

Search & Seizure

Updates

T.L.O. is still the standard!

(1) Was the search justified at its inception?

(2) Was the search, as conducted, reasonable based on item sought?

Factors: Age, gender, item sought, evidence against

Different types of seizures

Cell Phones



- Riley v. California, Supreme Court
- Why seized?
- Seizure generally Ok if in violation of policy on use or possession, not search.
- Generally no to search of phone itself
- Policy on retention of seized items? What do you do if office broken into and expensive phones stored are stolen?

Canine searches



. *Burlison v. Springfield Public Sch*
708 v. 1034 (8th Cir. 2013)

- Canine search by sheriff's office in cooperation with school district
- Searched objects not students
- Students not in the room, and never physically close to the dog.
- Court said OK, because written policies and procedures were reasonable!

Khachatourian v. La Puente Unified (9th Circuit) unpublished

- Routine scheduled canine search hit on teacher's desk and gun & knife found
- Court said no expectation of privacy in classroom because he was on notice as the school regularly conducted canine searches for drugs and weapons.



Faber v. Monticello Central

2013 WL 2450057 (S.D.N.Y. 2013)

- Student brought to office – disruptive and accused of being high
- Instructed to empty pockets
- Court said reasonable based on FACTS
- Accused of being high, admitted taking medication that creates that effect, created reasonable suspicion to conduct MINIMALLY INVASIVE SEARCH

State v. A.J.C.,
363 P.3d 1195 (OR, 2014)

- Locker searched based on student's tip that AJC was bring gun to school to shoot her and other students.
- Searched backpack & found gun & bullets
- Findings – Possible presence of gun is “immediate threat” to safety & nature of contraband reduces need for deeper investigation to support higher level of reliability. Targeted threat & search limited to parts of backpack gun could be found.



In re K.J., 18 Cal.App. 5th 1123
(Ca. Ct.App. 2018)

- Anonymous tip KJ had loaded gun
- Text message received and VP knew who it was but called her anonymous for fear
- “IDK if school is out RN, but there’s a guy with a loaded gun at Yeto” Credit recovery school located on main campus
- Court said reasonable based on “extraordinary dangers’ presented by gun

K.P. v. State

129 So. 3d 1121 (Fla. Ct. App. 2013)

- Anonymous tip about gun
- SRO and AP went to class and took book bag and student to office
- SRO opened bag and found loaded semi-automatic gun. Moved to suppress
- Ct said – expectation of privacy is reduced in school setting and gov't interest in protecting vulnerable children is heightened when suspicion of guns exists
- Tip gave names and school that added to reliability and search was only moderately intrusive.

Scott v. County of San Bernardino,
2018 WL 4288899 (9th Cir. 2018)

- Warrantless arrest of girls by SRO for being unresponsive and disrespectful
- Not reasonable in scope, not special need
- Arrested to prove a point and make them mature faster.
- Not justified at inception, arrest, handcuffing, and police transport of middle school girls.

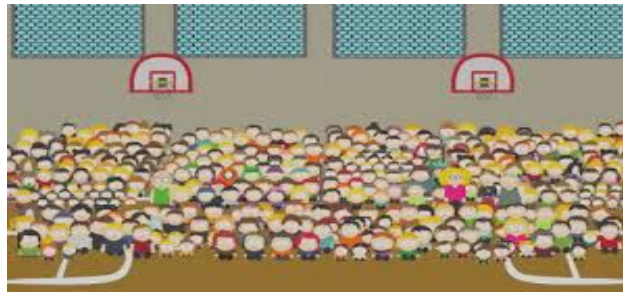


E.W. V. Dolgos,
884 F.3d 172 (4th Cir. 2018)

- SRO handcuffed a calm, compliant elementary student for fighting with another student three (3) days prior.
- Bus fight, both girls suspended
- 3 days later EW removed from class, brought to office handcuffed and seated.
- Cried and apologized; cuffs kept 2 minutes
- Objectively unreasonable to handcuff

Grant-Walton v. Montgomery Cnty. Bd. of Ed.,
2018 WL 2451204 (D.Md. 2018)

- Student's estate sued under 4th Amendment for intentionally denying her permission to leave the gym to retrieve her inhaler.
- Court said denial to leave was not a 4th Amendment seizure so no need to determine if it was unreasonable.
- Used “freedom to leave standard”



J.L. v. E. Suffolk Boces Sachem Cent. Sch. Dist.,
2018 WL 1882847 (E.D.N.Y. 2018)

- No dispute student physically restrained during altercation with staff is within 4th A
- But it is justified at inception and reasonable in scope when JL threatened staff and balled hand into a fist.
- Fast moving and potentially dangerous situations indicated it was objectively reasonable.

G.V.R. v. The Espanola Pub. Sch., 2018
WL 4401724 (D.N.M. 2018)

- Student injured in an in-class incident when teacher verbally and physically assaulted a group of 3rd grade students.
- Teacher plead guilty to criminal battery
- Sued illegal seizure and for failure to adequately screen, train, and supervise the teacher.
- Court said no, but it was like corporal punishment and used “shock the conscience” standard of 14th A.

*PozosLeon v. Tillamook Cnty. Sch. Dist.,
2018 WL 2175949 (D. Or. 2018)*

- 4 year old special needs child strapped in bus safety seat & unable to escape 75 min.
- Alleged: (1) Unreasonable length of time; (2) left alone on the bus in the dark; (3) Driver did not inspect bus or put marker on the windshield; (4) no other EE check on driver for inspection or marker; (5) unreasonable policy and prior complaints
- Reasonable at inception, but became unreasonable!



D.G. v. Westville Pub. Sch. Dist. No. 1-11
2018 WL 4323917 (E.D. Okla. 2018)

- 3rd grader forcibly removed from class, confined to isolated closet with closed door.
- D.G. attempted to leave, was forced to the ground and physically restrained.
- CP alleges a custom, policy or pattern of permitting employees to discipline behavior in this manner
- Plausible claim of unreasonable seizure

Strip Searches



4-4-10

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Seizures

People & Property

- Restraint must be Reasonable
- Depends on circumstances
 - Age
 - Gender
 - Size
 - Control
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Summary

- Have a clear policy
- Search only where contraband could be found
- What facts or factors do you have when decision to search takes place.
- What are you searching for?
- Strip Searches are generally a bad idea.