Review of Recent Juvenile Cases (2008)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

A school police officer may conduct a pat-down search of a student on school grounds for the sole purpose of finding the student's identification card if he fails to produce it when asked to do so.[D.L. vs. Indiana](08-1-5)

On December 7, 2007, the Indiana Court of Appeals held that under the *T.L.O.*, it was not unreasonable, in searching D.L. for his identification, to pat down his pant leg, and, following his attempt to place something down his pants, for a male police officer to shake his pant legs and to collect the green, leafy vegetation which fell out as a result.

¶ 08-1-5. **D.L. vs. Indiana**, No. 49A04-0703-JV-192, 2007 Ind. App.Lexis 2729, (Ind.Ct. App, 12/7/07).

Facts: On September 14, 2006, Indianapolis Public Schools Police Officer Sheila Lambert came into contact with D.L. and two other students in the second-floor hallway of Treadwell Hall at Arsenal Technical High School during a non-passing period. Officer Lambert asked D.L. and his companions if they had an identification card, a pass, or a schedule, and they responded that they did not. At that time, Officer Lambert conducted a pat-down search of D.L. for his identification card. According to Officer Lambert, immediately after she began patting D.L. down, he put something down his pants. Officer Lambert handcuffed D.L. and brought him to the police office, where Officer Jeffrey Riley conducted a search. During this search, Officer Riley shook D.L.'s pant legs, whereupon a clear plastic bag containing a "dry, green leafy vegetation" fell to the floor. Tr. p. 72. The vegetation inside of the bag was later determined to be 1.03 grams of marijuana.

On September 18, 2006, the State filed a petition alleging D.L. to be delinquent child based upon the offense of Possession of Marijuana, a Class A misdemeanor if committed by an adult. On October 12, 2006, D.L. moved to suppress all evidence obtained pursuant to the warrantless search of his person. Following a December 13, 2006 suppression hearing immediately preceding the denial hearing, the juvenile court denied D.L.'s motion. At the denial hearing, D.L. objected to the admission into evidence of State's Exhibits 1 and 2, which were the marijuana which dropped from D.L.'s pant leg and the laboratory report indicating the positive test for marijuana in the amount of 1.03 grams. The juvenile court overruled those objections and subsequently entered a true finding of delinquency on the basis of the offense of possessing marijuana. The juvenile court further awarded wardship of D.L. to the Department of Correction and recommended a commitment of eighteen months. D.L. now appeals.

Held: Affirmed

Opinion: The leading case governing searches conducted by public school officials is *New Jersey v. T.L.O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985)*. In *T.L.O.,* the Supreme Court rejected the argument that school officials are acting *in loco parentis* and concluded instead that school officials are state actors fulfilling

state objectives and are therefore subject to the strictures of the *Fourth Amendment*. *T.L.O., 469 U.S. at 333-36.* The court observed, however, that the school setting required some easing of the restrictions to which searches by public authorities are ordinarily subject. *Id. at 340.* Accordingly, the court dispensed with the warrant requirement and modified the probable cause requirement in holding that the legality of a search of a student depended simply upon the reasonableness, under all of the circumstances, of the search. *Id. at 341.* For purposes of determining the reasonableness of the search, the court announced a two-part test: (1) the action must be justified at its inception; and (2) the search as conducted must be reasonably related in scope to the circumstances which justified the interference in the first place. *Id.* A search by a school official is justified at its inception when 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 school rules. *Id. at 341-42.* The search will be permissible in 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. *Id. at 342*; *see S.A. v. State, 654 N.E.2d 791, 795 (Ind. Ct. App. 1995)*, *trans. denied; Berry v. State, 561 N.E.2d 832, 837 (Ind. Ct. App. 1990)*.

D.L. argues that Officer Lambert's search of him was not justified at its inception. D.L. points out that at the time Officer Lambert encountered him, he was not displaying his school identification card as required, and that upon being asked, he admitted to Officer Lambert that he did not have the required identification. It is D.L.'s contention that Officer Lambert's search, for the alleged purpose of finding his identification card, was not justified at its inception because he had already admitted against his interest that he did not have the card, so there would have been no reasonable grounds for conducting a search to turn up evidence of a rule violation.

The State argues in response that Officer Lambert's search was justified at its inception because D.L.'s failure to produce an identification card meant he could not be conclusively identified. According to the State, Officer Lambert was encountering a situation that could not be resolved without identifying the parties involved. The only means by which Officer Lambert could address and resolve the situation was to determine whether the individuals carried identification, which given D.L.'s denial that he had identification, required a minimally intrusive search ultimately leading to the discovery of the marijuana.

