A LEGAL ANALYSIS OF THE INVOLVEMENT OF SCHOOL RESOURCE OFFICERS IN SEARCHES AND SEIZURES IN K-12 PUBLIC SCHOOLS

by

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ABSTRACT

RICHARD W. WELLS. A Legal Analysis of the Involvement of School Resource Officers in Searches and Seizures in K-12 Public Schools. (Under the direction of DR. DAVID M. DUNAWAY)

The purpose of this study was to develop a set of court-based guiding principles for the integration of school resource officers in searches and seizures in K-12 public schools. This purpose was achieved by applying Standard Legal Analysis methodology to state and federal district and appellate court cases involving school resource officers in searches and seizures in the public school setting. After examining and analyzing data extracted from case briefs of lower court rulings, the patterns and themes that emerged were used to synthesize specific, court-defined legal principles in response to the questions of this study: (1) How have courts ruled on the role of school resource officers through holdings? (2) What legal standards have courts applied in searches and seizures involving school resource officers – school or non-school Fourth Amendment standards? Did court reasonings expand on *T.L.O.*? (3) What have been the key factors that influenced court rulings in cases where school resource officers are involved in the searches? (4) How have courts treated evidence obtained through searches involving school resource officers as compared to school administrator-only searches and school administrator-led searches with school resource officer involvement? Based on the findings and conclusions of this study, the researcher proposed several recommendations for the integration of school resource officers in searches and seizures in K-12 public schools that meets both the letter and spirit of the law.

DEDICATION

"If you weren't so good at the teaching part, I'd tell you to go change majors." Those words changed my life. Thank you to Dr. Joyce Frazier for having the pluck to say what needed to be said to an aimless student teacher who lacked motivation and discipline. At a fork in my life, your simple words steered me down the path that helped me unlock my full potential. Thank you to my wife, Jana, for hanging in there with me while I worked diligently on this aspiration. I think we can agree neither of us anticipated this would be our journey when we met during student teaching. Thinking about us and our four wonderful children – Richardson Carveth Frazier, Jennings Gardner Jameson, Raleigh Leona Victora, and Rhodes Golden Dunaway – is what fueled my drive to finish. I'm thankful we get to share this accomplishment together. I'm ready to be home.....

ACKNOWLEDGEMENTS

This dissertation is a furtherance of the work Dr. David M. Dunaway, UNC Charlotte Professor Emeritus, began with his own legal analysis dissertation completed in 1985 on the heels of *New Jersey v. T.L.O.*, the seminal court case for school searches. Dr. Dunaway came out of retirement to serve as my committee chair, and his guidance and support was crucial to this study which emphasizes legal analysis as a worthwhile academic endeavor. For this, I am forever indebted to him. As a school law professor, Dr. Dunaway preached that the law is to be mastered rather than memorized. My understanding of the process of extracting court-defined legal principles from a collection of court cases is a direct result of Dr. Dunaway's teaching, and I am not alone. Due to his instruction and high expectations coupled with extraordinary support and feedback, another generation of educational leaders understands that legal principles are not about what we think, feel, or believe; rather, they are defined by what the courts say.

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Chapter 1: Introduction

As the leaders of schools, administrators are accountable to balance the charge to uphold the educational program with the duty to protect students' rights. Of the most popular high-security measures K-12 public schools have deployed in its hallways to ensure safe, secure learning environments are school resource officers.[1] With the expansion of school resource officer programs in public schools comes the need for school officials to know how to involve them in a way that preserves the constitutional rights of students, especially during criminal investigations and searches. Given this responsibility, it is imperative that school and district personnel understand the law regarding searches and seizures in the school setting and what factors influence court cases when school resource officers are involved in searches and seizures. This understanding will enable school leaders to effectively integrate school resource officers into the school program in a way that meets both the letter and spirit of the law.

Background

In 1969, the U.S. Supreme Court in *Tinker v. Des Moines Independent School District* established that students have constitutional rights. According to Justice Fortas, who delivered the Court's opinion, students do not "shed their constitutional rights…at the schoolhouse gate."[2] In 1985, the Court determined in *New Jersey v. T.L.O.* that the Fourth Amendment to the U.S. Constitution applies to the search of students by school

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[1] Randall R. Beger, "Expansion of Police Power in Public Schools and the Vanishing Rights of Students," *Social Justice* 29, no. 1/2 (2002): 119-30; Brad A. Myrstol, "Public Perceptions of School Resource Officer (SRO) Programs," *Western Criminology Review* 27, no. 4 (2011): 20-40.

[2] Tinker v. Des Moines, 393 U.S. 503 (1969), 506.

officials, but that students have a lower expectation of privacy than the general public.[3] Acknowledging that searches of students at school were subject to a standard of reasonableness rather than probable cause, the Court established a two-part inquiry to determine the legality of the search. According to Justice White, the search must be "justified at its inception"[4] and "reasonably related in scope to the circumstances which justified its interference in the first place…in light of the age and sex of the student and the nature of the infraction."[5] Ten years later, the Court further clarified the custodial nature of the power schools apply as "a degree of supervision and control that could not be exercised over free adults…[but] what is appropriate for children in school" in *Vernonia School Dist. 47J v. Acton*.[6] The rules of law regarding the application of the Fourth Amendment in school searches and seizures stem from these landmark cases. They guide K-12 public school administrators, school resource officers, outside police when they are on school premises, and policymakers, where students' Fourth Amendment rights are concerned, and they will be the lenses through which this legal analysis will be conducted.

Though *T.L.O.* has been the seminal case for school-related searches and seizures for the past thirty years, the Court left several areas of this topic undisturbed as it declined to address "the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies."[7] The lack of a Supreme Court

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[3] New Jersey v. T.L.O., 469 U.S. 325 (1985)
[4] Ibid., 326.
[5] Ibid.
[6] Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995), 655-56.
[7] New Jersey v. T.L.O., 469 U.S. 325 (1985), 341, n.7.

opinion on that topic leaves guidance to common law to be developed through the evolution of subsequent lower court rulings.

Statement of the Problem

The National Association of School Resource Officers (NASRO) recommends having at least one school resource officer at every school.[8] According to the 2018 Indicators of School Crime and Safety report, a joint publication from the U.S. Department of Education and the U.S. Department of Justice through the National Center for Education Statistics (NCES), 42% of all public schools had at least one school resource officer, and 58.4% of public secondary schools had at least one school resource officer.[9] Sixty-three percent of school resource officers report maintaining school discipline at the secondary level compared to 43.3% at the primary level, 80.9% report identifying problems in the school and proactively seeking solutions at the secondary level compared to 63.6% at the primary level, and 87.8% report security enforcement and patrol at the secondary level compared to 67.4% at the primary level.[10] Though there are no formal reporting requirements for law enforcement agencies or school districts, the number of school resource officers in public schools has increased due in part to increased federal government funding.[11]

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[8] "Frequently Asked Questions," National Association of School Resource Officers, accessed November 17, 2018, https://nasro.org/frequently-asked-questions/

[9] U.S. Department of Education and U.S. Department of Justice Office of Justice Programs, *Indicators of School Crime and Safety: 2017*, Lauren Musu-Gillette et al. NCES 2018-036/NCJ 251413, Washington, D.C.: National Center for Education Statistics and Bureau of Justice Statistics, 2018. https://www.bjs.gov/content/pub/pdf/iscs17.pdf (accessed on November 17, 2018

[10] Ibid., 141.

[11] Myrstol, "Public Perceptions of School Resource Officer (SRO) Programs," 20-40.

Legal Definition of School Resource Officer

The NCES report clarifies that school resource officers are "career sworn law enforcement officers with arrest authority who have specialized training and are assigned to work in collaboration with school organizations."[12] Neither the NASRO nor the U.S. Department of Justice Community Oriented Policing Services (COPS) shies away from the fact that school resource officers are law enforcement officials rather than school officials. According to the NASRO, "A school resource officer is a commissioned, sworn law enforcement officer, not a 'security guard.'"[13] The COPS website notes that school resource officers "are sworn law enforcement officers responsible for safety and crime prevention in schools."[14]

This expansion of law enforcement presence in public schools is not without consequence. Law enforcement officials are increasingly called on to maintain discipline and order in the classroom,[15] a responsibility once reserved for school officials. In a meta-analysis that explicitly examined the relationship between school resource officers and exclusionary discipline in high schools,[16] Fisher and Hennessy identified an

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[12] U.S. Department of Education and U.S. Department of Justice Office of Justice Programs, *Indicators of School Crime and Safety: 2017*, Lauren Musu-Gillette et al. NCES 2018-036/NCJ 251413, Washington, D.C.: National Center for Education Statistics and Bureau of Justice Statistics, 2018. https://www.bjs.gov/content/pub/pdf/iscs17.pdf (accessed on November 21, 2018), 8, n.3.

[13] "Frequently Asked Questions," National Association of School Resource Officers.

[14] "Supporting Safe Schools," Community Oriented Policing Services, accessed November 17, 2018, https://cops.usdoj.gov/supportingsafeschools

[15] Beger, "Expansion of Police Power in Public Schools and the Vanishing Rights of Students," 119-30.

[16] Seven studies that met the eligibility criteria for the meta-analysis, which were published between 1999 and 2010, provided unique study samples and effect sizes, utilized official school reports for data, and considered high schools that ranged in size from 875 to 2350 students.

association between school resource officers and increased levels of exclusionary discipline including suspensions, arrests, sheriff incident reports, and crimes reported to law enforcement, in comparison to schools without school resource officers.[17]

However, school resource officers exercise considerable influence and discretion in the way the program is implemented.[18] The absence of federal guidelines and Supreme Court Rulings coupled with the highly contextualized implementation of school resource officer programs set the stage for inequitable practices.

Although a precise legal definition of school resource officers does not exist, it is clear that school resource officers fill a variety of roles in today's schools. One could argue that this lack of clarity causes a duality of responsibility. Does the duality of their allegiance to both school and law enforcement agencies overstep a boundary that should be maintained? For instance, at what point does a school resource officer's unfettered access to the undercover operations of students in the K-12 realm and their subsequent ability to provide intelligence on gang activity, juvenile crimes, burglaries, drugs, etc., to their law enforcement colleagues as an extension of the arm of the law abandon their responsibility to protect student information as school officials? According to Beger, "Instead of safeguarding the rights of students against arbitrary police power, our nation's courts are granting police and school officials more authority to conduct searches of

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[17] Benjamin W. Fisher and Emily A. Hennessy, "School Resource Officers and Exclusionary Discipline in U.S. High Schools: A Systematic Review and Meta-analysis," *Adolescent Research Review* 1, no. 3 (2016): 217-33.
[18] Michael D. Schlosser, "Multiple Roles and Potential Role Conflict of a School Resource Officer: A Case Study of the Midwest Police Department's School Resource Officer Program in the United States," *International Journal of Criminal Justice Sciences* 9, no. 1 (2014): 131-42; Kerrin C. Wolf, "Arrest Decision Making by School Resource Officers," *Youth Violence and Juvenile Justice* 12, no. 2 (2014): 137-51.

students. Tragically, little if any Fourth Amendment protection now exists to shield students from the raw exercise of police power in public schools."[19]

To date no cases involving school resource officers in searches and seizures have been granted certiorari by the United States Supreme Court – the only unifying judicial voice in the land. With no official ruling from the Supreme Court, lower courts across all jurisdictions have been weaving an uneven web of common law and will continue to do so until the Supreme Court rules on a case involving school resource officers in searches and seizures. Until this happens, the legality of these searches will continue to be a moving target for school resource officers and school officials, which highlights the importance of understanding what factors have influenced rulings in the lower courts to this point.

In the meantime, searches by or involving school resource officers in K-12 public schools continue on a daily basis. This convergence of schools and law enforcement increases the potential to violate students' constitutional rights, putting districts and individuals at risk of penalties, and most of all students at risk of being searched illegally. With a limited number of U.S. Supreme Court cases addressing students' Fourth Amendment rights in K-12 public schools coupled with an increased law enforcement presence, it is likely only a matter of time before a case involving school resource officers in a public-school search and seizure is granted certiorari with the U.S. Supreme Court.

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[19] Beger, "Expansion of Police Power in Public Schools and the Vanishing Rights of Students," 119-20.

Research Purpose and Questions

The purpose of this study was to develop a set of guiding principles for the integration of school resource officers in searches and seizures in K-12 public schools. These guiding principles emerged by investigating the following questions:

- How have courts ruled on the role of school resource officers through holdings?
- What legal standards have courts applied in searches and seizures involving school resource officers – school or non-school 4th Amendment standards? Did court reasonings expand on *T.L.O.*?
- What have been the key factors that influenced court rulings in cases where school resource officers are involved in the searches?
- How have courts treated evidence obtained through searches involving school resource officers as compared to school administrator-only searches and school administrator-led searches with school resource officer involvement?

Significance

The demand for a safe and secure learning environment is higher now than at any time in the history of public schools. Given this demand, along with the increasing integration of law enforcement into the school and the protections guaranteed to students through the U.S. Constitution, a school administrator is left with little room for error in balancing those interests. Although *T.L.O.* has been the seminal case for school-related searches and seizures for over three decades, the lack of a Supreme Court opinion on the topic leaves common law as the definitive source and common law is always evolving. Since *T.L.O.*, cases involving the participation of law enforcement in school settings can generally be grouped into three categories:

- Searches initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement;
- Searches initiated and/or directed by school resource officers acting on their authority;
- Searches by school officials acting at the behest of outside law enforcement.

While these types of cases continue to reach the highest level of appellate courts in a growing collection of states and federal districts, the issue of the participation of school resource officers in school searches has yet to appear before the U.S. Supreme Court. It is imperative that school and district administrators and policymakers have a set of specific legal principles to guide the implementation of a school resource officer program in K-12 public schools that meets the letter and spirit of the law.

The primary benefit of this study is that it will provide school and district administrators and policymakers with a set of court-defined principles for the implementation of a legally sound school resource officer program in K-12 public schools that protects students' rights when searches and seizures become necessary. This study will also aid in the creation of professional development sessions or workshops on how to create and sustain a partnership between law enforcement and schools, inform principal and teacher preparation programs, and influence specialized trainings for school resource officers and other law enforcement officials.

Limitations and Delimitations

Limitations

This study was limited in two ways: (1) the potential that a case would make its way to the Supreme Court after the study was completed, and (2) that the opinions of the

cases studied specifically relate only to the state or federal appellate court jurisdiction in which they were rendered.

The definitive voice in common law is always the U.S. Supreme Court. At the time of this study, there have only been three Supreme Court cases dealing with the matter of school searches, and none of them address the involvement of school resource officers in school searches. As such, the nature of this study is naturally exploratory; a case involving school resource officers in school searches or seizures that makes its way to the Supreme Court after the conclusion of this study could confirm, alter, or negate the findings and recommendations of this study.

While many cases and legal reviews were read to develop a broader perspective of the courts' opinions of school resource officer involvement in school searches, these cases were from federal district court, federal appellate court, state appellate court, and state supreme court levels. Therefore, the opinions of these cases only hold authority in the jurisdictions from which they originate. However, though these individual lower courts do not hold the legal authority of the U.S. Supreme Court, their rulings are the basis on which common law is built in absence of the highest court's ruling. The need to compile these lower court rulings into a grounded theory of the current status of school resource officer searches is the purpose of this study.

Delimitations

This study will focus specifically on state and federal district and appellate court cases involving school resource officers or other law enforcement-school liaisons involved in student searches and seizures since *New Jersey v. T.L.O.* in 1985.

Summary

What is the acceptable role of the school resource officer in and relating to school searches? The lack of understanding by school officials and law enforcement officials of the role the school resource officer fulfills "could result in violating the constitutional rights of students."[20] Maranzano posits, "Legislation is needed in all 50 states to clarify the ambiguous role police officers assigned to schools must play in the orderly and safe conduct of students in schools."[21] Tiller calls for a "bright-line test"[22] that could be readily understood and applied to the myriad novel situations that prompt school searches on a daily basis.[23] While this study will accomplish neither in an official sense, its purpose in part is to prompt further discussion and thought on the legal standards necessary for appropriate integration of school resource officers in searches and seizures in K-12 public schools and bring a contemporary perspective to a set of guiding principles that were initialized by the U.S. Supreme Court over three decades ago.

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[20] Spencer C. Weiler and Martha Cray, "Police at School: A Brief History and Current Status of School Resource Officers," *The Clearing House: A Journal of Educational Strategies, Issues, and Ideas* 84, no. 4 (2011): 162.
[21] Chuck Maranzano, "The Legal Implications of School Resource Officers in Public Schools," *NASSP Bulletin* 85, no. 621 (2001): 79.
[22] A bright-line test is a clearly defined, standardized protocol for judging legal issues.
[23] Benjamin Tiller, "The Problems of Probable Cause: Meneese and the Myth of Eroding Fourth Amendment Rights for Students," *Saint Louis University Law Journal*, 58 (2014): 610.

Chapter 2: Literature Review

Section one of this chapter provides a conceptual framework for the analysis of U.S. Supreme Court and common law rulings from lower courts. Section two provides an overview of school resource officer programs in K-12 public schools. Section three examines K-12 search and seizure jurisprudence through the framework of landmark U.S. Supreme Court Cases. The final section discusses gaps in case law regarding school resource officers and their involvement in searches and seizures in K-12 public schools.

Conceptual Framework

Jabareen posits that "building a conceptual framework...is a process of theorization, which uses grounded theory methodology rather than a description of the data and the targeted phenomenon."[24] To establish a technique that enables a researcher to theorize concepts that emerge from the text, Jabareen proposed a qualitative analysis process referred to as conceptual framework for analysis.[25] He defined this process as "a grounded theory technique, or tactic, that aims to generate, identify, and trace a phenomenon's major concepts, which together constitute its theoretical framework....[and] develop concepts...that shed more light on the phenomenon represented by the concepts themselves."[26] This technique, which harbors both inductive and deductive qualities, matches well with the process of legal analysis. Therefore, the process of legal analysis established the conceptual framework for this study. Cases that involved school resource officers in searches and seizures were analyzed through the

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[24] Yosef R. Jabareen, "Building a Conceptual Framework: Philosophy, Definitions, and Procedure," *International Journal of Qualitative Methods* 8, no. 4 (2009): 52.
[25] Ibid.
[26] Ibid., 53.

accepted method of legal analysis – the case brief – to extract the facts and procedural history, the issue, the reasoning and rule of law, and the holding for each case; a case analysis matrix was used to enter this data. Then the researcher affinitized individual pieces of information from these court cases and synthesized them to distill similarities and dissimilarities concerning the research questions of this study. The result was a distillation of the legal standards for the involvement of school resource officers in school searches and seizures.

School Resource Officer Programs in K-12 Public Schools

In American public schools, there has been for some time a growing demand that they be safe and secure learning environments where students can engage in academically rigorous activities free from the fears that drugs, alcohol, and criminal activity bring. Toward that end schools began employing school resource officers – commonly referred to as SROs – in the 1950s and 1960s; by the late 1990s, this practice became a nationwide trend.[27] Today, school resource officers are the most widely recognized group of school-based law enforcement officials.[28] As Bracy concludes, in modern-day

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[27] Nathaniel Cary, "So Just What Should That School Resource Officer Have Done?" *The State*, November 8, 2015, http://www.thestate.com/news/local/article43708536.html; Julie Coon and Lawrence F. Travis III, "The Role of Police in Public Schools: A Comparison of Principal and Police Reports of Activities in Schools," *Police Practice and Research* 12, no. 1 (2012): 15-30; Weiler and Cray, "Police at School: A Brief History and Current Status of School Resource Officers," 160-63.

[28] Caitlin G. Lynch, Randy R. Gainey, and Allison T. Chappell, "The Effects of Social and Educational Disadvantage on the Roles and Functions of School Resource Officers," *Policing: An International Journal of Police Strategies & Management* 39, no. 3 (2016): 521-35.

public schools, "a police officer in school is as normal to students as a principal in school."[29]

Federal Definition of School Resource Officer

The term school resource officer was first used by a police chief in Miami, Florida, in the 1960s to describe law enforcement officers assigned to public schools.[30] The term is officially defined by the federal government on page 75 of Section 1709 of the Omnibus Crime Control and Safe Streets Act of 1968 and amended most recently in October 2018 as:

> A career law enforcement officer, with sworn authority, deployed in community-oriented policing, and assigned by the employing police department or agency to work in collaboration with schools and community-based organizations—
> (A) to address crime and disorder problems, gangs, and drug activities affecting or occurring in or around an elementary or secondary school;
> (B) to develop or expand crime prevention efforts for students;
> (C) to educate likely school-age victims in crime prevention and safety;
> (D) to develop or expand community justice initiatives for students;
> (E) to train students in conflict resolution, restorative justice, and crime awareness;
> (F) to assist in the identification of physical changes in the environment that may reduce crime in or around the school; and
> (G) to assist in developing school policy that addresses crime and to recommend procedural changes.[31]

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[29] Nicole L. Bracy, "Student Perceptions of High-Security School Environments," *Youth & Society* 43, no.1 (2011): 388.
[30] Coon and Travis III, "The Role of Police in Public Schools: A Comparison of Principal and Police Reports of Activities in Schools," 15-30.
[31] U.S. Government, *Omnibus Crime Control and Safe Streets Act of 1968*, Public Law 90-351; 82 Stat. 197, Washington, D.C.: 2018. https://legcounsel.house.gov/Comps/Omnibus%20Crime%20Control%20And%20Safe%20Streets%20Act%20Of%201968.pdf (accessed November 17, 2018)

Roles of School Resource Officers

The function of school resource officers as defined by the National Association of School Resource Officers (NASRO) is three-pronged: law enforcement officer, law-related educator, and law-related counselor.[32] School resource officers are law enforcement officials often assigned to schools on a regular, full-time basis with duties beyond those of ordinary law enforcement officials. Those duties include teaching drug prevention and gang awareness classes, counseling students, and engaging in specialized training to ensure a safe and secure learning environment for students, teachers, and staff members. In Tiller's view, although school resource officers wear law enforcement uniforms, are armed, and have an office on the campus of the school, in many cases, school resource officers function more like school employees and less like outside law enforcement.[33]

While the law enforcement officer function is the most dominant role in practice, the person fulfilling the position is the most significant determinant in the actual implementation of the school resource officer program at the school.[34] Coon & Travis III reiterated that both school principals and law enforcement officials shared the perception that the most frequent types of police involvement in schools were related to law enforcement activities such as patrolling school grounds and facilities, responding to

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[32] "About NASRO," National Association of School Resource Officers, accessed November 17, 2018, https://nasro.org/about/

[33] Tiller, "The Problems of Probable Cause: Meneese and the Myth of Eroding Fourth Amendment Rights for Students," 589-615.

[34] Trisha N. Rhodes, "Officers and School Settings: Examining the Influence of the School Environment on Officer Roles and Job Satisfaction," *Police Quarterly* 18, no. 2 (2015): 134-62; Schlosser, "Multiple Roles and Potential Role Conflict of a School Resource Officer: A Case Study of the Midwest Police Department's School Resource Officer Program in the United States," 131-42.

reports of crime, and conducting investigations.[35] However, the role, in general, is "either negotiated or evolves within the specific context of each school."[36]

Eklund, Meyer, and Bosworth found evidence that the school resource officer's skill set is a necessary and critical component of an effective school safety team and that school resource officers are viewed favorably by other members of the team.[37] In light of recent developments in the areas of mental health in the public school setting, the law-related counseling role of school resource officers may supplement psychological health counseling in what Eklund et al. posit "a bridge in professional mentorship between mental health professionals, school resource officers, and school administrators."[38]

The job description of school resource officers is typically defined in memorandums of understanding between the school district and the law enforcement agency which employs the school resource officer. The NASRO supports these memoranda as necessary components of the interagency model.[39] When memoranda or other similar interagency agreements exist, school resource officers and school officials

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[35] Coon and Travis III, "The Role of Police in Public Schools: A Comparison of Principal and Police Reports of Activities in Schools," 15-30.
[36] Ibid., 29.
[37] Katie Eklund, Lauren Meyer, and Kris Bosworth, "Examining the Role of School Resource Officers on School Safety and Crisis Response Teams," *Journal of School Violence* 17, no. 2 (2018): 139-51.
[38] Ibid., 147.
[39] "NASRO Position Statement on Police Involvement in Student Discipline," National Association of School Resource Officers, accessed on November 17, 2018, https://nasro.org/news/press-releases/nasro-position-statement-police-involvement-student-discipline/

can act with more certainty due to the defined roles and responsibilities found in these documents.[40]

Eklund et al. and Rhodes recommend that the roles and purposes of school resource officers should be explicit and communicated to all stakeholders.[41] Interagency agreements between schools and law enforcement agencies provide school resource officers to assist school personnel in establishing and maintaining safe and secure schools. These agreements typically define the roles of school resource officers in the school setting. However, school resource officers usually report to a supervisor in their police or sheriff's division rather than to a school or district administrator.[42] While the agreements do not demonstrate that there is one formula for funding school resource officers in the school system, there is usually a financial contribution on the school's behalf to the agency to which the school resource officer reports.[43]

Dickmann & Cooner described the school resource officer role as "dual" and "conflicting" where they enforce the law and support students and staff members simultaneously, and that the key to a healthy partnership is in clear expectations and

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[40] Josh Gupta-Kagan, "The School-to-Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident and Its Aftermath," *Fordham Urban Law Journal* 45, no. 1 (2017): 83-147; Dara Yaffe, "Reading, Writing, and Rethinking Discipline: Evaluation of the Memoranda of Understanding Between Law Enforcement and School Districts in Massachusetts," *New England Law Review*, 51 (2017): 131-53.

