

Strip Search of High School Students Unconstitutional

Summary: School authorities and a policeman violated high school students' constitutional rights when they ordered a gym class to bare their bodies following a report that a student's prom money had been stolen during a class. The United States Court of Appeals for the Sixth Circuit Court decided *Beard v Whitmore Lake School District* on April 4, 2005.

Background: On May 24, 2000 one of the students in a Whitmore Lake High School gym class reported to the teacher that her prom money, "a few hundred dollars", had been stolen sometime during the class. The gym teacher advised Charmaine Balsillie of the theft. (Balsillie was serving as acting principal of the Michigan school that day because the regular principal was absent.) Balsillie reported the theft to police and recruited two female teachers and a male teacher to help her respond to the incident.

When Balsillie arrived at the scene, the boys were in the locker room and the girls were in the gym. Along with the two female teachers, the girls searched the gym and the girls' backpacks. They did not find the money. The gym teacher and the other male teacher searched the boys' lockers and backpacks and also failed to locate the missing cash.

One of the male teachers searched about ten boys, one at a time in the shower area. He had each boy remove his shirt and lower his pants and underwear so he could see if the student had hidden the money against his body. The teacher did not touch the students.

Police Officer Mayrand then arrived at the scene. He advised the male teachers to continue searching the boys. Mayrand told the teachers that they had "a lot more leeway" than a police officer to search students in school. Mayrand advised Balsillie that the girls should be searched too to avoid claims of gender discrimination by the boys. Balsillie and a female teacher then took the female students into their locker room. The girls formed a circle. On Balsillie's instructions, they pulled down their pants and lifted up their shirts. The girls did not remove their underwear and Balsillie and the female teacher did not touch them.

About twenty boys and five girls were searched in this manner. They searched the students, lockers and backpacks failed to reveal the stolen money, which was not recovered.

Several of the students sued the school and police over the searches, claiming they violated the students' right to be free from unreasonable searches and seizures. The teachers and police officer argued that they were protected from suit by the doctrine of 'qualified immunity.' This doctrine protects government employees from civil liability as long as the employee's conduct does not violate a clearly established law or constitutional right of which a reasonable person would know. Mayrand, Balsillie and the other teachers argued that they did not know the students had any clearly established right to be free from the type of searches they conducted.

The United States District Court for the District of Michigan denied the police and school officials' motion for summary judgment to dismiss the case. They then appealed to the Sixth Circuit Court of Appeals.

Analysis: The Fourth Amendment does not protect people from all searches, only unreasonable ones. For example, if a man fired a pistol in a police officer's presence and then ran into a crowd, it would be reasonable for the police officer to search the man for the weapon when he caught up with him. In determining whether this search was reasonable, the Sixth Circuit followed a two-part test established by the Supreme Court. First, it asks whether conducting a search was

reasonable at the time. Second, it examines whether the scope of the search conducted was reasonable in light of its purpose.

Conducting a school search is justified if there are reasonable grounds to suspect that the search will turn up evidence that a student has violated the law or school rules. The scope of the search is acceptable if it is related to the search's objectives and not excessive in light of the age and sex of the student and the nature of the alleged violation.

The Sixth Circuit found that initiating a search was reasonable because several hundred dollars cash had been stolen. But it found the scope of the search unreasonable in light of Supreme Court precedent (opinions in cases on the same issue).

One guideline courts use in determining the proper scope of a search is "individualized suspicion." Where evidence suggests that a particular person holds evidence of wrongdoing, a search focused on that person would be reasonable in scope. Where the authorities' suspicions don't settle on one individual, the scope question becomes more difficult. Courts are reluctant to hold that the Fourth Amendment permits authorities to search whole rooms or crowds of people. Its wording and history suggest otherwise.

The Sixth Circuit found a Supreme Court case that approved a search of numerous students without individualized suspicion. That case involved drug testing for student athletes. The Supreme Court upheld the tests because student athletes had a reduced expectation of privacy (they were bound by additional rules, and subjected to communal undress in locker rooms), the urine samples taken afforded some privacy and were designed to find their object, drug use, and the growing drug problem posed a risk to other students, who might emulate the athletes, and to the athletes themselves, who would face greater risk of injury if they competed under the influence of drugs.

The factors that supported the search in the drug-testing case were not present here. These were not student athletes, so they had not consented to be bound by additional competitive rules, nor did they routinely undress with teammates in locker rooms. They students in the drug-testing case remained clothed and provided the urine sample from behind a closed door. Here the boys stood in front of a teacher and were searched while almost completely naked. While the girls did not lower their underwear and were not searched individually, they were told to form a circle and raise their shirts and lower their pants together. These intrusions on the boys' and girls' privacy were not justified by any individualized suspicion, or by a reduced expectation of privacy. Nor were the searches conducted to address a school-wide problem. Instead, the students were searched intrusively over theft when there was no evidence that any particular student searched had taken the money. In light of these circumstances the searches were not reasonable, and therefore violated the Fourth Amendment.

The Sixth Circuit was not finished, however. The Court had determined that the teachers and the police violated the students' Fourth Amendment rights. But to defeat qualified immunity, the right violated must be "clearly established" at the time of the search such that a reasonable person would know the search was not permitted. On this point, the court sided with the teachers and police officer. While the Sixth Circuit interpreted Supreme Court law to find their search unreasonable, the Sixth Circuit's conclusion concerning this case was not "clearly established" by the Supreme Court's opinion or other binding law. Other cases from the Supreme

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Court and the Sixth Circuit could be relied upon to reach the opposite conclusion.