Prior cases involving searches by school officials are instructive in assessing the merits of D.L.'s and the State's arguments. In *T.L.O.,* a teacher discovered T.L.O. and another student smoking in the lavatory, a violation of school rules. T.L.O. and her companion were taken to the principal's office, where they were questioned. T.L.O.'s companion admitted violating the school rule. T.L.O. denied she had been smoking and claimed she did not smoke at all. In response to T.L.O.'s denials, the vice-principal demanded to see T.L.O.'s purse, opened it, and discovered a pack of cigarettes. Upon removing the cigarettes, the vice-principal discovered cigarette rolling papers often associated with the use of marijuana. Suspecting he might find further evidence of drug use, the vice-principal searched the purse more thoroughly and in doing so, uncovered marijuana and other evidence implicating T.L.O. in drug dealing.

The Supreme Court held that the search of T.L.O.'s purse was reasonable under the circumstances. It was justified at its inception because T.L.O. had denied the smoking accusations, she was carrying a purse, an obvious place to put cigarettes, and the discovery of cigarettes would be strong evidence that she was indeed violating the anti-smoking laws of the school. *T.L.O., 469 U.S. at 344-46.* The court additionally determined that the scope of the search was permissible because the vice-principal's discovery of the rolling papers inside the purse reasonably gave rise to a suspicion that T.L.O. was carrying marijuana, which justified the extended search of her purse resulting in the discovery of marijuana and other evidence implicating T.L.O. in drug dealing. *Id. at 346-47.*

Upon considering the above cases in light of the instant case, we note that this court, in generally finding school searches to be reasonable under the circumstances, has largely endorsed the justifications offered by the investigating school officials in conducting the searches. In *C.S.,* this court found the school search was justified at its inception based upon the mere statement by the school officer, without any further justification, that she feared for her safety. *735 N.E.2d at 275-76.* Here, while Officer Lambert did not indicate any fear for her safety, or specifically articulate why she sought D.L.'s identification card, the obvious inference from these repeated attempts by a public school safety officer to identify D.L. was that she found it necessary to determine his identity. Significantly, the very rule Officer Lambert was seeking to enforce, specifically that D.L. present his identification upon request, has as its purpose the protection of Arsenal Tech High School students.

We believe that in this post-9/11, post-Columbine age of increasing school violence, a public school police officer's determination that she must identify the individuals with whom she is in contact similarly warrants our endorsement. *See, e.g., Cochran v. State, 843 N.E.2d 980, 983-84 (Ind. Ct. App. 2006)* (recognizing that it is an essential police function for an officer to ask individuals for identification and that doing so does not by itself raise a *Fourth Amendment* issue), *trans. denied, cert. denied, 127 S. Ct. 943, 166 L. Ed. 2d 722 (2007)*. Indeed, the presence of an unidentified individual on school grounds has greater potential safety implications than does the mere scent of cigarette smoke as in *D.B.* or the fact of hearsay allegations regarding a student's sale of marijuana as in *Berry.* D.L. was on school grounds during a non-passing period and was unable to present identification when asked. In our estimation, it was not unreasonable for Officer Lambert to respond to this situation by conducting a relatively limited pat-down search of D.L.'s pocket in search of his identification. We are unpersuaded that D.L.'s admission to being in violation of school rules somehow obviates the officer's need to confirm this violation, or her accompanying need to identify him via any identification card potentially on his person. Given the circumstances of the unidentified individuals in a school setting, Officer Lambert's clear need to determine their identities, and this court's generally finding school searches to be reasonable under the circumstances, the limited pat-down search for identification in this case was justified at its inception.

D.L. does not argue under the second prong in *T.L.O.* that the scope of the search, once justified, was not reasonably related to the objectives of the search or that it was excessively intrusive. The stated objective was to look for D.L.'s identification. Upon beginning to pat him down, Officer Lambert observed D.L. appear to place something down his pants. She then led him to the school police office where a male colleague conducted a pat-down search, including shaking D.L.'s pant legs. The substance later identified to be marijuana fell out of the pant legs as a result. Under the *T.L.O.* analysis requiring that the scope of a search be reasonably related to the search's objectives and not excessively intrusive, it was not unreasonable, in searching D.L. for his identification, to pat down his pant leg, and, following his attempt to place something down his pants, for a male police officer to shake his pant legs and to collect the green, leafy vegetation which fell out as a result.

Conclusion: Having found that the search in this case was reasonable at its inception and reasonably related in scope to the circumstances justifying it, we hereby decline D.L.'s claim that the juvenile court abused its discretion in admitting the evidence at his denial hearing.

The judgment of the juvenile court is affirmed.