[41] Eklund, Meyer, and Bosworth, "Examining the Role of School Resource Officers on School Safety and Crisis Response Teams," 139-51; Rhodes, "Officers and School Settings: Examining the Influence of the School Environment on Officer Roles and Job Satisfaction," 134-62.

[42] Joseph M. McKenna, Kathy Martinez-Prather, & Scott W. Bowman, "The Roles of School-Based Law Enforcement Officers and How These Roles are Established," *Criminal Justice Policy Review* 27, no. 4 (2016): 420-43.

[43] Nathan James and Gail McCallion, "School Resource Officers: Law Enforcement Officers in Schools," *Congressional Research Service*, accessed June 26, 2013, https://www.fas.org/sgp/crs/misc/R43126.pdf

regular interactions.[44] Role ambiguity and conflict are shared experiences among school resource officers, making the ability to adapt law enforcement techniques, training, and mentality to accommodate the educational environment essential to a successful school resource officer program.[45]

With the promise of training, a good work schedule, and the opportunity to make a difference in the lives of youth, the role of school resource officer is enticing to many in law enforcement.[46] With significant interest in the position must come careful screening of school resource officer candidates to ensure they have the characteristics necessary to implement an effective school resource officer program.[47]

Expansion and Implications of School Resource Officer Programs

The school resource officer programs in public schools across the nation have rapidly expanded since the 1990s.[48] In fact, according to Theriot, "School-based policing is the fastest growing area of law enforcement."[49] Of these, school resource officers are

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[44] Ellyn M. Dickman & Donna D. Cooner, "Effective Strategies for Developing and Fostering Positive Relationships between Principals and School-Based Police Officers," *American Association of School Administrators Journal of Scholarship and Practice* 4, no. 1 (2007): 16.
[45] Rhodes, "Officers and School Settings: Examining the Influence of the School Environment on Officer Roles and Job Satisfaction," 134-62.
[46] Diane C. Wheeler, "The School Resource Officer: Reducing the Need for Court Intervention and Oversight," *Vermont Bar Journal* 38, no. 4 (2013): 29-30.
[47] Richard K. James, Joan Logan, and Scott A. Davis, "Including School Resource Officers in School-Based Crisis Intervention: Strengthening Student Support," *School Psychology International* 32, no. 2 (2011): 210-24.
[48] Myrstol, "Public Perceptions of School Resource Officer (SRO) Programs," 20-40; Matthew T. Theriot, "School Resource Officers and the Criminalization of Student Behavior," *Journal of Criminal Justice* 19, no. 3 (2009): 280-87; Weiler and Cray, "Police at School: A Brief History and Current Status of School Resource Officers," 160-63.
[49] Theriot, "School Resource Officers and the Criminalization of Student Behavior," 281.

the fastest growing division.[50] More and more schools have invited the presence of law enforcement agencies as the relationships between schools and police departments have grown.[51] Federal funding through the Community-Oriented Policing Schools program has also spurred the rapid expansion of school resource officer programs in K-12 public schools in all 50 states.[52] The 2018 Indicators of School Crime and Safety report from the National Center for Education Statistics found that 42% of all public schools have at least one school resource officer, and nearly half of all public schools have some form of sworn law enforcement presence at least once per week.[53]

School resource officers have been increasingly used for student discipline issues that have been handled in the past by school personnel. Coon & Travis III found that law enforcement officials reported higher levels of engagement with students in the policing of schools than did school principals and that the perception and communication of the roles of school resource officers throughout the school community was key to the

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[50] Beger, "Expansion of Police Power in Public Schools and the Vanishing Rights of Students," 119-30.

[51] *Fourth Amendment: Policing Students.* 128 Harv. L. Rev. 1747, April 10, 2015, http://harvardlawreview.org/2015/04/policing-students/; "Strategy: Assigning Resource Officers to Schools." *National Crime Prevention Council,* August 2, 2015, http://www.ncpc.org/topics/bullying/strategies/strategy-assigning-resource-officers-to-schools

[52] Caroletta Shuler Ivey, "Teaching, Counseling, and Law Enforcement Functions in South Carolina High Schools: A Study on the Perception of Time Spent Among School Resource Officers," *International Journal of Criminal Justice Sciences* 7, no. 2 (2012): 550-61.

[53] U.S. Department of Education and U.S. Department of Justice Office of Justice Programs, *Indicators of School Crime and Safety: 2017*, Lauren Musu-Gillette et al. NCES 2018-036/NCJ 251413, Washington, D.C.: National Center for Education Statistics and Bureau of Justice Statistics, 2018. https://www.bjs.gov/content/pub/pdf/iscs17.pdf (accessed on November 21, 2018)

successful implementation of the program.[54] According to Shuler Ivey, while law enforcement agencies downplay school resource officers as law enforcement officials in the school setting, school personnel highlight the law enforcement functions of a school resource officer presence in the same environment.[55] Due to a dearth of court rulings, the expansion of school resource officer programs has been largely unregulated legally on a broad scale, resulting in what Ryan, Katsiyannis, Counts, and Shelnut refer to as "mission creep,"[56] a phenomenon where blurred lines enable school resource officers to accomplish functions of their law enforcement roles under the guise of their school official roles.

Part of the consequence of mission creep of law enforcement in the schools has been an increase in the criminalization of student behavior, and in schools with school resource officer programs, this criminalization of student behavior is explicit.[57] It has been argued that school personnel do not understand the role of the officer in the school or how to utilize this support appropriately, resulting in the improper use of the school

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[54] Coon and Travis III, "The Role of Police in Public Schools: A Comparison of Principal and Police Reports of Activities in Schools," 15-30.
[55] Shuler Ivey, "Teaching, Counseling, and Law Enforcement Functions in South Carolina High Schools: A Study on the Perception of Time Spent Among School Resource Officers," 550-61.
[56] Joseph B. Ryan et al., "The Growing Concerns Regarding School Resource Officers," *Intervention in School and Clinic* 53, no. 3 (2018): 188.
[57] Lynn M. Barnes, "Keeping the Peace and Controlling Crime: What School Resource Officers Want School Personnel to Know," *The Clearing House: A Journal of Educational Strategies, Issues and Ideas* 9, no. 6 (2016): 197-201; Ryan et al., "The Growing Concerns Regarding School Resource Officers," 188-92; Theriot, "School Resource Officers and the Criminalization of Student Behavior," 280-87; Weiler and Cray, "Police at School: A Brief History and Current Status of School Resource Officers," 160-63; Yaffe, "Reading, Writing, and Rethinking Discipline: Evaluation of the Memoranda of Understanding Between Law Enforcement and School Districts in Massachusetts," 131-53.

resource officer to enforce school policies and procedures. When schools have school resource officer programs, school leaders sometimes relegate even the simplest infractions to law enforcement rather than employing traditional discipline approaches.[58]

Devlin & Gottfredson found an increase in crimes recorded and reported – especially lower level crimes – when school resource officers are present in the school setting.[59] A 2011 report from the Justice Policy Institute showed that schools with school resource officers had nearly five times the rate of arrests for disorderly conduct as schools without school resource officers.[60] Price talked about the criminalization of student behavior by school resource officers as a contributing factor to the "school-to-prison pipeline",[61] a concept confirmed in a 2016 statement published by the U.S. Department of Justice.[62] Policymakers have also begun to acknowledge the link between school resource officer programs and this school-to-prison pipeline. According to Gupta-Kagan,

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[58] Gupta-Kagan, "The School-to-Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident and Its Aftermath," 83-147; Michael Pinard, "From the Classroom to the Courtroom: Reassessing Fourth Amendment Standards in Public School Searches Involving Law Enforcement Authorities," *Arizona Law Review*, 45 (2003): 1067-1125; Yaffe, "Reading, Writing, and Rethinking Discipline: Evaluation of the Memoranda of Understanding Between Law Enforcement and School Districts in Massachusetts," 131-53.

[59] Deanna N. Devlin and Denise C. Gottfredson, "The Roles of Police Officers in Schools: Effects on the Recording and Reporting of Crime," *Youth Violence and Juvenile Justice* 16, no. 2 (2018): 208-23.

[60] Amanda Petteruti, "Education Under Arrest: The Case Against Police in Schools," Washington, D.C.: Justice Policy Institute, 2011. http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf (accessed November 18, 2018)

[61] Peter Price, "When is a Police Officer an Officer of the Law? The Status of Police Officers in Schools," *The Journal of Criminal Law and Criminology* 99, no. 2 (2009): 541-70.

[62] U.S. Department of Justice, *Department of Justice Files Statement of Interest in South Carolina Statewide School-to-Prison Pipeline Case*, Press Release Number 16-1392, Washington, D.C.: Office of Public Affairs, 2016.

"some of the most prominent efforts to reform the school-to-prison pipeline have focused on the role of school resource officers."[63]

Perceptions of School Resource Officer Programs

The research on student, faculty, and community perceptions of school resource officer programs is mixed. Reingle Gonzalez, Jetelina, & Jennings found an inverse relationship between visible security measures such as school resource officers and student-perceived school safety, but that teachers associate school resource officers with feelings of safety in the school setting.[64] Swartz, Osborne, Dawson-Edwards, & Higgins include school administrators in their positive perception of the impact of school resource officers on school safety.[65] In these studies, students felt less safe when school resource officers were present while adults felt safer.

Bracy suggests that the implementation of high-security measures, including school resource officer programs, have the potential to alienate students and jeopardize their constitutional rights.[66] The ethnographic study using in-depth interviews coupled with direct observations in two mid-Atlantic high-security public high schools showed that, though the schools were in different districts within the same county and had different demographic compositions, students' perceptions of their school resource

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[63] Gupta-Kagan, "The School-to-Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident and Its Aftermath," 132.
[64] Jennifer M. Reingle Gonzalez, Katelyn K. Jetelina, and Wesley G. Jennings, "Structural School Safety Measures, School Resource Officers, and School-related Delinquent Behavior and Perceptions of Safety," *Policing: An International Journal of Police Strategies & Management* 39, no. 3 (2016): 438-54.
[65] Kristin Swartz et al., "Policing Schools: Examining the Impact of Place Management Activities on School Violence," *American Journal of Criminal Justice*, 41 (2016): 465-83.
[66] Bracy, "Student Perceptions of High-Security School Environments," 365-395.

officer, their school's security and discipline policies, punishments, and fairness in rule applications to be "more similar than dissimilar."[67] Bracy also found that though students are not opposed to the presence of a school resource officer, that presence had no significant effect on students' perceptions of the safety of the school.[68] Devlin & Gottfredson found that the presence of school resource officers in public schools may contribute to students' feelings that their school is an unsafe place.[69] Shuler Ivey found that an overreliance on the law enforcement activities of school resource officers can have a negative influence on students' perceptions of school resource officers and cause them to see school resource officers as only law enforcement officials rather than law-related teachers or counselors.[70]

In a study centered on community survey data collected in Anchorage, Alaska, to assess the views of the general public regarding school resource officers, Myrstol found broad-based support for school resource officer programs by the community, stating that they improved public-police relationships.[71] However, this support may be rooted in the comfort of easily-accessible authorities. According to Myrstol, "Given the near absence of school resource officer program impact evaluations, there is little reason to think that people's confidence in these initiatives is based on evidence of their effectiveness."[72] Myrstol found socio-cultural identities and social contact with a police officer within a

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[67] Ibid., 373.
[68] Ibid.
[69] Devlin and Gottfredson, "The Roles of Police Officers in Schools: Effects on the Recording and Reporting of Crime," 208-23.
[70] Shuler Ivey, "Teaching, Counseling, and Law Enforcement Functions in South Carolina High Schools: A Study on the Perception of Time Spent Among School Resource Officers," 550-61.
[71] Myrstol, "Public Perceptions of School Resource Officer (SRO) Programs," 20-40.
[72] Ibid., 21.

twelve-month period as the most consistent predictors of positive public perception of school resource officer programs.[73] According to Myrstol:

> The permanent assignment of police in schools is a good way to reduce delinquency, enhance the overall climate of schools, improve community quality of life, strengthen the bonds between police and the community, educate students about law, the legal system, and law enforcement careers, and have a positive impact on the police department as well. Moreover, there is relatively little concern among members of the public that school resource officer programs would produce unintended negative consequences such as creating additional barriers between police and students, increasing the level of fear in schools, or undermining the authority of school officials.[74]

The Effectiveness of School Resource Officer Programs

Reingle Gonzalez et al. found that of the 29 studies included in their review, studies that examined the impact of safety measures such as school resource officers, focused on perceived safety rather than actual safety.[75] The findings on the effectiveness of school resource officer programs at establishing and maintaining a safe and orderly environment are mixed, and no clear, research-based nexus exists between the presence of school resource officers and improved school safety.[76] The absence of evidence is perhaps due in part to the lack of planning for assessment and evaluation between school

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[73] Ibid.
[74] Ibid., 27.
[75] Reingle Gonzalez, Jetelina, and Jennings, "Structural School Safety Measures, School Resource Officers, and School-related Delinquent Behavior and Perceptions of Safety," 438-54.
[76] Devlin and Gottfredson, "The Roles of Police Officers in Schools: Effects on the Recording and Reporting of Crime," 208-23; Gupta-Kagan, "The School-to-Prison Pipeline's Legal Architecture: Lessons from the Spring Valley Incident and Its Aftermath," 83-147; Reingle Gonzalez, Jetelina, and Jennings, "Structural School Safety Measures, School Resource Officers, and School-related Delinquent Behavior and Perceptions of Safety," 438-54.

districts and law enforcement agencies prior to the implementation of school resource officer programs.[77]

Johnson reported a reduction in school suspensions and school violence, an increase in counseling and support services, and a decrease in trespassers in a southern city that had implemented a school resource officer program in 18 middle schools and nine high schools.[78] Myrstol reported an active link between one's faith in the ability of police to control crime and their assessment of the effectiveness of school resource officer programs.[79] However, using data from the 2010 School Survey on Crime and Safety conducted by the National Center for Educational Statistics, Swartz et al. found that school resource officers neither prevent nor reduce violence in schools, but that accessibility by students and staff members to a school resource officer who is charged with securing a school through regulation of behavior may serve a more reactive purpose in the documentation of and response to reports of violent acts.[80]

In summary, the research into the role of school resource officer indicates that though these individuals retain their authority to enforce the law, their ability to adapt to the school setting is imperative. Clearly defined roles and responsibilities join schools and law enforcement agencies in integrating school resource officers most effectively.

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[77] Coon and Travis III, "The Role of Police in Public Schools: A Comparison of Principal and Police Reports of Activities in Schools," 15-30; Myrstol, "Public Perceptions of School Resource Officer (SRO) Programs," 20-40.
[78] Ida M. Johnson, "School Violence: The Effectiveness of a School Resource Officer Program in a Southern City," *Journal of Criminal Justice* 27, no. 2 (1999): 173-92.
[79] Myrstol, "Public Perceptions of School Resource Officer (SRO) Programs," 20-40.
[80] Kristin Swartz et al., "Policing Schools: Examining the Impact of Place Management Activities on School Violence," 465-83.

However, execution of school resource officer programs remains highly contextualized, and no universal expectation for implementation exists.

Search and Seizure Jurisprudence in K-12 Public Schools

The described roles of school resource officers in the literature are a starting point for better understanding their involvement in public schools. As law enforcement officials, investigation is a primary duty that often entails conducting searches and seizures. A brief explanation of the evolution of constitutional case law can clarify how students' constitutional rights are threatened if the implementation of a school resource officer program does not clearly establish the parameters under which officers work in the school environment, how they work with school officials, and expected adherence to established student's Fourth Amendment protections.

Evolution of Constitutional Case Law

This study focuses on case law, on judicial opinions as rules of law from courts of appeal at state and federal levels. Legal standards are developed based on a combination of legislation, policy, and case law. Case law influences future court opinions as those opinions are based on cumulative legal precedent. Case law is dynamic, and each time an opinion is rendered, it adds to the body of case law. *Stare decisis* – let the decision stand –means that future courts are almost always bound by previous court decisions when facts of the case are similar. However, nuances in the circumstances of a case can alter the direction of case law. Hierarchy of the court system is significant as all lower courts within a jurisdiction are expected to make decisions consistent with those of the higher courts in that jurisdiction.

An example of the progression of a case through the federal court system

A suit involving a school resource officer conducting a search in a K-12 public school is initially brought to the United States District Court for the Western District of North Carolina. The court issues a decision and a published written opinion in the case. Because of *stare decisis* that decision influences all nine federal district courts in the Fourth Circuit – which includes Maryland, West Virginia, Virginia, North Carolina, and South Carolina – when subsequent suits involving school resource officers conducting searches in K-12 public schools are brought. The decision may or may not also influence U.S. District Court decisions in other circuits when suits involving school resource officers conducting searches in K-12 public schools are brought.

Following the decision at the U.S. District Court for the Western District of North Carolina, either party reserves the right to appeal the case to the United States Court of Appeals for the Fourth Circuit in Richmond, Virginia. The appellant is the party filing the appeal; the appellee is the party against whom the appeal is filed. Parties file briefs and the court hears the case. The three-judge panel of the Fourth Circuit Court of Appeals will either affirm or reverse the decision of the district court. The U.S. Court of Appeals for the Fourth Circuit may choose to hear the case *en banc*, which means all judges in the Fourth Circuit hear the case and issue a decision. Like the initial decision at the district court level, the decision will influence all nine federal district courts in the Fourth Circuit and may or may not influence other circuit courts' decisions in suits involving school resource officers conducting searches in K-12 public schools.

Following the decision at the U.S. Court of Appeals for the Fourth Circuit, either party can submit a *writ of certiorari* to request that the United States Supreme Court hear

the case. If the U.S. Supreme Court grants *certiorari*, they agree to hear the case. If the Court denies certiorari, the opinion of the Appeals Court stands. The U.S. Supreme Court Justices can affirm, remand, or reverse the ruling of the federal court of appeals or the district court.

The U.S. Supreme Court, the highest in the land, has authority over the entire country. Once a decision regarding the involvement of school resource officers conducting searches in K-12 public schools is made at the U.S. Supreme Court level, that decision becomes the legal standard for all other courts, and they must make decisions consistent with the U.S. Supreme Court ruling.

Figure 2.1 demonstrates both state and federal jurisdictions. The U.S. Supreme Court has jurisdiction over all state and federal jurisdictions represented in the figure.

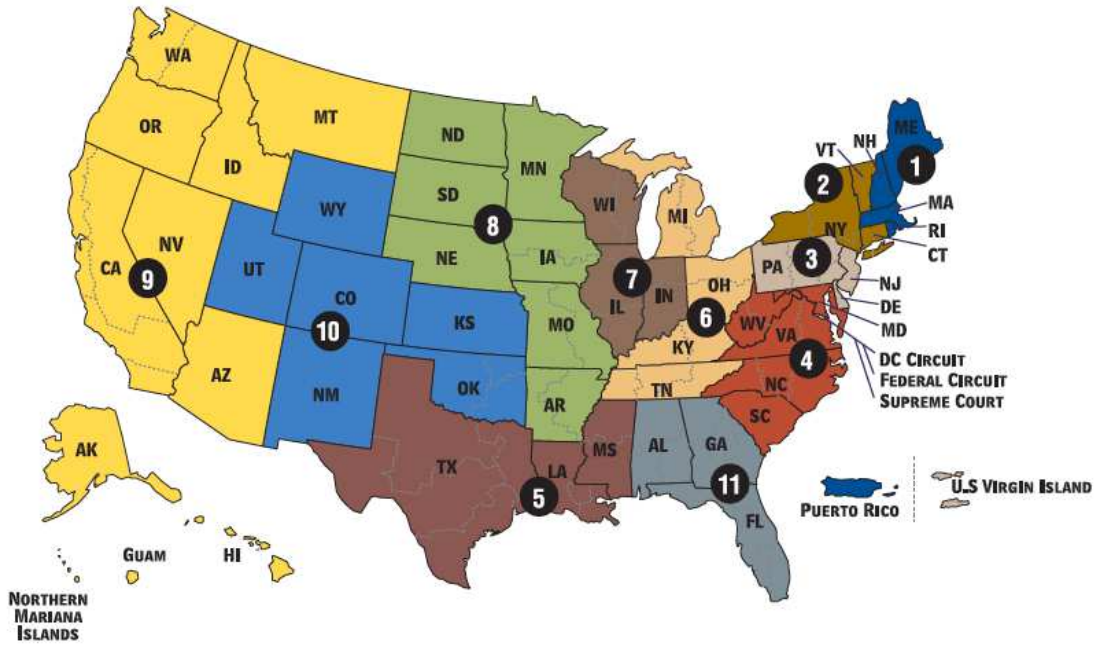

Figure 2.1 Geographic Boundaries of United States Courts of Appeals and United States District Courts. *Source*: http://www.uscourts.gov/sites/default/files/u.s._federal_courts_circuit_map_1.pdf. Accessed on May 6, 2018.

Legal Standards for Searches in K-12 Public Schools

Legal standards for search and seizure in K-12 Public Schools is foundationally based on the Fourth Amendment to the U.S. Constitution which grants specific protections to its citizens against unreasonable searches and seizures. It guarantees "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."[81]

Accordingly, the critical consideration for the legal standard based on a Fourth Amendment search by government officials is whether or not the search violated a reasonable expectation of privacy. Location is a contributing factor to a reasonable expectation of privacy, with one's home meriting the highest of expectations; however, outside the home, expectations of privacy are more subjective and must be judged as legitimate according to current societal standards as interpreted through the courts.[82]

The American public school is one area outside of the home that has been subject to special consideration regarding the application of Fourth Amendment rights. School shootings, gang activity, illegal drug use, and alcohol violations have resulted in the demand for increased safety measures which in turn have diminished the threshold of

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[81] U.S. Const. amend. IV.

[82] James C. Hanks and Kristy M. Latta, "Recent Developments in Education Law: Student Searches," *The Urban Lawyer* 44, no. 3 (2012): 743-55; Emily F. Suski, "Beyond the Schoolhouse Gates: The Unprecedented Expansion of School Surveillance Authority Under Cyberbullying Laws," *Case Western Reserve Law Review* 65, no. 1 (2014): 87-119.

reasonable expectations of privacy in the public-school setting[83] and students' Fourth Amendment rights.[84]

To further explore the concept of reasonable expectation of privacy, three landmark cases will be reviewed. These landmark cases lay the foundation for all case law regarding students' Fourth Amendment rights in K-12 public schools. These cases are *Tinker v. Des Moines Independent School District, New Jersey v. T.L.O,* and *Vernonia School Dist. 47J v. Acton*, and they serve as a guide for school administrators and policymakers when addressing issues of students' Fourth Amendment rights.

Landmark Case Reviews

Students Have Constitutional Rights: Tinker v. Des Moines Independent School District, 393 U.S. 503 (1969)

Jurisprudence

In *Tinker*, the Supreme Court recognized for the first time that students have constitutional rights. One quote captures the significance of the majority opinion delivered by Justice Fortas: "It can hardly be argued that either students or teachers shed their constitutional rights...at the schoolhouse gate."[85] This recognition is crucial because it establishes that if students have constitutional rights while in school, those rights can be violated.

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[83] Kari Staros and Charles F. Williams, "Search and Seizure in the Schools," *Social Education* 7, no. 1 (2007): 27-32; Suski, "Beyond the Schoolhouse Gates: The Unprecedented Expansion of School Surveillance Authority Under Cyberbullying Laws," 87-119.

[84] Jacqueline A. Stefkovich and Mario S. Torres, Jr., "The Demographics of Justice: Student Searches, Student Rights, and Administrator Practices," *Educational Administration Quarterly* 39, no. 2 (2003): 259-82.

[85] Tinker v. Des Moines, 393 U.S. 503 (1969), 506.

Facts and procedural history

In December 1965, John and Mary Beth Tinker, Christopher Eckhardt, and a group of adults, all from the Des Moines area, met to discuss how they might protest the Vietnam conflict. They decided to wear black armbands during the holiday season as a symbol of their objections to the Vietnam War. On December 14, 1965, following a tip regarding the students' planned protest, Des Moines school principals adopted a policy that prohibited students from wearing armbands. According to the policy: Any student wearing an armband would be asked to remove it; if he/she refused to do so, the student would be suspended until he/she complied with the order to remove the armband. Though aware of this policy, on December 16-17, 1965, petitioners wore the armbands to school; the policy was enforced, and the petitioners were suspended until they agreed to comply with the rule. The petitioners did not return to school until after New Year's Day – the time the group determined would end their wearing of the armbands. The petitioners brought the case before the Federal District Court on the grounds that the policy enacted by school authorities violated their First Amendment rights to free speech and expression. The Federal District Court found in favor of the school authorities. The petitioners appealed their case to the Court of Appeals for the Eighth Circuit where the entire court heard the case (*en banc*). The Court of Appeals for the Eighth Circuit was divided equally and therefore affirmed the decision of the Federal District Court. The case was appealed to the United States Supreme Court in 1969.[86]

[86] Ibid.

Issue

Did school authorities violate the petitioners' First Amendment rights to freedom of speech and expression by suspending them for wearing armbands in protest of the Vietnam War?

