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Summary of IN RE: L.A.W, 131 Nev. Adv. Op. 24 (May 7, 2015)

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CRIMINAL LAW: JUVENILE SEARCH AND SEIZURE

Summary

The Court determined, pursuant to the Fourth Amendment of the U.S. Constitution, as well as Article 1, § 18 of the Nevada Constitution, a public school cannot condition a student's access to a free public education upon consent to random searches of his person and property. Evidence gathered from random administrative searches must be suppressed in criminal proceedings.

Background

Minor L.A.W. enrolled in Legacy High School (Legacy) in Las Vegas on a trial basis as a "last chance" placement after a series of behavioral issues. His enrollment included a "Behavior Contract", which stipulated, among other things:

"7. I realize I am subject to random searches by the administration."

Both L.A.W. and his father signed the Behavior Contract.

At a later date, Legacy school administration conducted a search of all trial enrollees. Administration found $129 and some small bags of a "leafy green substance" in L.A.W.'s backpack. Administration gave the substance to the school district police officers, which determined the substance to be marijuana. Officers advised L.A.W. of his *Miranda*[2] rights and placed him under arrest.

The state charged L.A.W. with possession of a controlled substance with intent to sell. In a special hearing, L.A.W. contested the admissibility of the evidence, specifically statements made by school staff, the police officer, and the fruits of the search. The Hearing Master declined to suppress the evidence based upon the consent to search via the Behavior Contract and found him guilty of the charges. The district court upheld the Hearing Master's findings.

Discussion

While schools are expected to act "in loco parentis" and administrations are "permit[ted] a degree of authority that could not be exercised over free adults,"[3] this authority has limits. Students are not expected to "shed their constitutional rights at the schoolhouse gate."[4] Here, as the state had no reasonable cause, searching students without warrant and without suspicion of criminal activity is unreasonable, absent the student's express consent[5].

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[1] By Jessica Gandy.

[2] *See* Miranda v. Arizona, 384 U.S. 436 (1966).

[3] Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 655 (1995).

[4] Robinson v. Bd. of Regents of E. Ky. Univ., 475 F.2d 707, 709 (6th Cir.1973) (quoting Tinker v. Des Moines Sch. Dist., 393 U.S. 503, 506 (1969)) (third alteration in original).

[5] *See* New Jersey v. T.L.O., 469 U.S. 325, 341–42 (1985) (holding a school's search of a student is reasonable if, at its inception, there are "reasonable grounds for suspecting that the search will turn up evidence that the student has

Courts of other jurisdictions have held that education, even higher education, cannot be conditioned upon a student's willingness to waive his Constitutional rights.[6] The Supreme Court held in *Vernonia,*[7], however, that a school may require higher scrutiny of students who voluntarily engage in athletic or other extra-curricular activities.

The State argued L.A.W. knowingly and voluntarily signed the Behavior Contract, agreeing to random searches, as a condition of enrollment at Legacy. The State further argued L.A.W. had other educational options available to him if he did not want to sign the behavior contract, and these alternatives should allow the administration to use *Vernonia* and *Earls* standards.

The State conceded administrators had no "special need" to search L.A.W. at the time of the search and the administrators were relying on L.A.W.'s consent. Further, the State failed to show what "other" options were available to L.A.W. at the time of his enrollment at Legacy. The State offered some possible alternatives, but could not give any certain answers. As there was no evidence available to show educational alternatives, the Court could not rely on suppositions of the State, and had to assume none were available.[8]

As no evidence was available showing L.A.W. had access to alternative public education, this case does not meet the *Vernonia* and *Earls* standards. Rather, it must be measured by the *Robinson*[9] standards; L.A.W. should be treated as any other student seeking access to public education.

The State urged the Court to follow the Oregon Appellate Court's decision in *State ex rel. Juvenile Dep't v. Stephens*,[10] holding a juvenile with behavioral problems enrolling in a "last chance" school could be required to submit to random searches as a condition of enrollment. The Oregon court held these conditions were "in exchange for the desired benefit", in this case, public education. The Oregon Court held it analogous to X-ray screenings of belongings at a courthouse or airport.

The Court did not believe the right to a public education could be treated so lightly. A public education is the foundation of democracy and good citizenship. It is imperative that all students, especially those "last chance" students, are shown that the authority figures they come in contact with are fair, just, and trustworthy. There is no benefit from conditioning education on a denial of Constitutional rights.

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violated or is violating either the law or the rules of the school"); State v. Ruscetta, 123 Nev, 299, 302, 163 P.3d 451, 453–54 (2007) (holding warrantless searches presumptively unreasonable absent valid consent).

[6] Smyth v. Lubbers, 398 F.Supp. 777, 788 (W.D.Mich.1975); see ROBINSON, 475 F.2d at 709 ("[T]he state, in operating a public system of higher education, cannot condition attendance at one of its schools on the student's renunciation of his constitutional rights."); Dixon v. Ala. State Bd. of Educ., 294 F.2d 150, 156 (5th Cir.1961) (holding that a tax-supported college "cannot condition the granting of even a privilege upon the renunciation of the constitutional right to procedural due process"); Morale v. Grigel, 422 F.Supp. 988, 999 (D.N.H.1976) (stating that a school could not condition a student's attendance upon a waiver of constitutional rights); Moore v. Student Affairs Comm. of Troy State Univ., 284 F.Supp. 725, 729 (M.D.Ala.1968) (recognizing that a college may not condition admission on a waiver of constitutional rights); Devers v. S. Univ., 712 So.2d 199, 206 (La.Ct.App.1998) (noting the unconstitutionality of conditioning college dormitory occupancy on waiver of constitutional rights); CF. TINKER, 393 U.S. at 506 (noting that students retain First Amendment rights while attending school).

[7] 515 U.S. at 657; *see also,* Bd. of Educ. of Indep. Sch. Dist. No. 92 of Pottawatomie Cnty. v. Earls, 536 U.S. 822, 831 n. 3, 834 (2002) (upholding drug testing of students who wished to participate in extracurricular activities).

[8] *See* NEV. REV. STAT. §§ 47.130, 47.150.

[9] 475 F.2d 707.

[10] 27 P.3d 170 (Or.Ct.App.2001).

Conclusion

Admitting evidence from the administrative search would violate L.A.W.'s Fourth Amendment rights. The State failed to show either the consent to search was voluntary, or L.A.W. had other educational options beyond Legacy and its Behavior Contract. The State cannot reasonably condition a free public education on the waiver of Constitutional rights. Therefore, the district court should have suppressed the statements and the fruits of the administrative search.[11] The Court reversed the ruling of the district court and ordered the district court to proceed consistent with this opinion.

[11] *See* Torres v. State, 131 Nev., Adv. Op. 2, 341 P.3d 652, 657 (2015) (holding courts must suppress both direct and indirect evidence gathered from an illegal search or arrest).