focused on arguing that the seizure was not justified at its inception, the first prong. Id. at 375.

After considering the reduced expectation of privacy that students enjoy in public schools, the Court held that Sergeant acted reasonably in investigating the anonymous tip, and, the seizure of the juvenile did not violate his Fourth Amendment rights. Id. at 377-78. The Court noted that, inasmuch as Sergeant had already removed the juvenile from gym class and compelled him to accompany him to the locker room, this situation is distinguishable from a consensual encounter, where police officers are allowed to approach citizens and ask similar questions without implicating the Fourth Amendment as long as the person to whom the questions are put remains free to disregard the questions and walk away. Id. at 375-76. According to the Court (1) the only evidence that prompted Sergeant to remove the juvenile from

gym class was the anonymous tip; and (2) the Indiana Supreme Court has indicated that in the context of investigatory stops conducted by police officers, an anonymous tip will constitute reasonable suspicion only if (a) the State corroborates significant aspects of the tip, thus requiring that the anonymous tip give the police something more than details regarding facts easily obtainable by the general public to verify its credibility; and (b) the tip demonstrates an intimate familiarity with the suspect's affairs and is able to predict future behavior. *Id.* at 376. The Court analyzed the tip and its circumstances in light of case law and determined that it clearly did not give Sergeant reasonable suspicion required to conduct a *Terry* stop outside of a school. *Id.* at 377. However, the Court (1) noted that neither the Indiana nor the United States Supreme Court has articulated whether an anonymous tip can justify a search initiated by a school official on school property; (2) noted that removing the juvenile from class, although certainly an intrusion on his privacy, was not an invasive intrusion, especially in view of the fact that school officials routinely remove students from class for a variety of reasons; (3) noted that although it may cause more embarrassment for a student to be removed by a police officer, the officers to which this holding applies are also people whom students routinely see in the hallways, and are in the schools not only to enforce laws, but also to maintain a safe environment conducive to learning; (4) noted that the presence of drugs in schools is a serious problem that jeopardizes the learning environment; and (5) concluded that it is reasonable that an officer charged with maintaining this environment investigate a tip indicating that a student has drugs on school property by removing the student from class for questioning with the intent of taking the student to the dean's office. *Id.* at 377-78.

The Court concluded that given the totality of the circumstances, most importantly the school setting and Sergeant's role within the school, Sergeant's seizure of the juvenile was reasonable under the Indiana constitution. *Id.* at 379. Citing *Holder v. State*, 847 N.E.2d 930, 940 (Ind. 2006), the Court stated that, although the Fourth Amendment of the United States Constitution and Article 1, Section 11 of the Indiana Constitution are textually indistinguishable, analysis under the Indiana Constitution is distinct from that under the United States Constitution. The analysis with regard to the Indiana constitution examines whether the State has demonstrated that, under the totality of the circumstances, the search or seizure was reasonable. *Id.* In determining whether an action was reasonable, according to the Court, three factors are generally considered and balanced: "1) the degree of concern, suspicion, or knowledge that a violation has occurred, 2) the degree of intrusion the method of the search or seizure imposes on the citizen's ordinary activities, and 3) the extent of law enforcement needs." *Id.* Regarding these factors, the Court recognized (1) that the reliability of the tip in this case was dubious, and that Sergeant did not possess a high degree of suspicion that a violation had occurred; (2) that what made Sergeant's actions reasonable was not the reliability of the information that caused him to act, but the school setting in which he acted; and (3) that, because the juvenile already possessed a lesser expectation of privacy, the seizure was not as extensive an intrusion upon his ordinary activities as would have been a seizure occurring in public. *T.S.* at 378. The Court opined that, also weighing in favor of the conclusion that Sergeant acted reasonably under the circumstances, are: (1) the premise that students' privacy interests must be balanced with the substantial interest of teachers and administrators in maintaining discipline in the classroom and on school grounds, a task that has become increasingly difficult with the pervasive onslaught of drugs and violent crimes in schools; and (2) the dual role of school police officers, that of law enforcement and maintaining a safe environment conducive to learning. *Id.* at 379.