Reasoning and rule of law

Students possess fundamental rights guaranteed under the Constitution. According to Supreme Court Justice Fortas, "It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."[87] The students' form of protest was silent and symbolic; it did not interfere with the operation of the school or impinge on the rights of other students. According to Justice Fortas, school officials may not reduce students' rights to freedom of speech and expression merely to "avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."[88] The Court determined the wearing of the armbands in protest of the Vietnam War did not "materially and substantially interfere" with the safe and orderly operation of the school[89] and was therefore protected under the First Amendment.

Holding

The Supreme Court reversed the judgment of the Court of Appeals for the Eighth Circuit and remanded for further proceedings consistent with its findings.

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[87] Ibid., 506.
[88] Ibid., 509.
[89] Ibid.

Summary

The U.S. Supreme Court ruling in *Tinker v. Des Moines Independent School District* (1969) established that students have constitutional rights. According to Justice Fortas, who delivered the Court's opinion, students do not "shed their constitutional rights…at the schoolhouse gate."[90] The *Tinker* ruling is considered the height of students' rights in U.S. Supreme Court case law, and the Court has taken a much more conservative turn regarding students' rights in general – and students' Fourth Amendment rights in particular – since that time.[91]

A Reasonable Student Search: New Jersey v. T.L.O., 469 U.S. 325 (1985)

Jurisprudence

In *T.L.O.*, the Supreme Court defined the terms of a constitutional search of students through two expectations: the search must be "justified at its inception,"[92] and the search must be "reasonably related in scope to the circumstances which justified the interference in the first place."[93] While it is ultimately the courts that determine the reasonableness of searches when students' constitutional rights are in question, these guidelines continue to be the standard for searches of students by school officials to this day.

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[90] Ibid., 506.
[91] Thomas Y. Davies, "The Supreme Court Giveth and the Supreme Court Taketh Away: The Century of Fourth Amendment 'Search and Seizure' Doctrine," *Journal of Criminal Law & Criminology* 100, no. 3 (2010): 933-1041.
[92] New Jersey v. T.L.O., 469 U.S. 325 (1985), 326.
[93] Ibid.

Facts and procedural history

On March 7, 1980, a teacher caught T.L.O., a student, and another girl smoking in a bathroom at Piscataway High School in Middlesex County, New Jersey. Since this was a violation of a school rule, the teacher took the girls to the principal's office to see Assistant Vice Principal Choplick. While the other girl admitted to smoking in the bathroom, T.L.O. denied the accusation and argued she was not a smoker. After going into Choplick's office, he demanded to search her purse where he found a pack of cigarettes; consequent to this search, Choplick also found cigarette rolling papers which he believed to be associated with marijuana use. Continuing his search of T.L.O.'s purse, Choplick found marijuana, a pipe, plastic bags, a significant amount of money, a list of students who owed her money, and two letters linking her to marijuana dealing, all of which he turned over to the police. T.L.O.'s mother took her to police headquarters where she confessed to marijuana dealing at school. New Jersey took T.L.O. to the Juvenile and Domestic Relations Court of Middlesex County on charges of delinquency. T.L.O. moved to suppress the evidence from Choplick's search and the resulting confession on the grounds that the search violated her rights under the Fourth Amendment. The Juvenile and Domestic Relations Court found in favor of the student, T.L.O. The State appealed the case to the Supreme Court of New Jersey, but it upheld the lower court's decision. The case was then appealed to the Supreme Court of the United States in 1985.[94]

[94] Ibid.

Issue

Did the Assistant Vice Principal's search of a student's purse violate her rights under the Fourth Amendment?

Reasoning and rule of law

The Supreme Court determined that searches conducted by school officials be subject to the protections against unreasonable searches and seizures under the Fourth Amendment since they are acting as agents of the state rather than *in loco parentis*. Justice White gave a two-part test to determine the reasonableness of a student search:

- The search must be "justified at its inception."[95]
    - According to Supreme Court Justice White, 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."[96]
- The search must be "reasonably related in scope to the circumstances which justified the interference in the first place."[97]
    - According to Justice White, 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."[98]

Choplick's initial search of the purse for cigarettes was justified at its inception and was reasonable in scope. Choplick's subsequent search for drug paraphernalia following the discovery of cigarette rolling papers was also justified at its inception and was reasonable

[95] Ibid.
[96] Ibid.
[97] Ibid.
[98] Ibid., 342.

in scope. According to Justice White, "Because the search resulting in the discovery of the evidence of marijuana dealing by T.L.O. was reasonable, the New Jersey Supreme Court's decision to exclude that evidence from T.L.O.'s juvenile delinquency proceedings on Fourth Amendment grounds was erroneous."[99]

Holding

The Supreme Court of the United States reversed the judgment of the Supreme Court of New Jersey.

Summary

The Supreme Court determined in *New Jersey v. T.L.O.* that the Fourth Amendment to the U.S. Constitution applies to the search of students by school officials, but that students have a lower expectation of privacy than the general public. Unlike the requirement for probable cause applied to law enforcement officials on the street, according to Tiller, "the probable cause standard is unworkable in schools."[100] Requiring a warrant before searching a student suspected of a school rule infraction would place an undue hardship on school officials in swiftly administering disciplinary procedures.[101] Acknowledging that searches of students at the school were subject to a standard of reasonableness rather than probable cause, the Court established a two-part inquiry to determine the legality of the search. According to Justice White, the search must be

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[99] Ibid., 348.
[100] Tiller, "The Problems of Probable Cause: Meneese and the Myth of Eroding Fourth Amendment Rights for Students," 590.
[101] Philip Fetzer and Laurence Houlgate, "Are Juveniles Still 'Persons' Under the United States Constitution? A New Theory of Children's Constitutional Rights," *The International Journal of Children's Rights* 5, no. 3 (1997): 319-39; Tiller, "The Problems of Probable Cause: Meneese and the Myth of Eroding Fourth Amendment Rights for Students," 589-615.

"justified at its inception"[102] and "reasonably related in scope to the circumstances which justified its interference in the first place…in light of the age and sex of the student and the nature of the infraction."[103]

Consequently, school officials operate under different legal standards regarding searches and seizures than do law enforcement officials outside of public schools.

Appropriate Degree of Authority Over Students in School: Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995)

Jurisprudence

Acton is significant in the K-12 search and seizure trail because the Supreme Court acknowledges that though students have constitutional rights, those rights are more limited in schools than in public generally. This limitation affords school officials the authority they deem necessary to provide a safe and secure learning environment.

Facts and procedural history

An official investigation conducted by Vernonia School District 47J in Vernonia, Oregon, led to the discovery that high school athletes in the Vernonia School District participated in illicit drug use. School officials were concerned that drug use increased the risk of sports-related injuries. Consequently, and with the unanimous approval of parents who attended a parent input night, the Vernonia School District of Oregon adopted the Student Athlete Drug Policy. The policy, which authorized random urinalysis drug testing of all student-athletes participating in interscholastic athletics, was implemented beginning in the fall of 1989. In the fall of 1991, James Acton, a seventh-grade student, was denied participation in his school's football program when he and his

[102] New Jersey v. T.L.O., 469 U.S. 325 (1985), 326.
[103] Ibid.

parents refused to sign the testing consent form as outlined in the policy. The student's family filed suit on grounds that the policy violated Acton's rights under the Fourth and Fourteenth Amendments. The United States District Court denied the claims and dismissed the action. Acton appealed to the U.S. Court of Appeals for the Ninth Circuit, and the court reversed the decision of the district court. The school district appealed the decision to the United States Supreme Court in 1995.[104]

Issue

Did the random drug testing of high school athletes violate the reasonable search and seizure clause of the Fourth Amendment?

Reasoning and rule of law

The Court recognized that, consistent with its ruling in *New Jersey v. T.L.O.*, in the school setting a special need to conduct swift and informal disciplinary procedures may include searches without warrant and probable cause. Rather, the appropriate standard is reasonableness. According to Justice Scalia, who delivered the opinion, "The 'reasonableness' of a search is judged by balancing the intrusion on the individual's Fourth Amendment interests against the promotion of legitimate governmental interests."[105]

The Court considered three factors to determine the reasonableness of the random urinalysis as a search: the nature of the privacy interest upon which the search intrudes, the character of the intrusion, and the nature and immediacy of the governmental concern at issue. In the case of high school athletes who are under State supervision during

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[104] Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995)
[105] Ibid., 646.

school hours, they are subject to greater control than over free adults. The privacy interests compromised by collecting and analyzing urine samples are negligible since the conditions of collection are similar to public restrooms, and the results are viewed only by limited authorities. Furthermore, the governmental concern over the safety of minors under their supervision overrides the minimal, if any intrusion on student-athletes' privacy. Therefore, the Court found the district's policy requiring consent to random drug testing prior to participating in interscholastic athletics was both reasonable and constitutional.

Holding

The Supreme Court of the United States vacated the judgment of the Court of Appeals for the Ninth Circuit and remanded for further proceedings consistent with its findings.

Summary

Ten years after *New Jersey v. T.L.O.*, the Supreme Court further clarified the custodial and tutelary nature of the power schools apply as "a degree of supervision and control that could not be exercised over free adults…[but] what is appropriate for children in school."[106] This ruling crystallized the diminished Fourth Amendment rights of students in the interest of maintaining a safe school.

Issues at Hand

These landmark cases provide some guidance for school administrators and policymakers. In *T.L.O.*, the Court declined to address "the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement

[106] Ibid., 655-56.

agencies."[107] This ambiguity surrounding searches and seizures involving school resource officers has sparked litigation across the nation.[108] A burden has been placed on state and federal courts to decide which standards apply to school resource officers. Inconsistent rulings across jurisdictions have generated confusion. As these standards are currently exercised, school officials and school resource officers must choose whether to potentially violate a student's constitutional rights by conducting a search or apply for a warrant and risk the safety of students. In a day when school resource officers or other law enforcement officers are in the majority of schools on a regular basis, an examination of their involvement in searches and seizures in K-12 public schools is imperative. In doing so, clear guidelines may be developed, and arrangements can be made to protect school administrators, school resource officers, and students against infringement of their rights.

School officials are subject to the less stringent standard of reasonable suspicion to exercise efficiency in addressing student discipline issues[109] because a lower standard was deemed necessary to efficiently maintain a safe and orderly learning environment in K-12 public schools. Law enforcement officials must have probable cause and obtain a search warrant to conduct a search in a public school. However, under *New Jersey v. T.L.O.*, school resource officers in what Bailey terms their "quasi-law enforcement

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[107] New Jersey v. T.L.O., 469 U.S. 325 (1985), 341, n.7.
[108] Stefkovich and Torres, Jr., "The Demographics of Justice: Student Searches, Student Rights, and Administrator Practices," 259-82.
[109] Nicole L. Bracy, "Circumventing the Law: Students' Rights in Schools with Police," *Journal of Contemporary Criminal Justice* 26, no. 3 (2010): 294-315; Matthew T. Theriot and Matthew J. Cuellar, "School Resource Officers and Students' Rights," *Contemporary Justice Review* 19, no. 3 (2016): 363-79.

role,"[110] have fewer limitations when conducting searches initiated and/or directed by school officials, thus giving them a more relaxed standard than their colleagues on the streets. Stefkovich & Torres Jr. found that law enforcement officials are increasingly involved in conducting searches in public schools and that this phenomenon could be a function of increased interagency relations.[111]

The result of relaxed standards for school resource officers is a fusion of the justice system and the schools in a way not foreseen in *T.L.O.* Additionally, court cases have demonstrated inconsistencies in their views of the legal standards that should apply to searches and seizures involving school resource officers based on whether the agent is acting as a law enforcement officer or a school official.[112] The absence of a ruling on the involvement of school resource officers in searches and seizures in K-12 public schools at the U.S. Supreme Court level explains the inconsistencies across jurisdictions regarding this topic. These inconsistencies will be examined in Chapter 4 and Chapter 5.

Summary

In Chapter 2, the researcher described the conceptual framework for the study – the process of legal analysis – which was used to distill clearly articulated legal standards for the involvement of school resource officers in school searches and seizures. Following a review of the literature pertaining to the current status of school resource officer programs in K-12 public schools and of K-12 search and seizure jurisprudence

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[110] Kirk A. Bailey, "Guide 2: School Policies and Legal Issues Supporting Safe Schools." In *Safe and Secure: Guides to Creating Safer Schools*. Portland: Northwest Regional Educational Laboratory, 2002, 20.
[111] Stefkovich and Torres, Jr., "The Demographics of Justice: Student Searches, Student Rights, and Administrator Practices," 259-82.
[112] Bracy, "Circumventing the Law: Students' Rights in Schools with Police," 294-315.

through three landmark U.S. Supreme Court Cases, the researcher discussed gaps in case law regarding the involvement of school resource officers in searches and seizures in K-12 public schools. Chapter 3 will present the methodology used to answer the research questions.

Chapter 3: Methodology

This study used Standard Legal Analysis as described in the conceptual framework section of Chapter 2. This process pairs closely with Jabareen's conceptual framework for analysis, a grounded theory technique.[113] No human subjects were used in this study. The research involved the collection and study of existing documents that are publicly available without restrictions. As in the court documents, the anonymity of underaged individuals was protected. Rather than focus on a single jurisdiction, this study spanned all federal and state jurisdictions to develop a holistic perspective of the factors that influenced court rulings in cases where school resource officers were involved in searches and seizures.

Research Purpose and Questions

The purpose of this study was to develop a set of guiding principles for the integration of school resource officers in searches and seizures in K-12 public schools. These guiding principles emerged by investigating the following questions:

- How have courts ruled on the role of school resource officers through holdings?
- What legal standards have courts applied in searches and seizures involving school resource officers – school or non-school 4th Amendment standards? Did court reasonings expand on *T.L.O.*?
- What have been the key factors that influenced court rulings in cases where school resource officers are involved in the searches?

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[113] Jabareen, "Building a Conceptual Framework: Philosophy, Definitions, and Procedure," 49-62.

- How have courts treated evidence obtained through searches involving school resource officers as compared to school administrator-only searches and school administrator-led searches with school resource officer involvement?

Research Design – Standard Legal Analysis

For this study, the researcher employed Standard Legal Analysis – an iteration of document analysis – as the data analysis method rooted in the grounded theory methodological approach. According to Glaser, "The result of a grounded theory study is not the reporting of facts but the generation of probability statements about the relationships between concepts – a set of conceptual hypotheses developed from empirical data."[114] The researcher examined the data gathered through legal rulings following the method discussed below to theorize what factors impacted court rulings when school resource officers were involved in searches and seizures.

Methods and Analysis

Data sources and criteria

The empirical data for this study was the written opinions of court cases where school resource officers were involved in searches and seizures. The following criteria were used to select documents for the document analysis data sources:

- Written opinions, rules of law, and holdings from state appellate court, state supreme court, and federal appellate court cases since *New Jersey v. T.L.O.* (1985)
- Majority opinions (no dissenting opinions)

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[114] Barney G. Glaser, *Doing Grounded Theory: Issues and Discussions* (Mill Valley: Sociology Press, 1998), 3.

- Cases must have involved school resource officers or some law enforcement official acting in this capacity based on the details of the case
- Cases must have involved a search or seizure

A search of the Thomson Reuters WestLaw database accessed through the University of North Carolina at Charlotte (UNC Charlotte) Library was used to identify cases relevant to the topic. This database enabled the researcher to search all federal and state cases to identify cases involving school resource officers in searches or seizures.

Data Collection Methods and Data Analysis Methods Selected

Bowen defines document analysis as "a systematic procedure for reviewing or evaluating documents."[115] In document analysis, the researcher must consider multiple aspects of the document – such as context, format, and audience – to understand not only what it says but to interpret its meaning and how it relates to the research purpose. Given the cumulative nature of case law, conducting a chronological document analysis helped the researcher to understand how the issue developed over time in the context of the variety of jurisdictions in which the cases originate. Through an inductive data analysis of these documents, the researcher identified patterns in the data to develop a set of influential factors and their impact on court opinions.[116] An understanding of these factors can serve to guide the implementation of school resource officer programs that protect students' rights.

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[115] Glenn A. Bowen, "Document Analysis as a Qualitative Research Method," *Qualitative Research Journal* 9, no. 2 (2009): 27.
[116] Bowen, "Document Analysis as a Qualitative Research Method," 27-40; Michael J. Crotty, *The Foundations of Social Research: Meaning and Perspective in the Research Process* (London: Sage, 1998), 78.

After identifying relevant cases, each case was examined using the following treatments to distill the factors influencing court rulings in cases where school resource officers are involved in searches and seizures:

- Review and brief cases relevant to the topic by extracting the following information:
    - Title – the names of the parties involved in a case
    - Citation – the location of a published case in a case reporter
    - Facts and Procedural History – the details of a case and how a case proceeded through the judicial system
    - Issue – a question of constitutional concern that can be answered with "yes" or "no"
    - Reasoning and Rule of Law – a court's application of established legal principles to the details of a case
    - Holding – the outcome of a case (affirmed, reversed, or remanded)
- Develop case analysis matrix to organize data from individual cases.
- Analyze each case using the following questions/considerations to identify themes:
    - What was the role of the school resource officer from the court's purview?
    - What legal standards did the court apply to the search?
    - What were the salient features and nature of the search?
    - How was any evidence obtained through the search treated?
    - Did the court expand on the reasoning of *T.L.O.*?

- Affinitize and synthesize individual pieces of information from court cases through reasoning to generate themes that identify key factors influencing court rulings.
- After the data is analyzed, create recommendations that help school and district administrators integrate school resource officers into the school program in a way that meets both the letter and spirit of the law.

Strategies for Trustworthiness

Two methods to enhance trustworthiness were used in this study: triangulation and the establishment of an audit trail.

Triangulation

Shenton discusses one aspect of triangulation as "triangulating via data sources."[117] Using a wide range of data sources – cases in this study – helps to establish greater credibility, especially as similar influential factors emerge from those data sources across jurisdictions. Analyzing cases from both federal and state court systems provide a broader perspective to understand the involvement of school resource officers in searches and seizures better.

Establishment of an audit trail

According to Shenton, an audit trail "allows any observer to trace the course of the research step-by-step via the decisions made and the procedures described."[118] Establishing an audit trail through the use of a case analysis matrix and the concepts embedded in the research questions serve to promote confirmability. The matrix gives

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[117] Andrew K. Shenton, "Strategies for Ensuring Trustworthiness in Qualitative Research Projects," *Education for Information* 22, no. 2 (2004), 66.
[118] Ibid., 72.

the reader the ability to see how the data is connected to individual cases as well as how it is synthesized to generate key factors influencing court cases.

Summary

Chapter 4 will be a compilation of the case briefs in accordance with the method described previously. Briefing cases is the primary step in the data collection process of a legal analysis since the rulings in the cases included in this study are the foundation on which case law regarding the involvement of school resource officers in K-12 public schools is built. Findings, analyses, conclusions, and recommendations will flow from the content of these case briefs. Once case briefing is complete, the researcher will identify factual similarities in cases, extract nuggets of data, and create logical permutations of these nuggets to interpret meaning in Chapter 5. The result will be a set of influential factors and their impact on court opinions. In Chapter 6, the researcher will revisit the original research questions to report findings and conclusions as they have ripened over the course of this study. Finally, the researcher will propose a set of recommendations for the integration of school resource officers in searches and seizures in K-12 public schools that meets both the letter and spirit of the law.

Chapter 4: Case Briefs

Within this chapter are the relevant case briefs that serve as the data for this study. The case briefs are arranged chronologically to build a context for the evolution of case law regarding the involvement of school resource officers in searches and seizures in K-12 public schools since *New Jersey v. T.L.O.*

Court cases are complex documents that do not always follow a linear train of thought. The challenge of a case brief is to capture the essence of the ruling in a format that preserves the integrity of the information presented by the case in a succinct manner. A well-written brief – and indeed a collection of well-written briefs about a specific topic – helps legal researchers to develop an understanding of the current state of common law, which is critical to the issue of this study in order to ensure students' rights are protected and school officials and law enforcement agencies are operating within the bounds of those rights.

The cases that have been argued since *New Jersey v. T.L.O.* are especially crucial to this topic because the U.S. Supreme Court declined to address "the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies."[119] At the heart of this study is precisely that – school officials working with law enforcement agencies in varying capacities to conduct searches and seizures in K-12 public schools.

For this study, the researcher used the criteria established in Chapter 3 to identify relevant state and federal court cases that involved a school resource officer or some law

[119] New Jersey v. T.L.O., 469 U.S. 325 (1985), 341, n.7.

enforcement official acting in that capacity to conduct a search or seizure in the K-12 public school context. The researcher briefed those cases by identifying the title, citation, facts and procedural history, issue, reasoning and rule of law, and holding of each case. These briefs lay the foundation for this study.

Cason v. Cook, 810 F.2d 188 (1987)

Facts and Procedural History

On May 17, 1983, a North High School student told her vice-principal, Connie Cook, that her locker had been broken into and that she was missing sweatpants and a duffle bag; one of her friends was also missing a pair of sweatpants. A few minutes later another student reported to Ms. Cook that her wallet with $65 and a coin purse had been taken from her gym locker. Ms. Cook asked Wanda Jones, a Des Moines Police Department officer who was assigned as the liaison officer to the school, to accompany her as she began to investigate in the locker room. Ms. Cook interviewed several students and was able to get the names of four students, one of whom was Shy Cason, who had been in the locker room around the time the items went missing. Ms. Cook asked Officer Jones to accompany her as she interviewed the four students. Ms. Cook interviewed Cason in a locked restroom, and Officer Jones was present. Cason admitted to being in the locker room but denied having any of the stolen items. Ms. Cook informed Cason that she was going to search her purse, and, upon dumping the contents onto a shelf, discovered the coin purse that had been missing. After this, Officer Jones conducted a pat-down search of Cason. As they made their way to the office, Ms. Cook searched Cason's locker. Officer Jones and Ms. Cook jointly interviewed Cason and another accomplice when they could not agree on the events that happened in the locker

room. Officer Jones presented each student with a juvenile appearance card which required them and their parents to report to Officer Jones's office at the police station. Cason was suspended from school, and no further action was taken following the meeting with Officer Jones at the police station. Cason filed suit in the United States District Court for the Southern District of Iowa on the grounds that her constitutional rights to due process and to be free from unreasonable search and seizure were violated during the investigation by Ms. Cook and Officer Jones. The district court granted a directed verdict in favor of the defendants. Cason appealed to the United States Court of Appeals for the Eighth Circuit.

Issue

Did the school investigation conducted in conjunction with a police liaison officer violate Cason's Fourth Amendment rights?

Reasoning and Rule of Law

According to the Honorable Fred J. Nichol, "At most…this case represents a police officer working *in conjunction with* school officials," rather than at the behest of a law enforcement agency.[120] Requiring probable cause and a warrant based on the limited involvement of the police liaison officer "would not serve the interest of preserving swift and informal disciplinary procedures in schools."[121] The court found that the school official led all aspects of the search, and, under the circumstances, the correct standard to apply was the *T.L.O.* standard. The search of the purse was based on a reasonable suspicion that Cason had been involved in violating school rules and the law. The limited

[120] Cason v. Cook, 810 F.2d 188 (1987), 192.
[121] Ibid.

pat-down search by a police liaison officer was justified when the coin purse was discovered. The court ruled that the scope of the search was reasonable due to the nature of the missing items.

Holding

The United States Court of Appeals for the Eighth Circuit affirmed the order of the district court.

F.P. v. State, 528 So.2d 1253 (1988)

Facts and Procedural History

David Ferrell, an investigator for the Tallahassee Police Department, received a tip that F.P., a middle school student, had a stolen vehicle. Ferrell passed the information to Jackie Flint, the school resource officer for the middle school. Ferrell and Officer Flint looked for F.P. but were unable to find him. After Ferrell left, Officer Flint found F.P., brought him to her office, and called Ferrell. Before Ferrell returned, Officer Flint asked F.P. "if he had anything he needed to give her" and said Ferrell was going to make him empty his pockets.[122] F.P. gave Officer Flint the car keys and a paper. When Ferrell returned, he Mirandized F.P., but F.P. waived his rights and gave a statement about the keys and paper. In delinquency proceedings in the Circuit Court for Leon County, F.P. moved to suppress the keys, paper, and his statement, because Officer Flint, as a law enforcement officer, exercised the authority of a police officer but didn't have probable cause to search F.P. The State said rather than a search, F.P. voluntarily produced the evidence. They also argued that even if it were a search, it was permissible under the reasonableness standard for a search of a student by a school official. The trial court

[122] F.P. v. State, 528 So.2d 1253 (1988), 1254.

ruled that as a school resource officer, Officer Flint represented both the school and the sheriff's department. Therefore, as a school official, Officer Flint was subject to the school official exception of reasonableness, rather than the higher probable cause standard. F.P. was ordered committed for juvenile delinquency, and he appealed the decision to the District Court of Appeal of Florida for the First District.

Issue

Did the warrantless search of F.P. conducted by a school resource officer at the behest of police violate his rights guaranteed under the Fourth Amendment?

Reasoning and Rule of Law

According to the court, if the physical evidence were suppressed due to a violation of appellant's rights, any subsequent statements would also have to be suppressed. The court, citing *M.J. v. State* (1981), ruled that the school official exception did not apply when the search is carried out at the behest of police. In this case, Officer Flint acted at the behest of Ferrell. The court found that this fact triggered the higher traditional Fourth Amendment standard. Accordingly, the State was required to prove that the appellant consented to the search or that probable cause existed that the appellant had violated the law and possessed evidence of that violation.