Students in future cases may be able to benefit from the court's opinion that the searches here were unconstitutional, but the defendants in this case were entitled to qualified immunity. They were therefore not liable to the students over the strip searches they ordered in looking for the stolen money.

EXCERPTS FROM THE COURT'S OPINION

(By Judge Rogers):

"The government may have a comparatively strong interest in searching a particular student reasonably suspected of theft, because of the likelihood that the search will be successful. Such interest is diluted considerably when, instead of one, two, or three students, the school officials search over twenty students, without reason to suspect that any particular student was responsible for the alleged theft. In that case the intrusive search of each individual is that much less likely to be successful.

"The highly intrusive nature of the searches, the fact that the searches were undertaken to find missing money, the fact that the searches were performed on a substantial number of students, the fact that the searches were performed in the

absence of individualized suspicion, and the lack of consent, taken together, demonstrate that the searches were not reasonable...

"The Supreme Court has recently instructed that, for purposes of the 'clearly established' inquiry, the analysis 'must be undertaken in light of the specific context of the case, not as a broad general proposition.' Accordingly, cases 'cast at a high level of generality' will only be sufficient to clearly establish the unlawfulness of the defendants' actions where the conduct at issue is 'obviously' a violation based on the prior cases. This is not such an obvious case..."

"The Sixth Circuit cases involving student strip searches also do not clearly establish the unconstitutionality of the searches in the instant case. Indeed, in [one 1984 case], strip searches of students were found to be reasonable. Although the officials in each of those cases possessed individualized suspicion as to the particular student searched, the cases do not clearly state that such individualized suspicion is absolutely necessary to justify such a search...The Sixth Circuit cases thus simply do not 'truly compel' the conclusion that the searches in this case were not reasonable."

QUESTIONS & COMMENTS

1. What gave rise to the searches in this case?
2. How many students were searched in this case?
3. Why didn't the police officer take part in the searches?
4. What aspects of the search troubled the court?

The Fourth Amendment was created in the Bill of Rights appended to the U.S. Constitution. The colonists, who before the Revolutionary War were British subjects, fought a war for independence because they felt English officials were abusing their powers. They carefully crafted a Bill of Rights that would limit the new government's ability to reach the same sort of oppressive position over the people. The Fourth Amendment dealt with this type of oppressive behavior by the government dealing with unjustified searches. The Fourth Amendment states: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

It is important to note that the Fourth Amendment only protects against "unreasonable" searches and seizures. Not all searches are unreasonable. If a police officer observes an individual with a gun fleeing the scene of a shooting, it is reasonable for the officer to apprehend that person and search him. It is reasonable to search all persons who go through security at an airport. It is reasonable to have people pass through a metal detector to enter a government building. The question is...what is reasonable?

And guess what? What is unreasonable in another public setting might very well be reasonable in school. In order to maintain order and insure the proper educational environment, the courts have determined that school officials have greater leeway to search students in certain circumstances. For example, the court's opinion mentions a Supreme Court case involving the drug testing of student athletes. It was reasonable for all of the student-athletes to be subjected to this search, even if no particular students were suspected of drug use. Other cases have held that any student who participates in any extracurricular activity could be subjected to drug testing. If there was a violence problem in a school, it would probably be reasonable to require students to walk through a metal detector. It might be reasonable to search everyone's backpack as they entered school. Your school policy probably allows unannounced searches of your school lockers.

However, in this case, the court found the method of search used in this case to be unreasonable. Why do you think they ruled this way? Was it just the fact that the students were required to strip for the search? What if the teachers had just asked everyone to empty their pockets? Would that have been OK? What if the students whose money was missing had pointed the finger at three or four individual suspects? Would a strip search of those three or four students been OK?

Even though the court ruled the searches unconstitutional, the students don't get to recover any money because of the application of the doctrine of "qualified immunity". Qualified immunity protects government employees who have to exercise their discretion in the performance of their jobs. If they are performing their jobs in good faith and do not violate an established rule of law, they are not subject to suit and money damages. Do you think this is a good doctrine? Would you want to be a teacher, policeman or other public employee without some sort of protection like this?

Consider these scenarios, Is the search OK? Your teacher walks into the room, sees a bit of smoke in the air and believes she smells a cigarette, which is prohibited by school rules. She orders every student to empty his or her backpack on her desk, one at a time. She tells each student to empty his or her pockets and turn the pocket inside out. She tells each of you to remove your shoes and socks. She asks each student to pair up with one of the same sex and pat the other down in search of a cigarette pack. She pats down students herself-female and male. She reaches into students' shirt or pants pockets. The teacher sends all the girls out and tells the boys to remove their shirts. She does the same with the girls. In a school that requires students to shower after gym class, could the teacher order the boys and girls to the appropriate locker room, order them all to shower in the same way they would after gym class and have teachers of appropriate sex search their clothing during the showers? Consider these same scenarios if, instead of smoke the teacher found several live bullets on the floor. Is more searching reasonable? Would more intrusive searches be reasonable if the teacher smelled marijuana instead of cigarette?