Holding

The District Court of Appeal of Florida, First District, reversed the trial court's ruling that the school official exception applied based on the facts of the case, and remanded for clarification of the trial judge's ruling that appellant did not voluntarily produce the evidence.

Coronado v. State, 835 S.W.2d 636 (1992)

Facts and Procedural History

On April 27, 1989, Kim Benning, assistant principal, questioned, patted down, and searched the locker of appellant based on a report that appellant attempted to sell drugs to another student. Benning found $300 cash in appellant's wallet and asked, "Do you sell drugs?"[123] to which appellant replied, "Not on campus."[124] On May 5, 1989, Benning was notified by school personnel that appellant was leaving campus at 9:30 am to attend his grandfather's funeral. Benning notified Ernest Randall, a Galveston County Sheriff's Officer on special assignment at the school, and a school security officer that appellant was attempting to leave campus. Benning located appellant at an outside pay phone and asked him to come inside. Benning questioned appellant about the location of his vehicle and why he was leaving campus. The appellant evaded Benning's questions, but a call to appellant's relatives revealed that his grandfather had not died and the make of the vehicle appellant drove. This information heightened Benning's curiosity, and he escorted appellant to his office to determine whether appellant was skipping school. Benning asked Officer Randall to join them. Though neither Officer Randall nor Benning observed appellant commit any illegal act, Benning searched appellant with Officer Randall observing under the claim that he had cause to search appellant due to the previous tip that appellant had attempted to sell drugs to another student; no contraband was discovered. Following the search in Benning's office, Benning and Officer Randall searched appellant's locker. Later, Benning, Officer Randall, and a school security guard

[123] Coronado v. State, 835 S.W.2d 636 (1992), 637.
[124] Ibid.

went with appellant to his vehicle. Benning, flanked with Officer Randall and the school security officer, demanded appellant open the car. Officer Randall discovered bags of white powder, a triple beam balance, and what appeared to be marijuana. After completing the search, Officer Randall arrested appellant and handcuffed him to a chair in his office for two to three hours. Appellant gave a statement which revealed previous and pending drug deals. Appellant was charged with possession of cocaine. In the 10th Judicial District Court for Galveston County, appellant moved to suppress the evidence obtained during the search of his vehicle, but the motion was denied. Appellant pled nolo contendere and contested the legality of the search on appeal. The Court of Appeals affirmed, and defendant petitioned for discretionary review. The Court of Criminal Appeals of Texas heard the case *en banc*.

Issue

Was the search of appellant's vehicle reasonable under the Fourth Amendment?

Reasoning and Rule of Law

According to the court, the legality of a search conducted by school officials depends on the reasonableness of the search under all of the circumstances of the search. The court used the two-prong test outlined in *New Jersey v. T.L.O.* According to the court, the original search occurred on April 27, and no contraband was discovered. The second search occurred on May 5, as Benning attempted to ascertain whether appellant was skipping school. A pat-down search was conducted for safety, but no contraband or weapon was discovered. Therefore, Benning was justified in patting down appellant for safety reasons. The subsequent searches of clothing, locker, and vehicle extended

beyond the scope of reasonableness as they were progressively excessively intrusive in light of the infraction of attempting to skip school.

Holding

The Court of Criminal Appeals of Texas reversed the judgment of the Court of Appeals and remanded the case to the trial court.

In Interest of S.F., 414 Pa.Super. 529 (1992)

Facts and Procedural History

On March 8, 1991, Edmond Stone, a School District of Philadelphia plainclothes police officer, observed defendant S.F. with a clear plastic bag in his right hand and a wad of loose bills in his left hand. When defendant saw Officer Stone looking at him, he shoved the money in his pants pocket and the plastic bag in his jacket pocket and became noticeably nervous. Equipped with knowledge of six or seven direct reports from students and teachers that S.F. had been flashing large sums of money around and may be involved in narcotics, Officer Stone asked S.F. to step into an office. Officer Stone also asked the school's vice principal to join them. Inside the office, Officer Stone asked S.F. to empty his jacket pocket. S.F. removed some items, but no plastic bags. Officer Stone reached into S.F.'s jacket pocket and pulled out two plastic bags that contained a total of 30 vials of cocaine. Officer Stone called the Philadelphia police to transport S.F to the Narcotics Unit at the Philadelphia Police Administration Building. S.F. was found delinquent of knowingly or intentionally possessing a controlled substance in the Court of Common Pleas Philadelphia County Juvenile Division, and the motion to suppress the cocaine was denied. S.F. appealed to the Superior Court of Pennsylvania on the grounds that Stone did not have reasonable suspicion to perform the search.

Issue

Was Officer Stone's search a violation of S.F.'s Fourth Amendment rights?

Reasoning and Rule of Law

Based on the facts, Officer Stone had a reasonable suspicion to conduct the search. Rather than examine each factor upon which Officer Stone based his suspicion individually, the court reasoned that the officer was lawfully entitled to consider the aggregate effect of all the information available at the time of the search. The court applied the two-prong test established in *New Jersey v. T.L.O*. and determined his search was justified at inception based on the totality of information to arouse reasonable suspicion, and that removing plastic bags from S.F.'s pocket was not excessively intrusive.

Holding

The Superior Court of Pennsylvania affirmed the trial court's order adjudicating the appellant delinquent.

A.J.M. v. State, 617 So.2d 1137 (1993)

Facts and Procedural History

On May 26, 1992, principal Pink Hightower had several students in his office based on information that the students were involved in drugs. Hightower told Officer William Massey, a school resource officer, he wanted the students searched. On hearing this, A.J.M. jumped up and tried to leave the building. Officer Massey caught A.J.M., returned him to the office, and conducted a pat-down search pursuant to the principal's request. Officer Massey found cocaine. A.J.M. moved to suppress the evidence in the

Circuit Court of Jefferson County, but the motion was denied. A.J.M. appealed to the District Court of Appeal of Florida for the First District in 1993.

Issue

Was Officer Massey's search a violation of A.J.M.'s Fourth Amendment rights?

Reasoning and Rule of Law

The court acknowledged that the school exception to the probable cause requirement fashioned in *New Jersey v. T.L.O.* only considered searches carried out by school officials acting alone and on their own authority. The Supreme Court declined to address what standard would apply in conjunction with or at the behest of the police. The court, citing the legal test adopted in *M.J. v. State*, had to determine whether the officer directed, participated in, or acquiesced in the search. In this case, the officer conducted the search. Therefore, the court determined that the appropriate test to ascertain the validity of the search was whether probable cause existed for the search. With no further details provided from the principal concerning the details of the investigation, the court could not determine whether probable cause or reasonable suspicion existed based on the facts of the case.

Holding

The District Court of Appeal of Florida for the First District reversed the adjudication of delinquency and remanded the case for the trial court to enter an order granting the motion to suppress.

S.A. v. State, 654 N.E.2d 791 (1995)

Facts and Procedural History

In the fall of 1993, there was a rash of student locker break-ins at Howe High School. The lockers remained undamaged. During that time, the school's guidance director reported that the master locker combination book was missing. On February 9, 1994, a student gave Maurice Grooms, an officer of the Indianapolis Public School Police Department, the names of students who may have had the combination book. Officer Grooms searched the lockers of the students whose names were given, but he did not find the combination book. The next day, the same student informant told Officer Grooms that S.A. had the combination book in his blue book bag. Officer Grooms received another report of a locker break-in, so he instructed his assistant, Jerry Crawford, to remove S.A. from class and take him with his book bag to the vice principal's office. Since S.A. did not have his book bag with him, they stopped by S.A.'s locker to get it on the way to the vice principal's office. During that time, Crawford noticed S.A. put the combination book into his book bag. After a few minutes in the vice principal's office, Officer Grooms asked S.A. to step outside. When S.A. left, Crawford notified Officer Grooms that the book bag contained the missing combination book, and Crawford reached in and pulled out the missing book. S.A. returned to the office, and Officer Grooms asked S.A. whether he had school property. S.A. denied, but when they showed him the book, he said he found it. Later, in the presence of his father, S.A. admitted to taking the book and jackets from students' lockers. On March 15, 1994, the State filed a petition against S.A. on the grounds that his actions would have been crimes if committed by an adult. S.A. filed a motion to suppress the evidence and any statements in the

juvenile court on July 13, 1994. The juvenile court denied the motion. On October 21, 1994, in Marion Superior Court, S.A. entered a plea agreement and was adjudicated a delinquent child and sentenced to probation. S.A. appealed the denial of his motion to suppress to the Court of Appeals of Indiana on the grounds that the evidence obtained was the fruit of a warrantless search.

Issue

Was the warrantless search of S.A.'s school locker and book bag by Officer Grooms and Crawford a violation of his Fourth Amendment rights?

Reasoning and Rule of Law

The court recognized that the Indiana constitutional provision against unreasonable search and seizure was virtually identical to the Fourth Amendment to the U.S. Constitution. Therefore, a warrant is a condition of a lawful search. However, the court recognized that school searches conducted by school officials are subject to a less stringent standard under *New Jersey v. T.L.O.*, which the court held was the applicable standard. Though Officer Grooms was a trained police officer, when fulfilling his duties as a security officer for IPS schools, the court reasoned that his conduct regarding school searches was governed by the test announced in *T.L.O.* Crawford was also covered under *T.L.O.* since the vice principal was his direct superior. Officer Grooms and Crawford had reasonable suspicion, the search was justified at its inception, and it was permissible in scope since the school officials had ample information to believe they would find the missing book in S.A.'s book bag.

Holding

The Court of Appeals of Indiana affirmed the decision of the Marion Superior Court.

People v. Dilworth, 169 Ill.2d 195 (1996)

Facts and Procedural History

On November 18, 1992, two teachers at Joliet Township High Schools Alternate School asked police liaison officer, Detective Francis Ruettiger, to search a student, Deshawn Weeks, after they overheard him telling other students he had sold drugs and would bring more to sell the following day. The next day, Ruettiger searched Weeks, and upon finding nothing, escorted him to his locker. At the locker, defendant and Weeks began talking, looking at Ruettiger, and laughing. Ruettiger observed a flashlight in the defendant's hand and thought it might contain drugs. He grabbed the flashlight from the defendant, searched it, and discovered a bag containing a chunky white substance that later tested positive for cocaine. Defendant ran, but Ruettiger caught him and transported him to the police station. Defendant stated that he intended to sell the cocaine. Defendant moved to suppress the evidence found in his flashlight on the grounds that Ruettiger's seizure and search of the flashlight violated the Fourth and Fourteenth Amendments to the U.S. Constitution. The Circuit Court of Will County denied the motion, and the defendant was tried as an adult and convicted of unlawful possession of a controlled substance on school property with the intent to deliver. The court applied the reasonable suspicion standard for searches of students by school officials. Defendant appealed to the Appellate Court, and the conviction was reversed. The appellate court agreed that the reasonable suspicion standard was the proper standard to apply.

However, they held that Ruettiger lacked the reasonable suspicion necessary to seize and search the flashlight, and the motion to suppress evidence should have been granted. The State appealed to the Supreme Court of Illinois.

Issue

Were Ruettiger's seizure and search of the defendant's flashlight a violation of his Fourth Amendment rights?

Reasoning and Rule of Law

The court rejected the State's argument that the flashlight was subject to seizure based on the school's disciplinary guidelines that prohibited the possession of any object that could be construed as a weapon. The court then considered which Fourth Amendment standard applied to the facts of the case – reasonable suspicion for searches of students by school officials or the traditional Fourth Amendment standard of probable cause. The court recognized Ruettiger as a liaison police officer on staff at the Alternative School, working there full time, handling both criminal and disciplinary matters. In this case, the court characterized Ruettiger as a liaison police officer conducting a search on his own initiative and authority to maintain a proper educational environment. In light of these facts, the court held that the reasonable suspicion standard applied. Ruettiger had an individualized suspicion that the flashlight contained drugs, and he conducted a minimally intrusive search of the flashlight only.

Holding

The Supreme Court of Illinois reversed the appellate court judgment and affirmed the circuit court judgment.

People v. Pruitt, 278 Ill.App.3d 194 (1996)

Facts and Procedural History

This case covers three separate incidents in three different Chicago public high schools where police officers searched students. In each search, a firearm was discovered.

Serrick Pruitt

On November 24, 1993, Officer Edward Sonne, an officer of the Chicago Police Department who was assigned to assist Fenger School in the operation of metal detectors, conducted a pat-down search of Pruitt after the metal detector issued a positive reading. Officer Sonne discovered a .38 revolver in Pruitt's pants pocket.

Johnnie Cheatham

On April 13, 1993, Kimberly Taylor, a Chicago police officer assigned to Chicago Vocational High School as a school liaison officer, received a message from a school security agent that a student had reported that Cheatham had a gun in school that day. Officer Taylor asked her partner, Officer Grissett, also a school liaison officer assigned to the school, to accompany her to Cheatham's classroom to retrieve the student. Once the two officers had Cheatham in the disciplinary office, they asked if he had anything in his possession that could get him in trouble. He told them he had a gun, and Officer Grissett removed the gun from Cheatham's pocket.

Anthony Brooks

On December 3, 1993, Isaiah Kurry, Dean of Students at Simeon Vocational High School, received a report from a teacher that a stranger was on campus. Kurry confronted the stranger and asked him to come to the office to verify his identity. The

stranger was later confirmed as Brooks, a recently reinstated student. Kurry kept Brooks in the office for questioning. Kurry asked Officer David Rozzell, a Chicago police officer assigned to the school, to be present during the interview with Brooks. After about 45-60 minutes in the office, Kurry asked Brooks to empty his pockets, and Officer Rozell conducted a pat-down search of Brooks. Officer Rozell discovered a handgun. In each case, the trial judge of the Circuit Court for Cook County held the seizure as unreasonable under the Fourth Amendment and suppressed the evidence. The People appealed the decision to the Appellate Court of Illinois for the First District, First Division.

Issue

Did the searches conducted by Chicago Police Officers violate the students' Fourth Amendment rights?

Reasoning and Rule of Law

Pruitt

The court found that a metal detector walk-through constituted a search. Though the search was carried out by Chicago police officers, it was done so at the direction and control of school officials. The purpose of the search was to protect and maintain a proper educational environment, not to harvest evidence of a crime. All students were required to walk through the detectors, so no official discretion was involved. Walking through the detectors was minimally intrusive, and only when the metal detector issued a positive reaction did Officer Sonne conduct a justified pat-down search of Pruitt. The court applied the reasonableness test established by *T.L.O.* and found the search was

justified at its inception due to violence in the school, and it was reasonably related in scope to the objective of maintaining a proper educational environment.

Cheatham

The court found that the student report that Cheatham was carrying a gun created a reasonable suspicion that justified the officers removing Cheatham from class, which was less intrusive than questioning him in front of peers. The investigation was minimally intrusive and necessary when balanced against the context of a student making a report that another student had a gun on campus.

Brooks

According to the court, had Kurry ordered Brooks to empty his pockets when they first met, the search would have been justified. However, after 45-60 minutes in the office, the situation had changed. At that point, Kurry lacked the reasonable suspicion necessary to justify the search because Kurry no longer had reason to believe Brooks posed a danger or possessed evidence of a breach of the law or school rules. Instead, he only acted on a hunch.

Holding

The Appellate Court of Illinois for the First District, First Division reversed and remanded the Pruitt and Cheatham cases for trial and affirmed the trial judge's order in the Brooks case.

State v. D.S., 685 So.2d 41 (1996)

Facts and Procedural History

Middle school assistant principal, Karen Robinson, received four reports that D.S. offered to sell drugs he had with him to other students. Robinson explained the situation

to another assistant principal, Alberto Carvalho. Together, they escorted D.S. to Robinson's office where a Dade County Public School Police Officer was doing paperwork at Robinson's desk. Robinson instructed D.S. to empty his pockets. D.S. produced a plastic bag that contained marijuana. After that, Robinson notified the police officer that D.S. had possessed marijuana in violation of the school rules. The state brought charges against D.S. for possession of marijuana in a public middle school the next day. D.S. contested the charges and moved to suppress the evidence on the grounds that the search required probable cause since a school police officer was present in the room. The trial court granted the motion and held the standard of probable cause applied due to the police officer presence. The state appealed the decision to the District Court of Appeal of Florida for the Third District.

Issue

Did the trial court err in requiring probable cause since the police officer was present during the search of D.S.?

Reasoning and Rule of Law

According to the court, the trial court mistakenly applied *M.J. v. State* which held that probable cause was required when a search was conducted in the presence of a school police officer. The facts of the case show that the officer did not participate in the search in any way; therefore, the proper standard was reasonable suspicion. Furthermore, the court contended that a majority of post-*T.L.O.* decisions involving school board police officers in school settings who participate in searches initiated by school officials or who act on their own authority had been held to the standard of reasonable suspicion to justify the search. The court held that a legal search conducted by a school police officer

required only reasonable suspicion rather than probable cause, even to the point of directing, participating in, or acquiescing in the search, since the school police officer is a school official employed by the district school board. Finally, the court held that, even if probable cause were the proper standard, that standard would have been met given the facts of this case.

Holding

The District Court of Appeal of Florida for the Third District reversed the trial court's decision and remanded with directions to deny the motion to suppress.

In Interest of Angelia D.B., 211 Wis.2d 140 (1997)

Facts and Procedural History

On October 12, 1995, Neenah High School assistant principal David Rouse received a report from another student that Angelia D.B. had a knife in her backpack and that she might have access to a gun. Rouse notified Dan Dringoli, City of Neenah police officer and school liaison officer assigned to the school. Officer Dringoli went with Dean of Students Mark Duerwaechter to Angelia D.B.'s class; Duerwaechter escorted Angelia D.B. to the hallway. Officer Dringoli identified himself, informed Angelia D.B. of the report she might have a knife or gun, and conducted a pat-down search. He had Angelia D.B. search the contents of her backpack while he observed, and Duerwaechter searched her locker. No weapons were discovered. They went to Officer Dringoli's office, and Officer Dringoli continued the search. She removed her jacket, and Officer Dringoli searched it. He then lifted her shirt to expose her waistband. Officer Dringoli discovered a nine-inch knife tucked in her waistband and locked in the open position. Officer Dringoli arrested Angelia D.B. and advised her of her *Miranda* rights. The state filed a

juvenile delinquency charge against Angelia D. B. with carrying a concealed weapon. Angelia D.B. filed a motion with the circuit court to suppress the evidence on the grounds that Officer Dringoli lacked the probable cause necessary to conduct a search. The circuit court granted her motion, and the state appealed. The Supreme Court of Wisconsin granted the court of appeals petition to certify on July 17, 1996.

Issue

Did Officer Dringoli's search of Angelia D.B. violate her rights to be free from unreasonable search and seizure guaranteed under the Fourth Amendment?

Reasoning and Rule of Law

Due to the facts of the case, the court applied the two-prong test articulated in *T.L.O.* Though Angelia D.B. cited the differences between the roles of police officers and school officials, the court reasoned that when searches are initiated and conducted on school grounds in conjunction with police, "the school has brought the police into the school-student relationship."[125] The investigation was initiated and conducted in conjunction with school officials. The threat of a dangerous weapon in a public high school presented a "significant and imminent threat of danger to school staff and to the other students compelled to be there."[126] According to the court, since Officer Dringoli had an office on campus, one of his responsibilities was presumably to "assist school officials in maintaining a safe and proper educational environment."[127] The court reasoned that discouraging the involvement of trained police resources to assist in

[125] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 155.
[126] Ibid., 157.
[127] Ibid., 158.

searches of dangerous weapons "could be hazardous…."[128] and that "the proper standard for the constitutional reasonableness of searches conducted on public school grounds by school officials, or by police working at the request of and in conjunction with school officials, should not promote unreasonable risk-taking."[129] Consistent with this reasoning, the court found it "permissible for school officials who have a reasonable suspicion that a student may be in possession of a dangerous weapon on school grounds to request the assistance of a school liaison officer or other law enforcement officials in conducting a further investigation."[130] Consistent with *T.L.O.* and courts in other jurisdictions, the court found that the application of the reasonable suspicion standard outlined in *T.L.O.* was the proper standard to apply in searches where school liaison officers are involved at the request of and in conjunction with school officials to provide support when students are suspected of carrying dangerous weapons on school grounds. The court held that both the pat-down search and the more intrusive search of Angelia D.B.'s waistband was justified at inception and reasonable in scope.

Holding

The Supreme Court of Wisconsin reversed the orders of the circuit court and remanded for further proceedings.

In Interest of Thomas B.D., 326 S.C. 614 (1997)

Facts and Procedural History

Thomas D., a sixteen-year-old Georgetown High School student, was staying at the apartment of an older female. Thomas D.'s mother called Lieutenant Nelson Brown

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[128] Ibid., 159.
[129] Ibid.
[130] Ibid., 160.

of the Georgetown Police Department and requested that he go to the apartment to try to get her son to leave. Lt. Brown and two other officers knocked on the door of the apartment, but no one responded. They waited out of sight until Thomas D. left the apartment. The officers stopped Thomas D. and notified him that he was not under arrest. After conducting a pat-down search for weapons, they put him in the police car. When the officers notified Thomas D.'s mother that they had her son, she requested that the officers take him to school. On the way to school, Thomas D. asked the officers if he could smoke. Lt. Brown saw a cigarette pack in Thomas D.'s shirt pocket, and when they arrived at school, Lt. Brown removed the cigarette pack. Lt. Brown saw a marijuana roach inside the cigarette wrapper, and Thomas D. was arrested for possession of marijuana. The officers found a packet of marijuana in Thomas's wallet upon searching further. Thomas D. was charged with simple possession of marijuana. Thomas D. moved to suppress the evidence, but the motion was denied, and he was found delinquent in the Family Court for Georgetown County and sentenced to probation with special conditions. Thomas D. appealed to the Court of Appeals of South Carolina.

Issue

Was the officers' search of Thomas D. a violation of his right to be free from unreasonable search and seizure guaranteed under the Fourth Amendment?

Reasoning and Rule of Law

According to the court, though the search of Thomas D. was carried out on the grounds of the school in which he attended as a student, it was not conducted by a school official. Instead, police who were not connected to the school conducted the search on their own authority to further a law enforcement objective. Therefore, the court reasoned

that the *T.L.O.* standard of reasonable suspicion was inapplicable. The court applied a three-prong test and determined that the warrantless search met the criteria for the plain-view exception. The officers had probable cause under the circumstances. Therefore, Thomas D.'s motion to suppress was properly denied.

Holding

The Court of Appeals of South Carolina affirmed the decision of the Family Court of Georgetown County.

J.A.R. v. State, 689 So.2d 1242 (1997)

Facts and Procedural History

On August 15, 1994, the first day of school at Seth McKell Middle School, an eighth-grade student told a teacher that J.A.R. had a gun. The teacher sent the student with a note that contained that information to the office. The assistant principal read the note and called the school resource officer, a deputy sheriff assigned to the school. The two went to the classroom, identified J.A.R., and asked him to step outside. The deputy asked J.A.R. if he had a gun and the student said he did. The deputy performed a pat-down search, discovered a holstered pistol in J.A.R.'s waistband, and arrested him. J.A.R.'s motion to suppress the evidence was denied in the Circuit Court for Polk County, and he was found delinquent for possession of a firearm on school grounds, carrying a concealed weapon, and possession of a firearm by a minor. J.A.R. appealed to the District Court of Appeal of Florida for the Second District.

Issue

Was the school resource officer's search of J.A.R. a violation of his right to be free from unreasonable search and seizure guaranteed under the Fourth Amendment?

Reasoning and Rule of Law

According to the court, since the search involved a student potentially having a weapon on campus during the school day, the court determined that either a school official or a police officer needed only reasonable suspicion similar to a search permitted pursuant to a *Terry* stop. The court resisted differentiating between school resource officers and other police officers when dealing with searches for dangerous weapons on school campuses. The court said that if school officials have a reasonable suspicion that a person possesses a dangerous weapon, they can request any police officer to perform a constitutionally permissible pat-down search without activating the higher probable cause standard.

Holding

The District Court of Appeal of Florida for the Second District affirmed the decision of the Circuit Court for Polk County.

Commonwealth v. J.B, 719 A.2d 1058 (1998)

Facts and Procedural History

On September 11, 1996, Philadelphia school board employed school police officer, Misho Singleton, was on hall duty at Martin Luther King High School during a class change. As Appellant rounded the corner, Officer Singleton noticed his eyes were closed, and he was staggering. Officer Singleton confronted Appellant and noticed he was slurring his speech, swaying, and could not stand straight – not behaviors he had observed from Appellant previously. Officer Singleton suspected Appellant to be under the influence of a controlled substance, and he brought Appellant to the police office on campus. When Appellant failed to respond to Officer Singleton's inquiry on what was

wrong, he ordered Appellant to empty his pockets. Finding no contraband, Officer Singleton shook Appellant's pants and discovered a bag of marijuana and a pocketknife in the cuff of a pant leg. Officer Singleton placed the evidence in an envelope and contacted the Philadelphia Police Department. In municipal court, the judge suppressed the seized evidence. The Commonwealth appealed to the Court of Common Pleas, and the suppression order was reversed. Appellant was adjudicated delinquent in a stipulated trial and was sentenced to fifteen months of non-reporting probation. Appellant filed a petition for a writ of certiorari, but following a denial, appealed to the Superior Court of Pennsylvania.

Issue

Should physical evidence have been suppressed due to an unconstitutional search of Appellant by a school police officer?

Reasoning and Rule of Law

According to the court, student privacy interests must be balanced against the need for school administrators to maintain order. Corroborating physical evidence is not a prerequisite to justify a search by a school official. Instead, a search that complies with the requirements of *T.L.O.* is constitutionally sound. The Appellant staggering down the hall with his eyes closed, initial unresponsiveness to Officer Singleton's questions, and slurred speech, combined with prior observations that indicated this was not Appellant's typical behaviors, gave Officer Singleton reasonable suspicion that a search would produce evidence that Appellant had violated the law. The ordering to empty his pockets and subsequent shaking of Appellant's pant legs was reasonably related to Officer Singleton's belief that Appellant was under the influence of a controlled substance.

Following a review of the Pennsylvania Constitution, Pennsylvania case-law, related case-law from other states, and policy considerations, the court concluded that individualized searches of students by school officials, including school police officers, are subject to the reasonable suspicion standard under the Pennsylvania Constitution.

Holding

The Superior Court of Pennsylvania affirmed the order denying Appellant's writ of certiorari to the Court of Common Pleas.

In re Josue T., 128 N.M. 56 (1999)

Facts and Procedural History

Student was given a ride to Goddard High School along with several other students in a fellow student's truck. During the morning, the driver of the truck was sent to the assistant principal because of a strong marijuana odor. The assistant principal began an investigation to determine if students had marijuana on school premises. During the investigation, the assistant principal went to Student's classroom and asked that he step out in the hallway. Student was abnormally evasive and smelled of marijuana. The assistant principal escorted Student to her office, and Officer Reese, a full-time school resource officer employed by the Roswell Police Department and assigned to the school, accompanied them. As they walked down the hallway, both the assistant principal and Officer Reese noticed that Student kept both hands in his pockets. They also noticed that Student had a large, bulging object in his right front pocket. The assistant principal notified Student that he would be searched in the office, and she asked that he empty his pockets on her desk. Student emptied his left pocket, but he refused to empty his right pocket despite repeated requests by the assistant principal. She then

asked Officer Reese to search Student. Officer Reese ordered Student to remove his right hand from his pocket, but Student refused. Officer Reese took Student's hand out of his pocket, reached in Student's pocket, and took out a .38 caliber handgun. The State charged Student with unlawful carrying of a deadly weapon on school premises. Student moved to suppress evidence but was denied. Student entered conditional admission in the District Court of Chaves County, was found delinquent, and then appealed the judgment and denial of the motion to suppress to the Court of Appeals of New Mexico.

Issue

Was a school resource officer's warrantless search of Student unreasonable under the Fourth Amendment?

Reasoning and Rule of Law

According to the court, like other cases in other jurisdictions where the *T.L.O.* standard is applied in searches involving law enforcement agents, the assistant principal initiated the search, and Officer Reese's involvement was minimal. The search was conducted during the school day, and Officer Reese stepped in at the assistant principal's request. Quoting the Wisconsin Supreme Court in *In re Angelia D.B.*, in this case, the assistant principal brought Officer Reese "into the school-student relationship."[131] According to the court, "in effect, the officer was the arm of the school official."[132] Therefore, the lower standard expressed in *T.L.O.* should apply. The search was justified at its inception due to the original suspicion that Student might have marijuana on school grounds. The suspicion was elevated based on Student's abnormal behavior, the bulging

[131] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 155.
[132] In re Josue T., 128 N.M. 56 (1999), 62.

object in his pocket, and his refusal to comply with directives from both the assistant principal and the school resource officer. The search was reasonable in scope as it was limited to the bulging pocket and the objective of discovering what Student was trying to hide.

Holding

The Court of Appeals of New Mexico affirmed the trial court's denial of Student's motion to suppress evidence.

C.S. v. State, 735 N.E.2d 273 (2000)

Facts and Procedural History

C.S. was on probation while attending summer school. C.S. was prohibited from possessing a firearm as a condition of his probation. On August 9, 1999, Sergeant Gaines, an Indianapolis Public Schools police officer, received information about C.S. from another student that prompted her to pull C.S. from class. Due to a concern for her safety, Sergeant Gaines conducted a pat-down search of C.S. whereby she discovered a handgun in C.S.'s pocket. The state filed notices of delinquency against C.S. for possessing a firearm on school property, carrying a handgun without a license, and violating the terms of his probation. The Marion Superior Court found C.S. delinquent on all charges and sentenced him to six months incarceration. C.S. appealed to the Court of Appeals of Indiana on the grounds that the pat-down search violated his Fourth Amendment rights.

Issue

Did Sergeant Gaines' pat-down search of C.S. violate his rights against unreasonable search and seizure under the Fourth Amendment?

Reasoning and Rule of Law

According to the court, rather than requiring a warrant and probable cause, a search by a school official must be reasonable under all of the circumstances. The court applied the two-part test enunciated in *T.L.O.* According to the court, Sergeant Gaines' search of C.S. was justified at its inception due to a concern for her safety. The search was reasonably related to the objectives of the search as demonstrated by being limited to a pat-down of C.S.'s clothing; once the gun was discovered, the search stopped. Therefore, the search was reasonable under all the circumstances, and the handgun was properly admitted.

Holding

The Court of Appeals of Indiana affirmed the decision of the Marion Superior Court.

D.B. v. State, 728 N.E.2d 179 (2000)

Facts and Procedural History

During Indianapolis Public Schools Police Officer Dawn Austin's routine girls' bathroom check at Northwest High School on May 11, 1999, she smelled cigarette smoke coming from some stalls. Officer Austin saw D.B. and another student in the same stall. When the students emerged, Officer Austin asked them what they were doing, but the students did not respond. Officer Austin conducted a pat-down search and discovered a piece of paper folded in D.B.'s front pocket. Officer Austin asked D.B. to unfold the paper, which revealed 2.7 grams of marijuana. The State filed a petition against D.B. for possession of marijuana, and D.B. moved to suppress the evidence on the grounds that the search was a violation of her Fourth Amendment rights. D.B.'s motion was denied,

and she was found delinquent by the Marion Superior Court Juvenile Division. D.B. appealed to the Court of Appeals of Indiana.

Issue

Was the school police officer's search of a student a violation of her Fourth Amendment rights?

Reasoning and Rule of Law

Rather than requiring a warrant and probable cause, the court considered Officer Austin a school official. Accordingly, a search by a school official must be reasonable under all of the circumstances. The court applied the two-part test enunciated in *T.L.O.* According to the court, Officer Austin's pat-down search was justified at inception since she smelled cigarette smoke coming from the stall in which both D.B. and another student were. The students' unresponsiveness to Officer Austin's question about what they had been doing further justified the search. The court determined that the minimally intrusive pat-down search was reasonably related to the objective of the search, which was to determine whether or not D.B. had any contraband. When Officer Austin found marijuana, the search stopped. Therefore, the search was reasonable under all the circumstances.

Holding

The Court of Appeals of Indiana affirmed the decision of the Marion Superior Court Juvenile Division.

In re D.D., 146 N.C.App. 309 (2001)

Facts and Procedural History

On January 11, 2000, Hillside High School Principal Hermitage Hicks received a report from a substitute teacher that a group of girls was coming to campus to fight at the end of school. The substitute teacher also gave the name of a Hillside student who would allegedly be involved in the fight. Principal Hicks notified the school resource officer, Officer May, and near dismissal, they stationed themselves at opposite ends of the school building. Principal Hicks noticed four female students, only one that he recognized as a Hillside student, in the front parking lot, even though students were not allowed in the parking lot without permission from an administrator. Principal Hicks gathered Officer May and two other police officers and walked to the female students as classes were dismissing. Principal Hicks confronted the female students and asked the Hillside student some questions. As the two spoke, the other three students became talkative, using profane and vulgar language. As the students kept trying to walk away, the officers directed them to remain there. Principal Hicks asked the other students for their names, called central office administrators, and attempted to call the principal of The Learning Center, the alternative high school, to verify their identity. Principal Hicks refused to let the students leave campus. He was also concerned that since he was aware of the plan to fight, they might have weapons. Officer May requested to search one of the student's purses, and he found a box cutter. Principal Hicks and the officers took the four students to his office. There, Principal Hicks asked the students to empty their pockets, and one of the students placed a knife on his desk. Principal Hicks and one of the police officers decided to charge the juvenile for possession of a knife on school property. Juvenile filed

a motion to suppress the evidence on the grounds that the search violated her Fourth Amendment rights, but the District Court for Durham County denied the motion. The juvenile was found delinquent and placed on supervised probation for one year. The juvenile appealed the decision to the Court of Appeals of North Carolina.

Issue

Was the search of a student involving a school resource officer and other police officers a violation of student's Fourth Amendment rights?

Reasoning and Rule of Law

Though the court of appeals agreed with the trial court's conclusion that the evidence should not be suppressed, the court disagreed that the *T.L.O.* reasonableness standard was improper to apply, and that doing so would strengthen the court's ruling. According to the court, juveniles retain a certain degree of privacy when on other school campuses during school hours, but student visitors do not have the relationships with school officials that students do. In this case, Principal Hicks had a slight control and custodial relationship with the non-Hillside students since he had an obligation to report their unauthorized presence on his campus to his colleague. Therefore, the *T.L.O.* standard should have been applied. Even though law enforcement was involved in the search, their involvement was minimal and in conjunction with school officials, further supporting the application of the *T.L.O.* standard. In light of the facts of the case, Principal Hicks' approaching the students was reasonable pursuant to maintaining a safe educational environment. The scope of the search was not unnecessarily intrusive given all the circumstances. Therefore, the trial court properly denied the juvenile's motion to suppress.

Holding

The Court of Appeals of North Carolina affirmed the decision of the District Court of Durham County and remanded for the limited purpose of correcting a clerical error in the adjudication order.

Russell v. State, 74 S.W.3d 887 (2002)

Facts and Procedural History

High school principal, Sylvia Palacios, received a report that three students were smoking in a car in the parking lot. The three students, one of whom was Russell, were returning as Palacios went to the parking lot. She asked the students to come with her to the office. As the students sat in the office, Palacios noticed Russell kept messing with one of the pockets of his cargo shorts. She became concerned he might have a weapon in his pocket. Palacios asked Russell to come into her office, and she directed him to empty his pockets to which Russell refused. Palacios invited Officer Gregory Lee, a police officer assigned to the high school, to join them. She informed Officer Lee of the situation and told him she had directed Russell to empty his pockets, but he refused to do so. Based on Officer Lee's understanding of the situation, his observation that Russell had on baggy shorts, and previous experiences where students who refused to empty pockets for an administrator were concealing contraband, Officer Lee directed Russell to put his hands on the wall, and he conducted a pat-down search. The pat-down search yielded a small baggie of marijuana in the pocket Russell had favored. Officer Lee arrested Russell and charged him with possession of two ounces or less of marijuana in a drug-free zone. Russell challenged the search by a police officer as unconstitutional and made a motion to suppress the evidence. The County Criminal Court No. 7 for Dallas

County denied the motion, and Russell appealed the decision to the Court of Appeals of Texas, Waco.

Issue

Did Officer Lee's search of Russell violate his Fourth Amendment right to be free from unreasonable search and seizure?

Reasoning and Rule of Law

The court cited *New Jersey v. T.L.O*. and *People v. Dilworth* as relevant authoritative sources in school searches. Under *T.L.O.* a lawful school search must be justified at inception and reasonably related in scope to the circumstances which justified the search. The court recognized the three categories of school searches involving law enforcement officials that were first articulated in *People v. Dilworth*. Based on the facts of the case, the court held that this search was consistent with the second *Dilworth* category since Officer Lee was assigned to the high school as a school police officer who acted on his own authority in that role. Therefore, the *T.L.O.* standard was the proper standard to apply. Based on the information Officer Lee had when he searched Russell, he had reasonable grounds to suspect a search of Russell would produce evidence he had violated or was violating the law or school rules. Therefore, the search was justified at inception. The pat-down search and more focused search of the pocket Russell favored was reasonably related to the objectives of the search and not excessively intrusive in light of his age and the nature of the infraction. Therefore, Officer Lee's search did not violate Russell's Fourth Amendment rights.

Holding

The Court of Appeals of Texas at Waco affirmed the decision of the County Criminal Court No. 7 for Dallas County.

Shade v. City of Farmington, Minnesota, 309 F.3d 1054 (2002)

Facts and Procedural History

On December 2, 1999, Allen Schmitz, Apple Valley Alternative Learning Center teacher, was transporting eight students, one of whom was Jason Shade, to a local business in Farmington, Minnesota for automotive shop class. Schmitz stopped at a fast-food restaurant to allow students to purchase breakfast. Once everyone was back on the bus and *en route* to the local business, Shade asked if anyone had something he could use to open his orange juice container. Brandon Haugen, a fellow student, gave Shade a folding knife, which he used to open the juice before returning it to the other student. Schmitz saw Shade use the knife in the rear-view mirror but did not know where he got it or what he did with it after he used it. When the class arrived at the local business, Schmitz contacted Shirley Gilmore, a coordinator at the school, and reported seeing Shade with the knife on the bus. Gilmore notified Dan Kaler, the principal, and together they decided the students should be searched at the business before their return to the school. Kaler contacted the school liaison officer, Michael Eliason, to assist with the search, and Eliason contacted a fellow school liaison officer at a Farmington high school, Ted Dau, to provide further assistance. Schmitz was instructed to keep students at the business until school officials arrived to investigate. As students were boarding the bus to return to school, Officer Dau, Officer Eliason, and Gilmore arrived. Schmitz told Officer Dau about the knife he had observed Shade use. The officers asked the students

to exit the bus, and they searched the bus but found no knife. Officer Dau informed students that they would be searched for the knife, and he asked if any student had a knife to turn over before the officers began the search. Haugen handed a knife to Officer Eliason. Officer Dau conducted a pat-down search of the male students, and Gilmore conducted a pat-down search of the female students. Officer Dau found no knife on Shade, but he did find an item similar to a tactical baton that expanded from nine and a half inches to twenty-two inches. For the knife, Shade was charged with possessing a dangerous weapon on school property, and the school initiated an expulsion proceeding for Shade's possession of the knife and the expandable device, both in violation of the school's ban on weapons. Shade and his parents contested the expulsion proceeding, and his father requested the officer reports. When the departments refused to provide them, a Minnesota state court ordered the departments to provide the information under the Minnesota Government Data Practices Act. In U.S. District Court, Shade brought a 42 U.S.C. § 1983 action, alleging that school officials and school liaison officers violated his constitutional right to be free from an unreasonable search and seizure. The court granted summary judgment to defendants on the § 1983 claim and denied Shade's request for attorney's fees and costs under the Data Practices Act. Shade appealed to the United States Court of Appeals for the Eighth District.

Issue

Did the search conducted by school officials and school liaison officers violate Shade's constitutional right to be free from unreasonable search and seizure?

Reasoning and Rule of Law

The court considered whether or not the *T.L.O.* standard applied when law enforcement officers are involved in a search and when the search occurs away from traditional school grounds. After *T.L.O.*, the U.S. Court of Appeals for the Eighth Circuit held in *Cason v. Cook* that the reasonableness standard applied when a school official acted in conjunction with a school liaison officer to search a student. According to the court, since then, most courts have applied the reasonableness standard when school officials initiate the search or when officers are only minimally involved. In this case, though school officials initiated and directed the search, they reasonably believed that the police officers were more capable and better trained to search for weapons. The court reasoned that because Schmitz observed Shade with a knife while on the bus, it was reasonable for the officers to play a more significant role in the search to discover the weapon. Citing the Supreme Court of Wisconsin's reasoning in *In re Angelia D.B.*, the court agreed that maintaining the higher standard of probable cause solely based on the choice to involve school liaison officers "might serve to encourage teachers and school officials, who generally are untrained in proper pat-down procedures or in neutralizing dangerous weapons, to conduct a search of a student suspected of carrying a dangerous weapon on school grounds without the assistance of a school liaison officer or other law enforcement official[s]."[133]

Furthermore, the court concluded, "The fact that the search occurred away from what one would consider traditional school grounds similarly does not elevate the Fourth Amendment standard to one of probable cause. The nature of administrators' and

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[133] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 159.

teachers' responsibilities for the students entrusted to their care, not school boundary lines, renders the Fourth Amendment standard in the public- school context less onerous."[134] School officials still had an obligation to "protect students from harm and ensure a conducive learning environment despite the off-campus setting."[135] At all times, the students were in the custody and control of Schmitz. Therefore, the court determined that the proper standard to apply was *T.L.O.* The search was justified at inception. The court found that, although Haugen presented a knife when asked if he had any contraband, Mr. Schmitz believed there might have been more than one knife since he had witnessed Shade with a knife while on the bus and he did not know what he did with the knife after he used it. Therefore, Officer Dau continued to have reasonable grounds that Shade might also have a knife. The search, a general pat-down which is an acceptable method to discover weapons, was reasonable in scope. From the limited record, Shade's request of the information from the Farmington police department involved an ongoing investigation of several juveniles, and records involving such matters are confidential. Therefore, Shade was not an aggrieved person entitled to attorney's fees and costs.

Holding

The United States Court of Appeals for the Eighth Circuit affirmed the decision of the district court in its entirety.

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[134] Shade v. City of Farmington, Minnesota, 309 F.3d 1054 (2002), 1061.
[135] Ibid.

State v. N.G.B, 806 So.2d 567 (2002)

Facts and Procedural History

In a middle school alternative behavior classroom, a student reported seeing a baggie of what appeared to be marijuana in the floor between two rows of desks to the teacher. The teacher notified the assistant principal, Ms. Andress, who then called Deputy Mantzanas, the school resource officer, and requested that he meet her in the classroom. The teacher reported that the baggie had been found between the desks of N.G.B. and a female student. Ms. Andress and Deputy Mantzanas questioned and searched several students and their belongings. Ms. Andress found a note that mentioned N.G.B. and smoking marijuana. When Deputy Mantzanas asked if anyone knew where the marijuana came from, the student who initially reported noticing the baggie said he thought it had fallen out of N.G.B.'s pocket. After thinking they had secured consent to search, Deputy Mantzanas searched N.G.B. and found a baggie with marijuana residue and a full nickel bag that resembled the baggie found on the floor. N.G.B. filed a motion to suppress the evidence on the grounds that Deputy Mantzanas' search was unconstitutional since N.G.B. had not consented to the search and that he lacked probable cause to conduct the search. The trial court found that, although reasonable suspicion existed to search, since a law enforcement agency employed Deputy Mantzanas, he was not a school official for Fourth Amendment purposes. Therefore, his search was subject to the more stringent probable cause standard for searches. N.G.B.'s motion to suppress was granted, and the state appealed the decision.

Issue

Did the school resource officer need probable cause to search N.G.B.?

Reasoning and Rule of Law

According to Whatley, "Since *T.L.O.*, numerous state and federal courts have applied the *T.L.O.* standard to searches of school students involving varying degrees of law enforcement involvement."[136] Since the search was initiated by the assistant principal who then enlisted the help of the school resource officer, the proper standard to assess the legality of the search was reasonable suspicion, a standard that was met in the trial court's initial analysis.

Holding

The District Court of Appeal of Florida for the Second District reversed and remanded the decision of the trial court.

In re William V., 111 Cal.App.4th 1464 (2003)

Facts and Procedural History

On September 6, 2001, Officer David Johannes, Hayward High School resource officer saw William standing alone in the hallway with a red bandana hanging from his pants pocket. When the two made eye contact, William appeared to become nervous and started pacing. Officer Johannes approached William and asked him to remove the red bandana since it was considered contraband on campus. William asked, "What rag?"[137] and when Officer Johannes pointed to the bandana, William said he did not know it was there. Officer Johannes removed the bandana and asked William to come to the principal's office for discipline. Before going into the office, Officer Johannes conducted a pat-down search based on his suspicion that William's display of the red bandana was a

[136] State v. N.G.B, 806 So.2d 567 (2002), 568.
[137] In re William V., 111 Cal.App.4th 1464 (2003), 1467.

gang-affiliated sign that something was about to happen or William was getting ready for a confrontation. Officer Johannes was also suspicious since William exhibited heavy trembling all over his body as he was talking. During the pat-down search, Officer Johannes discovered a knife with a five-inch serrated metal blade, which William admitted he had for protection. Officer Johannes escorted William to the school administration office. The Alameda County District Attorney filed a petition alleging felony possession of a knife on school grounds. William filed a motion to suppress the evidence on the grounds that the knife was seized in an unlawful search, but the motion was denied. William entered an admission to misdemeanor possession of a knife on school grounds, and the judge declared him a ward of the court. William appealed to the Court of Appeal for the First District, Division Three in California.

Issue

Was Officer Johannes' search of William an unlawful search?

Reasoning and Rule of Law

As in *People v. Dilworth*, the court saw no reason to distinguish between a non-law enforcement security officer employed by the school board and a school resource officer employed by the city police department. As the court expressed, "This distinction focuses on the insignificant factor of who pays the officer's salary, rather than on the officer's function at the school and the special nature of a public school."[138] The court chose to focus on the fulfillment of the school's duty to protect students and provide them with an environment conducive to education, over whether school resource officers are paid by the city or by the school board. The court considered school resource officers as

[138] Ibid., 1471.

school officials for Fourth Amendment purposes, and subjected Officer Johannes's search to the lowered standard expressed in *T.L.O.* Furthermore, the higher level of training in constitutional law a school resource officer receives should not determine a higher standard of probable cause be applied. The court held that Officer Johannes's search of William was both justified at its inception and reasonably related in scope to the objectives of the limited pat-down search for weapons.

Holding

The Court of Appeals for the First District, Division Three of California affirmed the decision of the trial court.

People v. Williams, 339 Ill.App.3d 956 (2003)

Facts and Procedural History

On May 23, 2001, Mark Keller, school resource officer for Hinsdale Central High School, was investigating a burglary and trying to locate a stolen handgun. He spoke to several students, including Michele Williams and Nicole Ynke, in connection with the burglary. Based on information from the investigation, Officer Keller went to the apartment of Paul Grinkevisius to look for the stolen handgun. While he was off campus, Dean Bylsma continued the investigation. Ynke reported that Williams had told her the stolen gun was in Williams's car in the student parking lot. Bylsma called Williams to the office, and after their conversation, Williams called her mother, left a message, and returned to class. Bylsma contacted Officer Keller and asked that he return to the school. Dean Bylsma went to Williams's classroom, got her car keys, and told Williams to remain on campus; Williams did not consent to a search of her car. Williams's mother, Irene Harris, called the school and spoke to Dean Leverance about the situation. Harris

said she did not want the car searched and that she was on the way to the school. When Officer Keller returned to the school, he met a school security officer in the student parking lot, and they went to Williams's car. Dean Leverance gave him the keys and asked him to search Williams's car. When Harris arrived, the police were searching Williams's car. Officer Keller discovered the stolen handgun in Williams's trunk, and she was arrested and charged with unlawful use of weapons and unlawful possession of firearms. Williams filed a motion to quash arrest and suppress evidence on the grounds that there were no exigent circumstances to justify a warrantless search, and the Circuit Court of DuPage County granted the motion. The State filed a motion to reconsider, but the court denied the motion on the grounds that probable cause, the appropriate standard in this case, was lacking. The State appealed to the Appellate Court of Illinois for the Second District.

Issue

Did the trial court apply the appropriate Fourth Amendment standard in Officer Keller's warrantless search of Williams' car?

Reasoning and Rule of Law

Following *T.L.O.*, a search by school officials must be reasonable under all the circumstances. The court recognized that in cases where school officials initiate the search and police involvement is minimal or when school police or liaison officers conduct a search on their own authority, courts tended to apply the reasonableness standard. In contrast, when outside officers initiate the search or school officials act at the behest of law enforcement, courts tended to apply the probable cause standard. The court applied the three-part test articulated in Vernonia to determine if the case justified a

departure from the probable cause standard. The court found that Williams had a lesser expectation of privacy while in the school environment, Officer Keller had an individualized suspicion that the stolen gun was in Williams's car, which was the limit in his search, and that school officials acted prudently in asking the school resource officer to search Williams's car. The court also found that, due to the school's intimate involvement in the investigation and the search, Officer Keller, as a school official, needed reasonable suspicion rather than probable cause to search Williams's vehicle. Following this reasoning, the court analyzed Officer Keller's search using the two-prong test in *T.L.O.* According to the court, Ynke's report that Williams had told her the stolen gun was in the car coupled with Officer Keller's suspicion that Williams knew something about the burglary, was enough to establish his reasonable suspicion that Williams had violated or was violating the law. The court also considered the scope of Officer Keller's limited search of Williams's vehicle permissible and reasonable given the objective to find the handgun.

Holding

The Appellate Court of Illinois for the Second District reversed the decision of the Circuit Court of DuPage County and remanded for further proceedings consistent with the opinion.

In re J.F.M., 168 N.C.App. 143 (2005)

Facts and Procedural History

On May 15, 2003, sisters J.M. and T.B. were students at Kennedy Learning Center. Forsyth County Sheriff's Deputy S.L. Barr, school resource officer for the school, was investigating an affray. A school administrator told Deputy Barr that T.B.

had been in the affray and was leaving campus. As Deputy Barr was leaving campus while still on duty, he saw T.B. at a bus stop on school grounds. Deputy Barr approached T.B. and told her to return to the school and talk to the administrator about the affray. When T.B. refused to come, Deputy Barr grabbed her arm and told her she needed to come with him. J.M. pushed Deputy Barr, told him to take his hands off of her sister, and told T.B. to run. Deputy Barr told J.M. she was under arrest and grabbed her arms when she tried to run. He attempted to handcuff J.M., but she bit him. T.B. came back and began hitting Deputy Barr with an umbrella, and, when he let go of J.M., the two ran. Deputy Barr called for assistance, and the two were apprehended. The students were so violent that officers had to use handcuffs and leg restraints to get the girls into patrol cars. The state filed petitions alleging resisting, delaying, and obstructing a public officer and assault on a public officer. Juveniles filed a motion to dismiss all charges on the grounds that Deputy Barr lacked the legal authority to detain them at the bus stop, but the motion was denied. The juveniles were adjudicated delinquent in the District Court of Forsyth County, and they appealed to the Court of Appeals of North Carolina.

Issue

Did Deputy Barr's detainment of T.B. on campus in conjunction with a school official violate her right against unreasonable seizure under the Fourth Amendment?

Reasoning and Rule of Law

The court recognized that in addition to the lower reasonableness standard for school searches by school administrators, the Fourth Circuit had extended that same standard to the detainment of a student by school officials in *Wofford v. Evans* in 2004. Furthermore, in *In re D.D.*, the court adopted an extension of the reasonableness standard

to searches conducted by school resource officers working in conjunction with school officials when the officers are primarily responsible to the school district. Based on this rationale, the *T.L.O.* reasonableness standard should apply when a school resource officer working in conjunction with a school official detains a student on school grounds. The court determined that Deputy Barr was indeed acting in conjunction with the school administrator when he attempted to detain T.B. The court applied the *T.L.O.* standard to determine if the seizure was reasonable. The court found Deputy Barr had reasonable grounds to detain T.B. since the school administrator confirmed T.B. was involved in the affray and he saw her on school grounds after this confirmation. The court found that in order to mitigate the potential danger of allowing the affray to carry over into another school day, the circumstances justified Deputy Barr temporarily detaining T.B. to resolve the matter. Therefore, the detainment of T.B. by Deputy Barr was lawful.

Holding

The Court of Appeals of North Carolina found no error in the trial court's ruling.

In re S.W., 171 N.C.App. 335 (2005)

Facts and Procedural History

On December 2, 2003, S.W. walked by Durham County Deputy Sheriff, Eric Carpenter, school resource officer at Riverside High School. When Deputy Carpenter smelled a strong odor of marijuana coming from S.W., he asked S.W. to come with him. After finding two assistant principals, the group went into the school's weight room. Deputy Carpenter questioned S.W., got his consent to search, and upon searching found ten small plastic bags of marijuana. S.W. was charged with possession with intent to sell or deliver a schedule VI substance. S.W. filed a motion to suppress the evidence on the

grounds that it was the product of an unlawful search, but the Durham County District Court denied his motion and adjudicated him delinquent. S.W. appealed the decision to the Court of Appeals of North Carolina.

Issue

Was Deputy Carpenter's search of S.W. an unlawful search?

Reasoning and Rule of Law

In previous cases, this court applied the *T.L.O.* standard to warrantless searches in furtherance of established educational and safety goals (*In re D.D.*) and extended the relaxed standard to school resource officers working in conjunction with school officials to that end when the officers are primarily responsible to the school district rather than law enforcement (*In re J.F.M.*). The court established Deputy Carpenter's status as the school resource officer and his work in conjunction with school officials to further the educational and safety goals of the school, thereby granting his eligibility for the lower *T.L.O.* standard. The court found that Deputy Carpenter had a reasonable suspicion that S.W. possessed marijuana when he smelled the strong odor of marijuana emanating from the student. The search was reasonably related to the objective and not excessively intrusive given S.W.'s age and gender coupled with the nature of the suspicion. While S.W. gave his consent to search, Deputy Carpenter did not need his consent, and the trial court's decision to deny the motion was supported by competent evidence.

Holding

The Court of Appeals of North Carolina affirmed the decision of the District Court of Durham County.

Gray ex rel. Alexander v. Bostic, 458 F.3d 1295 (2006)

Facts and Procedural History

During physical education class at Holt Elementary School, the teacher, Coach Williams, believed Gray, a student, was not doing jumping jacks with the rest of the class. Coach Williams told her to do her exercises, but she refused, so he sent her to the wall of the gym. As Gray passed Coach Williams, she threatened to hit him. Both Coach Williams and Coach Horton, another physical education teacher, heard the threat. Coach Horton told Gray to come to her, and Coach Williams resumed his instruction with the class. Deputy Antonio Bostic, a school resource officer for several schools including Holt Elementary, witnessed the interaction as well. He intercepted Gray before she made it to Coach Horton. Deputy Bostic told Coach Horton that he would talk to Gray, even though Coach Horton insisted she would handle the matter. Deputy Bostic escorted Gray out of the gym, told her to turn around, and handcuffed her for at least five minutes to teach her a lesson about disrespect and breaking the law. Once the handcuffs were removed, Gray returned to the coaches' office until her next class. Gray, by and through her mother, filed suit with eight claims against Deputy Bostic and the Tuscaloosa County Sheriff in their official and individual capacities. The defendants filed a motion to dismiss, and the United States District Court for the Northern District of Alabama granted the motion. Gray appealed to the United States Court of Appeals for the Eleventh Circuit, challenging only the court's dismissal of the Fourth Amendment claim against Deputy Bostic and Sheriff Sexton in their individual capacities. The court of appeals reversed and remanded, granting Gray's entitlement to pursue her Fourth Amendment claims and to file an amended complaint, in which she asserted claims of excessive use of

force and unreasonable seizure. The defendants filed a motion for summary judgment based on qualified immunity, but the district court denied the motion. The defendants filed an interlocutory appeal on the grounds that the district court erred in denying the defendants' motion for summary judgment based on qualified immunity.

Issue

Did the district court err in denying Deputy Bostic's motion for summary judgment based on qualified immunity?

Reasoning and Rule of Law

As a school resource officer, Deputy Bostic had a responsibility to investigate criminal activity at the school, which could include detaining, questioning, arresting, and handcuffing students under the right circumstances. Deputy Bostic believed Gray had committed a misdemeanor with her threat to her teacher and detained the student to discuss the incident with her. Therefore, the court reasoned that Deputy Bostic's actions were within his discretionary duties. The court then turned its attention to the constitutionality of Deputy Bostic's seizure of Gray by applying the reasonableness standard under *T.L.O.* Since Deputy Bostic witnessed the interaction between Gray and the teacher, including the threat, the detainment of Gray to question her about the incident was justified at its inception. However, when Deputy Bostic handcuffed Gray, there was no indication of a potential threat to anyone's safety. Rather, the handcuffing was to teach the student a lesson about her disrespectful attitude and the seriousness of committing crimes. As a punishment, Deputy Bostic's handcuffing was not reasonably related to the scope of his reasons for detaining Gray and was excessively intrusive given the student's age and her compliance with directions by teachers and the school resource

officer up to that point. The court then examined whether or not clearly established law existed when Deputy Bostic detained and handcuffed Gray during his investigatory stop absent a safety concern but found no factually similar cases that would have prohibited the use of handcuffs to discipline a student as objectively unreasonable for Fourth Amendment purposes. However, the court concluded that Deputy Bostic's handcuffing of a compliant, nine-year-old girl to punish her was both unreasonable and a blatant violation of Gray's Fourth Amendment rights. The court ruled that "every reasonable officer" would have known that handcuffing Gray under these circumstances was unreasonable.[139]

Holding

The United States Court of Appeals for the Eleventh Circuit affirmed the district court's denial of summary judgment in Deputy Bostic's favor, reversed the district court's denial of summary judgment in Sheriff Sexton's favor, and remanded for further proceedings consistent with this opinion.

State v. K.L.M., 278 Ga.App. 219 (2006)

Facts and Procedural History

The principal received a report from a student who overheard K.L.M. making plans to sell drugs during in-school suspension. Since the school resource officer was at training, the principal contacted the Director of Public Safety, law enforcement officer Jeff Johnson, for assistance. In the office, only the principal questioned K.L.M. with Johnson present. When K.L.M. denied his involvement in selling drugs and his possession of drugs, the principal asked Johnson to search K.L.M. Following the

[139] Gray ex rel. Alexander v. Bostic, 458 F.3d 1295 (2006), 1307.

principal's direction, Johnson searched K.L.M. and found a bag of marijuana in his pocket. Johnson placed K.L.M. under arrest. K.L.M. filed a motion to suppress the evidence. The Juvenile Court for Walton County granted K.L.M.'s motion to suppress while noting it could probably find that Johnson acted as the principal's agent when conducting the search, but that existing State Supreme Court precedent in *State v. Young* (1975) required probable cause if a law enforcement officer is involved in a search at a school in any manner. The trial court also found that the principal had reasonable grounds to search K.L.M. had he conducted the search on his own as a school official, but that probable cause did not exist. The State appealed the decision to the Court of Appeals of Georgia.

Issue

Did the trial court apply the proper standard for searches under the Fourth Amendment?

Reasoning and Rule of Law

The court held to the standard articulated in *State v. Young*. The court cited the State Supreme Court's identification of three groups that guided their application of Fourth Amendment analysis: private persons, government agents such as school officials conducting state actions, and government law enforcement agents. In cases where government law enforcement agents violate the Fourth Amendment, the exclusionary rule would apply. The court explicitly outlined that if law enforcement officers participate in a school search, probable cause to search was required. Since probable cause did not exist and the State failed to assert that it did, the trial court applied the appropriate standard.

Holding

The Court of Appeals of Georgia affirmed the decision of the Juvenile Court for Walton County.

D.L. v. State, 877 N.E.2d 500 (2007)

Facts and Procedural History

On September 14, 2006, a small group of students including D.L. was walking down a hallway at Arsenal Technical High School during a non-passing period. Officer Shelia Lambert, Indianapolis Public Schools police officer, encountered the group. In accordance with school policy that students present their identification cards upon request, Officer Lambert asked if they had an identification card, a pass, or a schedule. They said they did not, so Officer Lambert began conducting a pat-down search of D.L. for some form of identification. She observed D.L. put something down his pants, so she handcuffed D.L. and brought him to the school police office, where Officer Jeffrey Riley continued the pat-down search. When Officer Riley shook D.L.'s pant legs, a clear plastic bag containing marijuana fell to the floor. D.L. was charged with possession of marijuana. D.L. filed a motion to suppressed all evidence on the grounds that the warrantless search violated his Fourth Amendment rights. The juvenile court denied D.L.'s motion. D.L. appealed the decision to the Court of Appeals of Indiana.

Issue

Did the school police officers' pat-down search of a student on school grounds violate that student's right to be free from unreasonable searches and seizures under the Fourth Amendment?

Reasoning and Rule of Law

As a matter of first impression, the court recognized *New Jersey v. T.L.O.* as the leading case in searches conducted by school officials, and they used the two-prong test outlined by the U.S. Supreme Court for their analysis. Officer Lambert found it necessary to determine D.L.'s identity under school policy, and the court endorsed her need to do so in the interest of school safety. Officer Lambert's limited pat-down search of D.L.'s pocket for identification was justified at its inception. The search for any form of identification when D.L. denied having his school card was reasonably related to Officer Lambert's objective of identifying D.L., and the search was not excessively intrusive. When Officer Lambert observed D.L. place something down his pants, she was justified in escorting him to the school police office for a male colleague to conduct the pat-down search including shaking the pant legs, where the marijuana fell out of D.L.'s pants.

Holding

The Court of Appeals of Indiana affirmed the decision of the juvenile court.

T.S. v. State, 863 N.E.2d 362 (2007)

Facts and Procedural History

On October 13, 2005, Indiana Public Schools Police Officer, Sergeant Mark Driskell, was stationed in Broad Ripple High School. Sergeant Driskell received an anonymous report from an unidentified female that T.S., a student, had marijuana in his right front pant pocket. Sergeant Driskell summoned T.S. from his gym class into the locker room where he told T.S. to change out of his gym uniform back into his regular school clothes. Once he was dressed, Sergeant Driskell asked T.S. if he had anything he

should not have. T.S. reached in his front pocket and handed Sergeant Driskell a small plastic baggie with marijuana in it. Sergeant Driskell reached in the same pocket and pulled out another baggie of marijuana. T.S. was arrested and charged with possession of marijuana. The student filed a motion to suppress the evidence on the grounds that the search was a violation of his right to be free from unreasonable searches and seizures. The motion was denied, and T.S. was adjudicated a juvenile delinquent. T.S. appealed the decision to the Court of Appeals of Indiana.

Issue

Did Sergeant Driskell's seizure of T.S. violate his right to be free from unreasonable seizures under the Fourth Amendment?

Reasoning and Rule of Law

The court named *New Jersey v. T.L.O.* as the seminal case regarding school searches and seizures. However, the court expressed three issues relevant to this case that *T.L.O.* left undecided:

- the level of cause required for a school police officer who initiates an encounter with a student without the involvement of other school officials
- whether the encounter as described by the facts, in this case, constituted a seizure
- the standard for determining the constitutionality of a seizure occurring in a school

In examining Sergeant Driskell's status, the court relied on the State Supreme Court's reasoning in *Myers v. State*, which was influenced by other jurisdictions, to separate school searches into two categories based on the nature of law enforcement involvement. In searches initiated and conducted by school officials acting alone or

where police involvement is minimal to further educationally-related goals, the reasonableness standard will apply. In searches where outside police officers initiate or are heavily involved in for police investigative purposes, the probable cause and warrant standard will apply. The court had previously held that Indiana Public Schools police officers are considered school officials. After consideration of reasoning from other jurisdictions, the court concluded that Sergeant Driskell acted as a school resource officer furthering educationally-related goals. Therefore, the court would analyze his actions under the *T.L.O.* reasonableness standard.

In examining whether T.S. was seized, the court reasoned that while T.S. was not free to roam the halls or come and go as he pleased, T.S. enjoyed greater freedom while in his regularly-scheduled class than when he was in the locker room with Sergeant Driskell. Furthermore, no reasonable student would feel free to ignore the orders of an armed police officer to leave class and accompany him to the locker room. Therefore, the interaction between Sergeant Driskell and T.S. constituted a seizure under the Fourth Amendment.

The court then examined the seizure to determine whether it was justified at its inception and reasonable in scope to the objectives of the search. Due to the reduced expectation of privacy students endure in schools, Sergeant Driskell acted reasonably in investigating the anonymous tip. Removing students from class at times is a regular occurrence in the school setting. The court found it reasonable for Sergeant Driskell to remove T.S. from class to investigate a tip pursuant to maintaining a safe, drug-free learning environment.

Holding

The Court of Appeals of Indiana affirmed the decision of the juvenile court.

Wilson ex rel. Adams v. Cahokia School Dist. No. 187, 470 F.Supp.2d 897 (2007)

Facts and Procedural History

On April 27, 2004, Teneisha Adams, a sixth-grade student at Wirth/Parks Middle School in Cahokia, Illinois, was allegedly sexually assaulted during after-school detention by Craig Nichols, a fellow student. Adams immediately reported the incident to Lela Prince, principal of the school, who then notified Dwayne Cotton, the school's resource officer. Prince also notified Brenda Wilson, Adams's mother, and told her Officer Cotton would investigate the incident. Wilson responded that she did not want Officer Cotton to interview Adams without her knowledge. The next morning, Officer Cotton got Adams out of class and interviewed her in his office about the incident. Officer Cotton spoke to Wilson on the telephone, and she asked that he terminate the interview and send Adams home. Officer Cotton declined to terminate the interview but told Wilson she could come to get her daughter. During the interview, Adams consented to a physical examination of her back and arms by a female school employee. Officer Cotton escorted Adams back to class after the interview. Adams through Wilson filed several claims under 42 U.S.C. § 1983, including violation of her Fourth Amendment rights to be free from unlawful searches and seizures by Prince, Officer Cotton, Cahokia, and the Sheriff. Prince, Officer Cotton, and Cahokia moved for summary judgment on her § 1983 claim for violation of her rights under the Fourth Amendment.

Issue

Was Officer Cotton's interview of Adams a violation of her Fourth Amendment rights to be free from unlawful searches and seizures?

Reasoning and Rule of Law

The court referenced *T.L.O.* as the authoritative source for the proper standard for assessing the legality of school searches. The court also highlighted the finding of the *Vernonia* court that the reasonableness of a search must be balanced against a school's legitimate governmental interests. In this case, Adams argued that the proper standard to apply was the higher probable cause standard due to Officer Cotton's position as a law enforcement officer. However, the court stated that as a school resource officer, Officer Cotton is a school employee who investigates school matters solely at the request of school authorities. According to the court, "Although the Seventh Circuit Court of Appeals has not spoken to the issue, the weight of authority holds, and the court agrees, that a search of a student on school grounds by a school resource officer at the request of school officials should be deemed a search by a school employee for Fourth Amendment purposes and thus is subject to the reasonableness standard, not the probable cause standard."[140] In this case, the search was justified at its inception since a report such as sexual assault demands a prompt investigation by school officials. The search was reasonably related in scope given Adams's reduced expectation of privacy in the school setting. The interview lasted less than an hour and included a brief physical examination by a female school employee where the student never disrobed. The school's interest in

[140] Wilson ex rel. Adams v. Cahokia School Dist. No. 187, 470 F.Supp.2d 897 (2007), 910.

conducting a prompt investigation of sexual assault "was very great, even overwhelming."[141] The court reasoned that not investigating the incident would have potentially triggered enormous civil liability. An interview with Adams was an essential part of the investigation process, and parental consent is not a requirement to meet the reasonableness standard. Having met the reasonableness standard, no violations of Adams's Fourth Amendment rights occurred.

Holding

The United States District Court of S.D. Illinois granted the motion for summary judgment brought by Prince, Officer Cotton, and Cahokia, and dismissed the action with prejudice.

R.D.S. v. State, 245 S.W.3d 356 (2008)

Facts and Procedural History

On November 25, 2003, G.N., a student at Page High School, was taken to Vice Principal Tim Brown's office due to concerns he was under the influence of an intoxicating substance. Mr. Brown requested the school resource officer, Deputy Sharon Lambert, report to his office. When Deputy Lambert entered the office, she noticed G.N. appeared very sleepy or groggy, and his eyes were bloodshot. When Deputy Lambert asked him what he had taken, G.N. responded that he had consumed a quarter of a bottle of cough syrup before coming to school. Skeptical of his response since school had started several hours earlier and knowing that G.N. had skipped some of his morning classes, Deputy Lambert asked where he had been. He told her he had been in R.D.S.'s truck in the parking lot. Based on this information, Deputy Lambert decided to search

[141] Ibid., 911.

R.D.S.'s truck. When she and Mr. Brown found R.D.S., he did not appear to be under the influence of intoxicants. Deputy Lambert explained why she was going to search his truck, and she requested that R.D.S. accompany them. On the way to the truck, Deputy Lambert asked R.D.S. if there was anything in this vehicle that he should not have and reminded him that he was responsible for anything that was in the truck. He responded no and referenced the sign that disclosed that any vehicle on school property was subject to search. The truck was unlocked, and when Deputy Lambert opened the driver's door, she found a plastic bag containing marijuana. R.D.S. said it was his. Deputy Lambert continued the search and found a glass pipe containing a tarry residue. On their way back into the school building, Deputy Lambert asked R.D.S. where he had been that morning, and he responded that he and G.N. left campus, smoked marijuana from a pipe, went to the bank, and returned an hour later. Video surveillance footage confirmed the departure and arrival times. When they got back to the office, Deputy Lambert transported G.N. to the juvenile detention center. R.D.S. remained on campus for a special education hearing before being transported to the juvenile detention facility by Deputy Lambert. R.D.S. was charged with simple possession or casual exchange of marijuana and possession of drug paraphernalia. R.D.S. filed a motion to suppress the incriminating statements on the grounds that he was not read his *Miranda* rights before his interrogation as well as the evidence seized from the truck as "fruits of the poisonous tree" since it was discovered after his interrogation. The Circuit Court of Williamson County denied the motions and R.D.S. was adjudicated delinquent. R.D.S. appealed, but the Court of Appeals affirmed the trial court's decision. R.D.S. appealed to the Supreme Court of Tennessee at Nashville.

Issue

Was Deputy Lambert's search of the truck a violation of R.D.S.'s rights guaranteed under the Fourth Amendment?

Reasoning and Rule of Law

The court agreed with the court of appeals that both the questions Deputy Lambert asked and her statements constituted interrogation since they invited R.D.S. to incriminate himself. However, in order to trigger the requirement for *Miranda* warnings, the questioning must amount to custodial interrogation. Because both the trial court and the court of appeals concluded that R.D.S. was not in custody, the Supreme Court of Tennessee agreed since it was a question of fact and both courts had considered the totality of the circumstances. Because R.D.S.'s statements were admissible, the evidence discovered during the search was not tainted. The court also clarified that the evidence was discovered based on the appearance of and statements made by G.N. and that R.D.S.'s incriminating statements were made after the discovery of marijuana in his truck. The court heard the issue of the proper standard to apply to law enforcement officers conducting a student search in a school as a matter of first impression in Tennessee. The court referenced *T.L.O.* but recognized the increased presence of law enforcement officers in public schools since the landmark case in 1985. The court also recognized that a majority of jurisdictions had applied the reasonable suspicion standard to school resource officers or other law enforcement officers assigned to schools, but when law enforcement officers not associated with the school system initiate the search or when school officials act at the behest of law enforcement agencies, the probable cause standard is applied. Based on the reasoning of other jurisdictions, the court held that the

reasonable suspicion standard applies to searches conducted by law enforcement officers assigned to the school on a regular basis with school duties beyond those of typical law enforcement officers, regardless of whether or not they were labeled "SRO."

Conversely, if a law enforcement officer not associated with the school system searches a student in a school setting, the officer will be held to the probable cause standard. Though the State referred to Deputy Lambert as a school resource officer, the court could not determine which role she filled based on the record. Therefore, the court remanded to the lower courts to create a record addressing evidence of Deputy Lambert's role which would then guide the application of the proper standard as enunciated by the court.

Holding

The Supreme Court of Tennessee at Nashville affirmed in part, reversed in part, and remanded the case to the trial court to determine the role of the law enforcement officer involved in the search to determine the proper standard to apply.

State v. R.D.S., Slip Copy (2009)

Facts and Procedural History

On remand from the Tennessee Supreme Court, the Circuit Court for Williamson County determined that Deputy Lambert, school resource officer for Page High School, was a school official entitled to the reasonable suspicion standard when she searched R.D.S.'s truck in the student parking lot. Based on this decision, R.D.S. was again found delinquent. R.D.S. filed a motion for a new trial, but the trial court denied the motion. R.D. S. appealed to the Court of Appeals of Tennessee on the grounds that the school

resource officer is more of a police officer than a school official and should, therefore, be held to the probable cause standard.

Issue

Did the court err in applying the reasonable suspicion standard to Deputy Lambert's search of R.D.S.'s truck as a school official?

Reasoning and Rule of Law

The court analyzed the school resource officer program agreement between the Williamson County Board of Education and the Williamson County Sheriff's Department. The court found that the agreement neither anticipated nor permitted a school resource officer to act as or perform the duties of a school official. Deputy Lambert did not work for the school, take directives from the administration, perform school duties, discipline students, nor was she subject to direct supervision at the school level. Instead, she was an officer of the Williamson County Sheriff's Department, governed by Sheriff's Department policies and procedures, paid a regular deputy's salary by the Sheriff's Department, and her direct supervisor was a lieutenant with the Sheriff's Department. Williamson County Sheriff Robert Rhodes testified that a school resource officer is primarily a law enforcement officer with arrest authority. The court also considered that Deputy Lambert always wore either a dress or less formal uniform, was armed, drove a marked cruiser, called for backup law enforcement officers at times, and participated in drug searches including ones with drug dogs. The court found that neither the Sheriff, Deputy Lambert, nor the school administrators considered Deputy Lambert to be a school official. Therefore, the court found that Deputy Lambert was a law

enforcement official, and probable cause was the correct standard to apply to the search of R.D.S.'s truck.

Holding

The Court of Appeals of Tennessee reversed the judgment of the trial court and remanded for further proceedings consistent with this opinion.

In re D.L.D., 203 N.C.App. 434 (2010)

Facts and Procedural History

On the morning of January 6, 2009, as Corporal R.A. Aleem of the Durham County Sheriff's Department and Hillside High School Assistant Principal Bob Barbour were reviewing live surveillance video, they noticed two male students enter a bathroom while a third male student stood outside the bathroom. Corporal Aleem, who was assigned to the school, was familiar with that bathroom as he had arrested several suspects for controlled substances offenses in that location. Barbour told Corporal Aleem the video looked suspicious, and the two went to the bathroom to check things out. As they approached the bathroom, they observed a male student outside the men's bathroom, a male student outside the women's bathroom, and D.L.D. and two other male students exiting the bathroom. When D.L.D. saw Barbour and Corporal Aleem, he ran back in the bathroom. Corporal Aleem followed after him, and he observed D.L.D. put something inside his pants. Corporal Aleem reported his observation to Barbour, and Barbour responded that they needed to check it. Corporal Aleem performed a pat-down search of D.L.D., which produced a BB gun pellet container with three bags of marijuana. Corporal Aleem put D.L.D. in handcuffs and escorted him to the main office. When Barbour directed Corporal Aleem to search D.L.D., he discovered $59. D.L.D. said the

money was not from selling drugs but was his mother's rent money. When D.L.D.'s mother arrived at the school, she fussed at him and said the money was not for her rent. D.L.D. was arrested and charged with possession with intent to sell or deliver marijuana. D.L.D. filed a motion to suppress his statements and evidence obtained from the search on the grounds that they were obtained in violation of his Fourth and Fifth Amendments. The District Court of Durham County denied his motion to suppress, and D.L.D. appealed the court's decision to the Court of Appeals of North Carolina.

Issue

Were the evidence and statements made obtained in violation of D.L.D.'s Fourth and Fifth Amendment rights guaranteed under the U.S. Constitution?

Reasoning and Rule of Law

The court reasoned a search should be reasonable under all the circumstances, a standard North Carolina has adopted for student searches at school even when law enforcement officers conduct those searches. The reasonableness standard applies in three situations: when school officials initiate a search and law enforcement involvement is minimal, when police officers act in conjunction with school officials, and when a school resource officer conducts a search to further well-established educational and safety goals. When school officials act at the behest of outside law enforcement officers or when outside law enforcement officers search students as part of an independent investigation, courts apply the traditional probable cause requirement. Based on the facts of the case, Corporal Aleem was acting in conjunction with and at the direction of the assistant principal to maintain a safe and educational environment. Therefore, the court applied the reasonableness standard outlined in *T.L.O.* The search was justified at its

inception since both Barbour and Corporal Aleem had reasonable grounds to suspect that a search of D.L.D. would turn up evidence that he had violated the law and school rules. The pat-down search was not excessively intrusive in light of D.L.D.'s age, gender, and the nature of the infraction. The court also held that the second search in the conference room of the main office was justified at its inception because marijuana had already been discovered in D.L.D.'s pocket, and it was not excessively intrusive. The court also ruled D.L.D.'s statement was admissible because it was not made at the questioning of Corporal Aleem, but rather it was unsolicited and spontaneous.

Holding

The Court of Appeals of North Carolina affirmed the decision of the District Court of Durham County.

State v. Burdette, 43 Kan.App.2d 320 (2010)

Facts and Procedural History

Bill Gies, a teacher at Southeast of Saline school, reported to a school counselor in the office that he was concerned about a student's welfare after observing him behaving abnormally in the hallway before classes began. Burdette, a student who was usually "open-eyed, and open to most of the kids,"[142] appeared to be either ill or under the influence of something. Deputy Shea, the school resource officer, and Deputy Trembley, a law enforcement officer whose patrol area included the school, overheard Gies's conversation with the school counselor. Burdette was called to the office to meet with the acting principal, Wayne Sager. When Sager came into the office, Burdette was already there with Deputy Shea and Deputy Trembley. Deputy Shea asked Sager if he

[142] State v. Burdette, 43 Kan.App.2d 320 (2010), 321.

wanted Burdette to empty his pockets, and Sager said yes. When Burdette emptied his pockets, the contents included a money clip and two baggies. Deputy Trembley smelled one of the baggies and asked Burdette what it contained, to which Burdette responded, "Weed."[143] Burdette was charged with possession of marijuana and drug paraphernalia. He filed a motion to suppress the evidence and his statement that the baggie contained weed on the grounds that they were obtained as the fruit of an unlawful search. The District Court of Saline County denied the motion to suppress the evidence but granted the motion to suppress the statement. Following a bench trial on stipulated facts, Burdette was found guilty of possession of marijuana and drug paraphernalia. Burdette appealed to the Court of Appeals of Kansas.

Issue

Did the presence of law enforcement officers during a school search conducted by the principal require the probable cause standard under the Fourth Amendment?

Reasoning and Rule of Law

The court cited *T.L.O.* as an exception to warrantless searches, a decision further reinforced by the Kansas Supreme Court in *In re L.A.* In both cases, the courts differentiated law enforcement searches from school searches and applied the less demanding reasonable suspicion standard. The court examined rulings in other jurisdictions and found that when school officials initiate the search and police involvement is minimal or where school officials act in conjunction with, but not at the behest of law enforcement, the *T.L.O.* reasonableness standard applied. However, when the search fulfills a police function such as obtaining evidence of a crime, and it is

[143] Ibid., 322.

performed by or at the behest of outside law enforcement officers, probable cause is required to justify the search. The court found there was no real law enforcement officer involvement in the search in this case. Therefore, the court applied the reasonable suspicion standard, not probable cause, to the search. The court found the search was justified at its inception due to Burdette's abnormal behavior and it was reasonable in scope and not excessively intrusive.

Holding

The Court of Appeals of Kanas affirmed the decision of the District Court for Saline County.

Ortiz v. State, 306 Ga.App. 598 (2010)

Facts and Procedural History

A South Gwinnett High School assistant principal observed Ortiz smoking a cigarette in the bus lane in violation of school policy. When she questioned him, Ortiz said he was a student, but that he was not attending the school that day and was passing through campus on his way home. The assistant principal brought Ortiz to the closest administrative office and called another administrator and the school resource officer for assistance. The school resource officer told Ortiz he was there for safety and that the search was an administrative action. The assistant principal directed Ortiz to dog-ear his pockets. He responded he did not want her to cut herself as he removed a razor blade from his breast pocket. Ortiz was arrested for carrying a weapon on school property. Ortiz filed a motion to suppress the evidence on the grounds that the evidence was obtained through an illegal search, but the motion was denied. Following his conviction, Ortiz appealed to the Court of Appeals of Georgia.

Issue

Did the assistant principal's search of Ortiz in the presence of the school resource officer violate his Fourth Amendment rights?

Reasoning and Rule of Law

According to the Georgia Supreme Court in *State v. Young* (1975), three groups exist when applying the Fourth Amendment to school searches: private individuals, government agents performing state actions covered by the Fourth Amendment, and law enforcement agents governed by the Fourth Amendment and the exclusionary rule. In this case, the school resource officer was present during the search for safety reasons but did not physically conduct the search. The court reasoned that his mere presence with no further evidence of his involvement would not constitute police participation in the search and would therefore not implicate probable cause or the exclusionary rule.

Holding

The Court of Appeals of Georgia affirmed the decision of the Superior Court for Gwinnett County.

In re K.K., 192 Ohio App.3d 650 (2011)

Facts and Procedural History

An outside police officer, Commander Brown, received an anonymous tip that a student at Lancaster High School, K.K., might be dealing heroin. Commander Brown notified Sergeant Andrew Dreyer, the school resource officer, of the tip. Sergeant Dreyer informed Nathan Conrad, the assistant principal that K.K. might possess illegal drugs. Based on the school's zero-tolerance policy, any tip required action. Conrad pulled K.K. from class and searched his book bag in the office which produced a plastic wrapper that

contained illegal drugs. K.K. was charged with two counts of illegal possession of drugs. K.K. filed a motion to suppress the evidence on the grounds that the search was performed at the request and direction of law enforcement, making it an illegal warrantless search. The motion was denied in the Court of Common Pleas of Fairfield County Juvenile Division. K.K. appealed to the Court of Appeals of Ohio for the Fifth District, Fairfield County.

Issue

Did the assistant principal's search of K.K. in response to a tip from a law enforcement officer that he might possess illegal drugs violate the Fourth Amendment?

Reasoning and Rule of Law

Based on the facts, the court found that once Sergeant Dreyer relayed the tip to Conrad, he had no further involvement in the search. Therefore, the court determined that reasonableness was the proper standard to apply. Based on the fact that every tip required action under the school's zero-tolerance policy regardless of the source, Conrad's decision to search was independent of police and justified at its inception. The search was also reasonably related in scope to the tip Conrad received.

Holding

The Court of Appeals of Ohio for the Fifth District, Fairfield County, affirmed the decision of the lower court.

In re R.E., Not Reported in Cal.Rptr.3d (2011)

Facts and Procedural History

Marilyn Jones, Dana Hills High School campus supervisor and security officer, observed R.E. and two other students violate school rules by walking toward the school's

football stadium press box, a designated out-of-bounds area to students during school hours. Jones radioed Deborah Helms, another campus supervisor, to respond to the area. As Jones watched, it appeared that one of the students stood as a lookout while the other two went behind the press box. When Helms arrived, she escorted the students to the assistant principal's office. The assistant principal contacted Deputy John Good, the school's resource officer. After the assistant principal separated the students and questioned them, he asked Deputy Good to search R.E. The search produced a small plastic bag of what R.E. identified as cocaine. He was arrested and charged with possession of cocaine. R.E. filed a motion to suppress the evidence on the grounds that the search was a violation of his Fourth Amendment rights. The court denied the motion, and R.E. appealed to the Court of Appeal for the Fourth District, Division Three of California.

Issue

Did the school resource officer's search of R.E. violate his Fourth Amendment right to be free from unreasonable searches?

Reasoning and Rule of Law

The court applied the reasonable suspicion standard articulated in *T.L.O.* and extended to school officers in the California Supreme Court's *In re William G.* Under these rulings, a search must be reasonable under all the circumstances. In this case, R.E. concedes his detention was not arbitrary or capricious. R.E. and his friends being in a restricted area and one standing lookout, while the other two went behind the press box, gave the assistant principal, and by extension, Deputy Good, reasonable suspicion that

they had violated rules and possibly participated in illegal activity. The court concluded that the search of R.E. was reasonable under all the circumstances.

Holding

The Court of Appeal for the Fourth District, Division Three of California affirmed the decision of the Superior Court of Orange County.

M.D. v. State, 65 So.3d 563 (2011)

Facts and Procedural History

School officials received an anonymous tip that M.D. had carried a gun on campus three months earlier. The next day, the school resource officer asked a school security guard to escort himself and M.D. to the security office, but the school resource officer did not say why. All students are searched upon entering the security office, so M.D. was asked to empty his pockets. He disclosed that he had a lighter, which was a violation of school policy. When M.D. emptied his pockets, the security guard observed that M.D. had a gun. M.D. was arrested and charged with possessing a gun on school grounds. He filed a motion to suppress the evidence, but the trial court denied the motion. M.D. was convicted in the Circuit Court of Duval County, and he appealed the decision to the Court of Appeal of Florida for the First District.

Issue

Was the discovery of the gun on M.D. the product of an unlawful search under the Fourth Amendment?

Reasoning and Rule of Law

The court began its reasoning by listing five precepts that guided the ruling:

> (1) allegations of possession of a gun on a school campus should be treated differently than similar allegations in other settings;
>
> (2) students in school do not possess the same breadth of constitutional rights as parties in other settings;
>
> (3) school resource officers should be treated as part of the school administrative team and not as outside police officers entering school grounds to investigate;
>
> (4) courts should not second-guess the reasonable administrative decision of school officials to segregate a student from the general population before questioning a student about possible weapons possession; and
>
> (5) courts should not question reasonable administrative policy decisions of school officials concerning the method of ensuring safety in their security office.[144]

The court discussed how judicial bodies view allegations of gun possession on school campuses differently because of the seriousness and location of the threat, the vulnerability and number of potential victims, and the lowered expectation of privacy of students. The lower standard of reasonableness under all the circumstances is the proper standard for a school search when there is a potential for discovering firearms on school grounds. The court recognized that every other district court in the state adopted the reasonable suspicion standard for school searches conducted by school officials, including school resource officers. The court differentiated between an outside police officer and a school resource officer, noting that the higher probable cause standard

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[144] M.D. v. State, 65 So.3d 563 (2011), 565.

would apply to an outside police officer. According to the court, "A search conducted by a resource officer placed in the school as a liaison is more akin to a search from a school official than from an outside police officer coming into the school to conduct a search...."[145]

In this case, though the tip came three months later, the court reasoned that school officials had a responsibility to investigate the threat. The school officials approached the student in a crowded cafeteria; moving the student to a more private location before questioning him was a responsible action to protect the other students and, therefore, did not constitute a seizure. Since the search of all students upon entry to the security office was considered an administrative search with a neutral plan for execution, and the compelling government need to protect the safety of students and staff members was evident in this case, the scope of the search was reasonable given this need.

Holding

The District Court of Appeal of Florida for the First District affirmed the decision of the Circuit Court of Duval County.

State v. J.M., 162 Wash.App. 27 (2011)

Facts and Procedural History

On February 4, Michael Fry, school resource officer for Robinwood High School, observed J.M. standing at a sink in the restroom holding what appeared to be a baggie of marijuana and a medicine vial. When Officer Fry approached J.M. he smelled a strong odor of marijuana, so he seized the baggie, the vial, and J.M.'s backpack; he brought the seized items and escorted J.M. to Phyllis Roderick, the dean of students. Officer Fry told

[145] Ibid., 566.

Roderick what he had seen, informed J.M. he was under arrest and called for another officer to come to the school. Officer Fry then moved to search J.M.'s backpack, which was padlocked between the two zipper pull tabs on the main compartment. When he asked J.M. for the key, J.M. responded that he had left it at home. Officer Fry handcuffed J.M., searched him, and found the key to the lock. When he opened the padlock, Officer Fry discovered an air pistol. Officer David Finney arrived, and Officer Fry read J.M. his *Miranda* rights. J.M. indicated he would not answer any questions, so Officer Finney took J.M. to the precinct for booking. J.M. was charged with carrying a dangerous weapon at school and possession of marijuana. J.M. filed a motion to suppress the air pistol on the grounds that Officer Fry's search of the backpack violated his constitutional privacy rights, but the motion was denied. J.M. was convicted on both counts and filed a motion for revision of the motion to suppress. The motion was denied, and the superior court judge imposed a standard range disposition in which the court noted that though Officer Fry lacked probable cause to search the backpack, the padlock coupled with the discovery of marijuana and the fact that the backpack was J.M.'s gave him reasonable grounds to search it. The court refused to distinguish between whether school officials, school security guards, or school police officers conducted the search because the invasion of privacy is identical in each circumstance, and the distinction would only focus on who pays the officer's salary rather than the officer's function at the school or the special nature of the public school. J.M. appealed the dangerous weapon conviction to the Court of Appeals of Washington, Division 1.

Issue

Was Officer Fry's warrantless post-arrest search of J.M.'s locked backpack on school grounds a violation of J.M.'s rights under the Fourth Amendment?

Reasoning and Rule of Law

The court cited the school search exception to the warrant requirement when school officials conduct the search as outlined in *T.L.O.* and *State v. Brooks*, a state case ruling on the same topic, which requires that the search be reasonable under all the circumstances. Reasonableness is established by determining if the search is justified at its inception and reasonably related in scope to the reasons justifying the search. As a matter of first impression in deciding whether or not school resource officers should be considered school officials when involved in school searches, the court turned to *People v. Dilworth* and *S.A. v. State* for guidance. Given the facts of the case coupled with his primary duty to maintain a safe, secure, and orderly learning environment, Officer Fry was acting as a school official, triggering the lower reasonableness standard. Officer Fry had reasonable grounds to search J.M.'s locked backpack, and it was justified at its inception. Since Officer Fry had observed J.M. standing at the sink with marijuana and a vial, he had a reasonable suspicion that the backpack might also contain marijuana in violation of the law and school rules. The search was justified in scope since the search of the locked backpack was reasonably related to his objective of determining if it, too, contained marijuana.

Holding

The Court of Appeals of Washington, Division 1 affirmed the decision of the Superior Court of King County.

In re A.T., Not Reported in Cal.Rptr.3d (2012)

Facts and Procedural History

A cell phone was stolen in Holly Falck's Washington High School classroom. Officer Robin Berlin, school resource officer, was called for assistance in locating the phone. When she arrived, Kathy Fetz, school security supervisor, was there as well. Falck explained that she had confiscated the phone from D.D. and placed it on the edge of a dry erase board. D.D. and A.T. walked out of the classroom, passing by where Falck had left the phone. When the students returned to class, Falck noticed the phone was missing. Officer Berlin and Fetz divided the students in the classroom and searched their bags and pockets. When they did not find the phone, Officer Berlin and Fetz took D.D. and A.T. to the office for further investigation. The two students were separated, and Officer Berlin took A.T. to an office for further questioning, during which A.T. gave his consent to be searched. Officer Berlin searched A.T. and discovered a knife. A.T. was arrested and charged with possessing a knife on school grounds. A.T. filed a motion to suppress the knife on the grounds that his consent was the product of a prior illegal search and detention in the classroom. The motion was denied, and A.T. was convicted. A.T. appealed the decision to the Court of Appeal for the First District, Division Three of California.

Issue

Was the initial classroom search conducted by Officer Berlin and Fetz a violation of A.T.'s Fourth Amendment rights?

Reasoning and Rule of Law

The court recognized that the U.S. Supreme Court and the California Supreme Court have not ruled on the applicable standard for searches conducted by school officials in conjunction with or at the behest of law enforcement. However, California courts have applied the reasonable suspicion standard afforded to school officials to school resource officers as well, regardless of whether they are employed by the school district or another government entity. Therefore, the court applied the test outlined in *T.L.O.* to the search in the classroom. The decision to conduct the search was based on class still being in session, thereby leading Fetz and Officer Berlin to believe a student in the classroom had the phone. It was D.D.'s phone that was missing, and D.D. and A.T. were the only two students who left the classroom and passed by the location at about the time the phone went missing; there was an even stronger reason to believe one of these two students either had the phone or knew where it was. The search was restricted to students' pockets and bags in the classroom, reasonably related to finding the missing phone. The subsequent search in the office was also pursuant to the preservation of order in the school, giving Officer Berlin and Fetz the authority to continue the investigation to discover the phone.

Holding

The Court of Appeal for the First District, Division Three of California affirmed the decision of the juvenile court.

State v. Alaniz, 815 N.W.2d 234 (2012)

Facts and Procedural History

On February 17, 2011, Troy Vanyo, school resource officer for a Grand Forks high school, received information that students might be involved in drug use near campus. Officer Vanyo and Ryan Rupert, a school security guard, went to investigate. Rupert was patrolling the area on foot and noticed two students, one of whom was Alaniz, acting suspiciously. Rupert notified Officer Vanyo, who then drove his patrol car to the area and located the students. Rupert notified Officer Vanyo that the students were attempting to evade him, so Officer Vanyo was able to tell him where the students were. Rupert said he would investigate further and, after smelling a distinct smell behind a stage area, suspected the students were involved in drug activity. Officer Vanyo returned to the high school to wait for the students, and he notified the assistant principal when the first student arrived. When he saw Alaniz speaking with the attendance secretary, Officer Vanyo notified the school principal that Alaniz was the other student. The principal, Officer Vanyo, and Alaniz went to a detention room where the principal questioned Alaniz. Officer Vanyo advised Alaniz that if he had anything he needed to lay it on the table. Alaniz placed a glass pipe and synthetic marijuana on the table. Officer Vanyo arrested Alaniz and charged him with possession of a controlled substance and possession of drug paraphernalia. Alaniz filed a motion to suppress the evidence on the grounds that there was not probable cause to justify the search and the exception for warrantless searches by school officials did not apply. The district court denied Alaniz's motion, and Alaniz appealed the decision to the Supreme Court of North Dakota.

Issue

Was the school official exception to the probable cause requirement for warrantless searches the proper standard to apply in this case?

Reasoning and Rule of Law

The court cited three categories of school searches involving law enforcement officers that other jurisdictions have used:

1. when school officials initiate the search or police involvement is minimal
2. when the search involves school resource officers acting on their own initiative or at the direction of other school officials to further educationally related goals
3. when outside police officers initiate the search

For the first two categories, the courts have typically applied the reasonableness standard; for the third category, courts have required probable cause and a warrant. The court discussed other factors, such as whether or not the officer is in a police uniform, whether or not the officer has an office on campus, how much time the officer spends at the school, who pays the officer's salary, what the officer's duties entail, who initiates or conducts the search, and the purpose of the search, as indicators of which standard should apply. Rupert initiated the investigation, Officer Vanyo is a full-time school resource officer funded by the school district, and one of his goals as a school resource officer is to provide a clean, safe, and secure learning environment. When Officer Vanyo returned to campus, he reported to the administrative team and let them decide how to handle the situation. Officer Vanyo was not involved in the questioning of Alaniz. Consistent with other cases with similar facts, the court concluded that the reasonableness standard was the proper standard to apply. The search was justified at its inception due to the chance

the search would turn up evidence Alaniz had violated the law or school rules. The search was not excessively intrusive; rather than a physical search, Alaniz merely emptied his pockets following Officer Vanyo's statement that he should put anything he had on the table.

Holding

The Supreme Court of North Dakota affirmed the decision of the district court.

State v. Meneese, 174 Wash.2d 937 (2012)

Facts and Procedural History

On February 4, Michael Fry, school resource officer for Robinwood High School, observed Meneese standing at a sink in the restroom holding what appeared to be a baggie of marijuana and a medicine vial during a routine check of the boys' restroom. When Officer Fry approached Meneese he smelled a strong odor of marijuana, so he seized the baggie, the vial, and Meneese's backpack; he brought the seized items and escorted Meneese to Phyllis Roderick, the dean of students. Officer Fry told Roderick what he had seen, informed Meneese he was under arrest, and called for another officer to come to the school for booking at the police station. Officer Fry then moved to search Meneese's backpack, which was padlocked between the two zipper pull tabs on the main compartment. When he asked Meneese for the key, Meneese responded that he had left it at home. Officer Fry handcuffed Meneese, searched him, and found the key to the lock. When he opened the padlock, Officer Fry discovered an air pistol. Officer David Finney arrived, and Officer Fry read Meneese his Miranda rights. Meneese indicated he would not answer any questions, so Officer Finney took Meneese to the precinct for booking. Meneese was charged with carrying a dangerous weapon at school and possession of

marijuana. Meneese filed a motion to suppress the air pistol on the grounds that Officer Fry's search of the backpack violated his constitutional privacy rights, but the motion was denied. Meneese was convicted on both counts and filed a motion for revision of the motion to suppress. The motion was denied, and the superior court judge imposed a standard range disposition in which the court noted that though Officer Fry lacked probable cause to search the backpack, the padlock coupled with the discovery of marijuana and the fact that the backpack was Meneese's gave him reasonable grounds to search it. The court refused to distinguish between whether school officials, school security guards, or school police officers conducted the search because the invasion of privacy is identical in each circumstance, and the distinction would only focus on who pays the officer's salary rather than the officer's function at the school or the special nature of the public school. Meneese appealed the dangerous weapon conviction to the Court of Appeals of Washington, Division 1, but the Court of Appeals affirmed, finding that the school search exception applied. Meneese appealed to the Supreme Court of Washington, and the court granted certiorari to hear the case *en banc*.

Issue

Was Officer Fry's warrantless post-arrest search of J.M.'s locked backpack on school grounds a violation of J.M.'s rights under the Fourth Amendment?

Reasoning and Rule of Law

The court cited *State v. Stroud*, a case which held that post-arrest searches of locked containers require a valid search warrant. The court also referenced *T.L.O.* and the school search exception to the warrant requirement, allowing a school official to search a student provided the search is reasonable under all the circumstances. The

underlying rationale for this exception is that school officials have a substantial interest in maintaining discipline in the school which can at times require swift action; requiring a warrant for school searches would undermine the need for swift discipline. The court highlighted a fundamental difference between school officials and Officer Fry as a school resource officer – a school resource officer is a law enforcement officer whose job concerns the discovery and prevention of crime. Officer Fry has no authority to discipline students, he is a uniformed police officer, and at times can still be called upon to answer police matters unrelated to the school. Officer Fry further demonstrated his role as a law enforcement officer when he arrested and handcuffed Meneese. Other jurisdictions have held that the school search exception should apply to school resource officers when they conduct searches in the furtherance of the school's education-related goals. In this case, the search of the backpack occurred post-arrest, and Officer Fry's objective at that point was to promote criminal prosecution, not education-related goals, informal school discipline, or to maintain order. Therefore, probable cause with a warrant issued prior to the search was the proper standard. Lacking both, the court ruled the search was unlawful, and the evidence should have been suppressed.

Holding

The Supreme Court of Washington reversed the decision of the Court of Appeals and remanded for further proceedings consistent with this opinion.

Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police, 69 A.3d 360 (2013)

Facts and Procedural History

On January 30, 2008, Vice Principal David McDowell invited Delaware State Trooper David Pritchett, who was serving as a short-term school resource officer for the

district, to Richard A. Shields Elementary School to talk about bullying with a small group of fourth and fifth-grade students during their in-school suspension. Under an inter-agency agreement between the Cape Henlopen School District and the Delaware State Police, Trooper Pritchett was only assigned to the high school, but he agreed to come to talk to the students. The next day, one of the fifth graders who had attended Trooper Pritchett's presentation reported to McDowell that AB, another fifth-grade student, had taken one dollar from an autistic student on the bus. McDowell called AB's mother and secured her permission to have Trooper Pritchett speak with AB about the incident. When Trooper Pritchett arrived at the school, McDowell described the incident to him, and the two went to a Reading Lab to question AB. During the questioning, McDowell was called to deal with a school emergency, but Trooper Pritchett remained with AB. AB admitted he had the money, but he reported that another student, Anthony Hunt, had taken the money and given it to him. Though Trooper Pritchett believed AB had taken the money, he investigated AB's claim. Without discussing the matter with McDowell, Trooper Pritchett had the secretary call Hunt to the office. As they walked to the reading lab, Trooper Pritchett told Hunt about the accusation, but also divulged that he did not think Hunt had taken the money. Trooper Pritchett told Hunt, "When I tell you --- when I tell the story of what's happened and I look at you, you just say no, you didn't do it...."[146] Once in the reading lab, Trooper Pritchett closed the door and told them that if they lied, he had the authority to arrest them and place them in jail or an alternative learning setting. Hunt started to cry. When AB saw Hunt in distress, Trooper Pritchett

[146] Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police, 69 A.3d 360 (2013), 364.

coaxed a confession out of him. When Hunt got home from school, he told his mother, Lisa DeSombre, what had happened. Hunt withdrew from school, and his mother filed suit on his behalf against Trooper Pritchett, the state of Delaware, the Department of Safety and Homeland Security, and the Division of the Delaware State Police with several claims, among which was an alleged 42 U.S.C. § 1983 claim arising from Trooper Pritchett's interrogation of Hunt. The defendants moved for summary judgment, and the Superior Court of Kent County granted the motion. Hunt and his mother appealed to the Supreme Court of Delaware.

Issue

Were Trooper Pritchett's seizure and interrogation a violation of Hunt's Fourth Amendment right to be free from unreasonable search and seizure?

Reasoning and Rule of Law

The court established that Hall had been seized for Fourth Amendment purposes since a reasonable child would not believe he was free to leave the reading lab while being questioned by a police officer in full uniform. The court recognized that, though *T.L.O.* only addressed school searches, several appellate courts including the Third Circuit Court of Appeals had applied the same reasonableness standard to school seizures. Therefore, the court held that school seizures should be reasonable under all the circumstances. According to the facts of the case, both McDowell and Trooper Pritchett were confident Hunt was not involved in the incident. Trooper Pritchett even told Hunt he knew he had nothing to do with the incident. Yet he continued with the interrogation to elicit AB's confession. Therefore, Trooper Pritchett's seizure was unreasonable. The court then considered whether or not Hunt's right to be free from unreasonable seizure

was a clearly established right that Trooper Pritchett should have known he was violating. The court determined Trooper Pritchett should have known that interrogating Hunt to scare him and eliciting a confession from another student or teaching another student a lesson was unreasonable.

Holding

The Supreme Court of Delaware held that there was sufficient evidence to support the 42 U.S.C. § 1983 claim and all tort claims except the battery claim. Therefore, the court affirmed in part and reversed in part the decision of the Superior Court of Kent County and remanded for further action in accordance with this opinion.

J.V. v. Sanchez, Slip Copy (2013)

Facts and Procedural History

On the morning of November 14, 2011, Maria Martinez, a school social worker, received a report that C.V., an autistic and gifted student at Mary Ann Binford Elementary School in Albuquerque, was calling peers stupid and was refusing to do his classwork. Martinez got C.V. to come to her office, but when C.V. began acting out in her office, she called for Misti Miller, assistant principal of the school. When Miller arrived, Martinez went to speak to the principal. When C.V. saw Miller, he ran, which was a typical reaction for C.V. The principal directed Martinez to call C.V.'s parents to come to the school to help control C.V. After several attempts and messages, Martinez spoke to C.V.'s father, but he refused to come to school. During this time, C.V. had been returned to the office several times, but he continued to leave the office and run around the building. Albuquerque Public Schools police officer, Xiomara Sanchez, was dispatched to the school at 12:15 pm. When she arrived, she met with the principal and

Miller, who told her about the situation and that the parents had refused to come to the school to help. After their meeting, the principal brought Officer Sanchez to the cafeteria at the same time that Martinez and C.V. were leaving the cafeteria. When C.V. saw them, he began running around the school again. Officer Sanchez contacted C.V.'s parents. After the father refused to come to the school, she spoke to the mother and notified her that she would need to come to pick C.V. up from school. C.V.'s mother said she could be there in approximately 30 minutes. Sanchez asked for and received permission from C.V.'s mother to restrain him, and the mother gave consent. After chasing C.V. for approximately fifteen minutes, staff members were able to get C.V. in a room. C.V. continued acting out in the room by hitting, kicking, and knocking items over. Officer Sanchez blocked C.V. from leaving the room. C.V. made several unsuccessful attempts to leave the classroom, and Officer Sanchez gave several warnings that she would handcuff him if he did not stop. He began shooting rubber bands at her face and kicking her. Officer Sanchez handcuffed C.V. to a chair. C.V. pleaded that Officer Sanchez remove the handcuffs, and she said she would when he calmed down. C.V. began standing up in the chair, dragging the chair with him, pulling, tugging, and twisting, to get out. A fellow Albuquerque Public Schools police officer, Officer Villonez arrived and observed C.V.'s behavior. He yelled for the student to stop, and C.V. stopped, sat down, and began crying. After that, C.V.'s mother entered the room and demanded the handcuffs be removed, which Officer Sanchez did. C.V.'s mother withdrew her son from the school effective immediately. C.V.'s parents filed suit against Officer Sanchez on the grounds that she unlawfully seized C.V. and used excessive force in the process. Officer Sanchez filed a motion for summary judgment on the basis of

qualified immunity. Plaintiffs filed a response in opposition to Officer Sanchez's motion. The case went before the United States District Court in New Mexico.

Issue

Did Officer Sanchez's handcuffing of C.V. at school violate his Fourth Amendment right to be free from unreasonable search and seizure?

Reasoning and Rule of Law

The court established that, for Fourth Amendment purposes, Officer Sanchez seized C.V. when she placed handcuffs on him. The court also extended the *T.L.O.* reasonableness standard to Officer Sanchez since she was acting in her capacity as a school resource officer to maintain school order and security. Consistent with other Tenth Circuit rulings, the court recognized the lower standard of reasonableness as the proper standard, since a school official conducted the detention in the school setting with the goal of maintaining a safe environment for students and staff members. Though the court laid the foundation for a *T.L.O.* analysis, they reasoned that such an analysis was not necessary since case law regarding Officer Sanchez's actions had not been settled at the time C.V. was seized. The court found that a reasonable officer would not have known handcuffing a student under the circumstances of this case would be a violation of that student's Fourth Amendment right to be free from unreasonable seizure. Furthermore, Officer Sanchez sought and obtained C.V.'s mother's consent to restrain him, though their presumption of restraint methods was different. Since no clearly established law gave notice to Officer Sanchez that her handcuffing of C.V. would violate his Fourth Amendment rights, the court found that Officer Sanchez was entitled to qualified immunity on Plaintiff's Fourth Amendment claims.

Holding

The United States District Court for New Mexico granted Officer Sanchez's motion for summary judgment on the grounds of qualified immunity.

K.P. v. State, 129 So.3d 1121 (2013)

Facts and Procedural History

On October 12, 2011, the Miami-Dade County Police Department Gun Bounty Program received an anonymous tip that K.P., a student at Miami Northwestern Senior High School, was possibly in possession of a firearm on the school campus. The program notified a Miami-Dade County Schools Police Department school resource officer of the tip, who then notified the assistant principal and school security guards. The assistant principal and two school security guards retrieved K.P. and his bookbag from his classroom and brought him to the conference room. When they entered the room, the assistant principal gave the book bag to the school resource officer to search. The search produced a loaded semi-automatic handgun. K.P. was arrested and charged with carrying a concealed weapon, possession of a firearm on school grounds, and possession of a firearm by a minor. K.P. filed a motion to suppress the evidence on the grounds that the search of his bookbag was a violation of his Fourth Amendment right to be free from unreasonable searches and seizures. The trial court denied the motion and found K.P. to have committed the offenses as charged. K.P. appealed the decision to the District Court of Appeal of Florida for the Third District.

Issue

Was the school resource officer's search of K.P.'s book bag a violation of his Fourth Amendment right to be free from unreasonable search and seizure?

Reasoning and Rule of Law

The court, recognizing that an anonymous tip initiated the search, reasoned that the level of reliability an anonymous tip needs to pass Fourth Amendment muster is lower when a threat of extraordinary danger is present or legitimate expectations of privacy are reduced. Given the substantial governmental interest in protecting students from gun violence, the lowered standard of reasonableness expressed in *T.L.O.*, and the recognition that students have reduced rights in the school setting, the court held that the search of K.P.'s book bag was reasonable. K.P.'s expectation of privacy of the contents of his book bag was tempered by the school's need to maintain a safe learning environment, thus justifying the search at its inception. The court further reasoned that the search of K.P.'s book bag, while moderately intrusive, was conducted privately and by school officials, and was related in scope to the objective of discovering a firearm. The court found that the analysis it used was the same for a school official and a school resource officer who was assigned to work full time at the school. The reasoning for this was because a school resource officer is more like a school official than a police officer on the street, and the purpose of the search was to protect students rather than to establish guilt.

Holding

The District Court of Appeal of Florida for the Third District affirmed the decision of the Circuit Court of Miami-Dade County.

Hoskins v. Cumberland County Bd. of Educ., Not Reported in F.Supp.3d (2014)

Facts and Procedural History

T.H., a second-grade student, had been placed in the Phoenix School, an alternative school for students in grades seven through twelve who had been suspended or expelled from their regular school program, in response to an incident where T.H. swung his fist in the vicinity of his teacher. On March 1, 2012, in the Phoenix School gym, T.H. told his teacher that he and his older brother would "beat the crap"[147] out of her and then swung his fist in the vicinity of the teacher. T.H. was escorted to the principal's office, where he then made a fist and threatened to strike the principal and Officer Tollett, the school resource officer. Officer Tollett placed T.H. in handcuffs and intended to arrest him and take him to juvenile detention. However, when Officer Tollett realized he knew T.H.'s parents, he called them and asked them to come to the school to talk about the situation. T.H. remained in handcuffs throughout the conversation with his parents, which lasted forty-five minutes. At the end of the meeting, T.H. was released into the custody of his parents. On February 28, 2013, filed a complaint with multiple claims, one of which asserted that Officer Tollett violated T.H.'s Fourth Amendment right to be free of unreasonable seizures when he handcuffed T.H. in the principal's office. On February 19, 2014, Officer Tollett filed a motion for summary judgment.

Issue

Did Officer Tollett's handcuffing of T.H. violate his Fourth Amendment rights to be free of unreasonable seizures?

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[147] Hoskins v. Cumberland County Bd. of Educ., Not Reported in F.Supp.3d (2014), 3.

Reasoning and Rule of Law

The court considered Officer Tollett's eligibility for qualified immunity by applying a two-part inquiry to determine whether Officer Tollett's handcuffing violated T.H.'s constitutional rights, and, if so, whether that right was clearly established at the time of his actions.

The court began its analysis under traditional Fourth Amendment standards. The court established that for purposes of the Fourth Amendment in the school setting, the standard used to determine whether a student is seized is whether or not the freedom of a student's movement is significantly different than what is inherent in compulsory attendance. The court found that Officer Tollett seized T.H. from the time he placed handcuffs on him since T.H.'s limitation of freedom of movement significantly exceeded that inherent in compulsory attendance. The court then considered T.H.'s young age, the nature of his conduct in the Phoenix School gym, the fact that the handcuffing occurred on school grounds, and the fact that while he threatened to hit the principal and Officer Tollett, T.H. never actually swung his fist at either. The court reasoned under those circumstances that Officer Tollett's initial handcuffing of T.H. was not objectively reasonable and that the subsequent forty-five-minute stint during the meeting was even less reasonable. Therefore, Officer Tollett violated T.H.'s Fourth Amendment rights under a traditional Fourth Amendment analysis.

Recognizing that courts in other circuits had analyzed similar claims under the standard articulated in *T.L.O.*, the court considered a *T.L.O.* analysis since the school setting requires some easing of search and seizure restrictions. The court acknowledged that courts of appeals in other jurisdictions had extended the standard of reasonableness

from searches of students conducted by school officials to seizures of students as well. However, the court found no Sixth Circuit rulings on the relaxed reasonableness standard being applied to school seizures by school officials or law enforcement officials in the school setting. The court reasoned that, given the circumstances of the case, the traditional Fourth Amendment standard was the appropriate standard to apply.

Since the court found that Officer Tollett violated T.H.'s constitutional rights, they considered whether that right was clearly established at the time of his actions. According to the facts of the case, T.H. did not demonstrate that Officer Tollett was not entitled to qualified immunity by showing that T.H.'s right was clearly established at the time of Officer Tollett's actions. Since that burden was not met, Officer Tollett's motion for summary judgment was granted.

Holding

The United States District Court held that though Officer Tollett violated T.H.'s constitutional right to be free from unreasonable seizure, they granted Officer Tollett's motion for summary judgment on the basis of qualified immunity and dismissed all federal claims with prejudice.

Ziegler v. Martin County School District, 831 F.3d 1309 (2016)

Facts and Procedural History

The Jensen Beach High School Junior/Senior prom was scheduled from 8:00 pm to 12:00 am on May 3, 2014, at the Port St. Lucie Civic Center. The tickets, which were sold at the school, gave notice that no students would be admitted to the event after 10:00 pm. Students who planned to attend the prom were required to sign a form that reminded them of the school's Zero Tolerance Policy against alcohol, drugs, tobacco, and profanity

on the school campus and at school-sponsored off-campus functions. The form also notified students that they would be required to pass a breathalyzer test if school officials had reason to suspect they or their guests had consumed alcohol. On the evening of the prom, a group of approximately 40 students and guests had rented a party bus for one-way transport to dinner and then to the prom. The party bus arrived at the Civic Center at approximately 10:15 pm. Once all students and guests had exited the party bus, Lorie Kane, Dean of Students, asked the group to stay together while the bus was searched. School resource officer, Norm Brush, secured the driver's consent to search the vehicle for contraband or any items left on the bus. Officer Brush discovered an empty champagne bottle and twelve plastic cups inside the bus in plain view. Based on this discovery, Dean Kane informed the group they would all be required to pass a breathalyzer test before entering the prom. Assistant Principal Theresa Iuliucci was the only school official who was trained to administer breathalyzer tests, but she had already gone home for the evening. Principal Greg Laws called her to return to the event to administer the tests, and he directed Dean Kane to go back to the school to get more testing mouthpieces for the device since there were only two on-site. Officer Brush stood guard over the students and guests who had been detained while the team got the materials for the breathalyzer tests. Some students asked if they could go home, but Officer Brush and Dean Kane told them they could not leave and they had to wait until everyone in the group had taken a breathalyzer test. The breathalyzer tests began at approximately 11:10 pm and everyone in the group was tested by 11:55 pm; all students tested passed with a 0.00 blood-alcohol content. The prom ended at 12:00 am. Students filed suit against Martin County School District, Jensen Beach High School, Principal

Laws, Assistant Principal Iuliucci, Dean Kane, and Officer Brush, claiming among other things that searching the party bus, breathalyzing prom attendees, and seizing prom attendees both before and after administering breathalyzer tests violated their rights to be free from unreasonable searches and seizures under the Fourth Amendment. Defendants pled qualified immunity and moved for summary judgment. The United States District Court for the Southern District of Florida granted all motions for summary judgment, and the students appealed the decision to the United States Court of Appeals for the Eleventh Circuit.

Issue

Did the search of the party bus, breathalyzer tests of prom attendees, and detention of prom attendees both before and after administering breathalyzer tests violate their rights to be free from unreasonable searches and seizures under the Fourth Amendment?

Reasoning and Rule of Law

The court determined the appropriate lens under which its Fourth Amendment analysis would be conducted would be the *T.L.O.* standard for school searches and seizures. Therefore, the legality of the search or seizure should depend on the reasonableness under all the circumstances – whether it was justified at its inception, and whether it was reasonably related in scope to the circumstances that justified the interference.

Though it occurred off campus, since the prom was organized by the school and supervised by school officials in all aspects, the event was a school event. Accordingly, students who voluntarily attended had a diminished expectation of privacy that made the

T.L.O. reasonableness standard applicable. When they exited the bus, students left no personal belongings on the bus, and the court perceived this to mean they did not intend to return to the bus after exiting the prom. Therefore, students failed to establish an actual or reasonable expectation of privacy once they exited the bus. The bus driver had the authority to give consent to search the bus, which he did. The court found Officer Brush's search of the party bus did not violate the students' Fourth Amendment rights.

The students signed the form reminding them of the school's Zero Tolerance Policy and notifying them that they would be required to pass a breathalyzer test if school officials had reason to suspect they or their guests had consumed alcohol. When Officer Brush searched the bus and discovered the champagne bottle and cups, the driver told him it belonged to the students. Therefore, Officer Bush had reasonable suspicion that students had consumed alcohol on the party bus. The breathalyzer test was a minimally invasive method to determine which students might have consumed alcohol. The initial detention for breathalyzer testing was justified at its inception due to the reasonable suspicion that students had consumed alcohol based on Officer Brush's search, and the detention was reasonably related in scope. Though having to wait until they had more mouthpieces and a trained individual to administer the breathalyzer tests was inconvenient, it was necessary to conduct the tests. However, rather than holding all students until each one had taken a breathalyzer test in the interest of fairness, once a student passed the test, that student should have been free to go. The detention of all students until they had all been tested was not reasonably related to the reason for detention in the first place, which was to determine if students had been drinking.

Though the defendants violated the students' Fourth Amendment rights by their continued detention of the students once they passed their individual breathalyzer test, the defendants were entitled to qualified immunity because there was no clearly established law at that time to inform them they had done so.

Holding

The United States Court of Appeals for the Eleventh Circuit affirmed the decision of the United States District Court for the Southern District of Florida.

DeCossas v. St. Tammany Paris School Board., Not Reported in Fed. Supp., 2017 WL 3971248

Facts and Procedural History

On January 8, 2016, M.D. was sent to the office of Leonard Tridico, chief disciplinarian at a public high school in St. Tammany Parish. Tridico interrogated M.D. regarding drug allegations brought by another student in the presence of Assistant Principal Michael Astugue and Deputy Gerchow, St. Tammany Parish Sheriff's Deputy and school resource officer. M.D. admitted to violating school rules for possession or use of drugs. During the interaction, Tridico searched M.D.'s person and effects, including a cellphone, with M.D.'s consent and code to unlock the phone. When the school personnel recognized a number in the cellphone as that of another student A.G., they summoned A.G. for questioning and to write a statement confirming M.D.'s involvement in the purchase or sale of a controlled substance. Once they had A.G.'s statement, they confronted M.D. with the statement and got a written statement from him as well. M.D. was suspended from school pending a hearing at the district office. At the hearing, M.D. was expelled from school for a minimum of four complete school semesters, consistent with Louisiana state law. On April 29, 2016, M.D.'s mother brought several claims,

including Fourth Amendment violations against all named defendants, including Tridico, Astugue, and Deputy Gerchow, as well as an expungement of all relevant records, reversal of the suspension, and general and punitive damages. On July 18, 2016, Movants filed a motion to dismiss or motion for a more definite statement. On March 27, 2017, the court granted the motion in part. On April 17, 2017 Plaintiffs filed an amended complaint. Movants filed a motion for summary judgment on July 17, 2017. Plaintiffs filed an opposition on July 25, 2017. Movants filed a reply on August 2, 2017. On August 10, 2017, the court granted Deputy Gerchow's motion for summary judgment.

Issue

Did the search of M.D.'s person and effects, including his cellphone, in the presence of a school resource officer violate his Fourth Amendment rights?

Reasoning and Rule of Law

Under *New Jersey v. T.L.O.*, a warrant is not required for searches of students in schools by school officials, but rather the legality of a search depends on the reasonableness of the search under all the circumstances. The court recognized that while the Fifth Circuit had not addressed the standard for assessing the legality of searches conducted by school officials in conjunction with law enforcement officers, the Eighth Circuit had held that the reasonableness standard, not probable cause, applies where a school official searches a student in conjunction with a law enforcement officer acting as a school liaison officer. The search of M.D.'s person and effects in the presence of a school resource officer was reasonable given that it was based on information Tridico received from another student that M.D. was involved in the purchase or sale of a controlled substance at school.

Holding

The United States District Court, E.D. Louisiana granted the motion for summary judgment in part and denied the motion in part.

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

Facts and Procedural History

On December 17, 2015, William Cushman, assistant principal of Fairfield High School, received a text message from a student stating that another student had a gun at Sam Yeto High School, a credit recovery school located on the campus of Fairfield High School. Cushman had the secretary call the police and went to the Yeto campus to notify the principal, Sherry McCormick. Paula Gulian, Fairfield campus resource officer, met Cushman at the Yeto campus. Under police protocol, Officer Gulian called for a backup officer. Officer Gulian also had Cushman contact the anonymous student tipster to get more information. According to the student, she had received a SnapChat video showing a student sitting in a classroom with a gun and a magazine clip. Cushman saw the video, and based on the description given by the tipster, Cushman and McCormick identified two possible suspects. When Cushman gave the names to the student tipster, she identified K.J. as the student in the SnapChat video. When Officer Quinn, the backup officer, arrived, he, Officer Gulian, and McCormick, went to K.J.'s classroom. McCormick escorted K.J. from the classroom, and, once in the hallway, Officer Gulian removed K.J.'s backpack, handcuffed him, and searched him. The search produced a bullet magazine with seven rounds of ammunition in his jeans pocket and an unloaded nine-millimeter semi-automatic handgun in his pants. K.J. was arrested and charged with possession of a weapon on school grounds. K.J. filed a motion to suppress the evidence

on the grounds that the search violated his Fourth Amendment rights since he was detained and searched without reasonable suspicion. The Superior Court of Solano County denied the motion, and K.J. appealed the decision to the Court of Appeal for the First District, Division 4 of California.

Issue

Did the detention and search of K.J. by Officer Gulian and Officer Quinn violate his Fourth Amendment right to be free from unreasonable search and seizure?

Reasoning and Rule of Law

The court recognized that students have Fourth Amendment rights in the public-school context, but those rights are balanced against the school's interest in maintaining a safe environment for students and staff members. The court cited *In re Randy G.*, noting that to that end, school officials may detain a student for questioning on campus without reasonable suspicion as long as the detention is not arbitrary, capricious, or for the purpose of harassment. The court continued that, consistent with *In re William V.*, school resource officers are considered school officials for the purposes of Fourth Amendment analysis. Though Officer Quinn was not a school resource officer, Officer Gulian called him following police protocol. The court found that the relationship between students and the school resource officer and the backup officer and students was not different just because one was assigned to work at the school and the other was not. Instead, the school resource officer's function at the school and the special nature of public schools should be the distinguishing factors. Not allowing the school resource officer to follow the protocol of calling for a backup officer would jeopardize students and staff members. Following this rationale, the court extended the school official exception even further to

include backup officers who are called to assist school resource officers. Given the threat of a student with a gun on campus, the officers acted reasonably in their detention of K.J. by immediately grabbing his backpack and controlling his hands with handcuffs. The student tipster gave particular information that helped Cushman and Officer Gulian narrow their suspicion to one student, thereby justifying the search at its inception. However, the court ruled that even if the tip included only marginal reliability, the search would have still been justified at its inception based on the extraordinary danger having a handgun on a school campus presents and the need to act swiftly to investigate such a report.

Holding

The Court of Appeal for the First District, Division 4 of California affirmed the decision of the Superior Court of Solano County.

Scott v. County of San Bernardino, 903 F.3d 943 (2018)

Facts and Procedural History

On October 8, 2013, Assistant Principal Balbina Kendall called Sheriff's Deputy Luis Ortiz, school resource officer, to Etiwanda Intermediate Middle School to speak to a group of seventh-grade female students about an ongoing conflict. Kendall and Principal Janella Cantu-Myricks were present for the meeting. Kendall addressed the students first, and then Deputy Ortiz spoke to the students. Deputy Ortiz perceived the students to be unresponsive and disrespectful, and in response, he arrested all seven students for unlawful fighting in violation of California Penal Code § 415. Deputy Ortiz called Deputy Thomas for backup, and together they cited and handcuffed all seven students. One student was released to her father at the school campus. The other six students were

transported by police vehicles to the San Bernardino County Sheriff's Department, where they were separated, interviewed, and released to their parents. No criminal charges were filed, and no school disciplinary action was taken against any of the seven students. The parents of three of the students brought suit against Deputy Ortiz, Deputy Thomas, and the County of San Bernardino on the grounds that the warrantless arrests of the girls violated their Fourth Amendment rights. Defendants were granted partial summary judgment in the United States District Court for the Central District of California, but students' Fourth Amendment claims were set for trial. However, on the first day of the trial, the Plaintiffs moved for summary judgment based on newly-discovered authority regarding the state law under which Defendants had justified the students' arrests. The motion was granted, and the district court denied the Defendants qualified immunity and granted summary judgment to the students. The defendants appealed the decision to the United States Court of Appeals for the Ninth Circuit on the grounds that they were entitled to qualified immunity.

Issue

Were the arrests of seven middle school girls by Deputy Ortiz and Deputy Thomas unreasonable under the Fourth Amendment?

Reasoning and Rule of Law

The court applied a two-part test to determine if Deputy Ortiz and Deputy Thomas were entitled to qualified immunity by considering whether or not they violated a constitutional right, and, if so, whether or not that right was clearly established at the time of the violation. The court began by considering if the seizure was reasonable under the standards outlined in *T.L.O.* The court held that the arrests of the students were not

justified at inception because the officers only had generalized allegations of the group being in conflict and Deputy Ortiz expressed that his motivation for arresting the students was to punish them and teach them a lesson. According to the court, seizures for impermissible motives as stated in the arresting officer's testimony make a warrantless arrest unreasonable. The court continued that, even if the arrests would have been justified at inception, they were not reasonably related in scope to the circumstances that justified the interference in the first place. The arrests, handcuffing, and police transport was disproportionate in response to the school's need to address the ongoing conflict among the students. Instead, the actions of the officers were excessively intrusive in light of the students' ages and not reasonably related to the scope of the school's need to end the conflict. When the officers arrested the students, it had been established that police seizures at the behest of school officials must meet both prongs of the standard articulated in *T.L.O.* The court found that the Defendants could not meaningfully contest Deputy Ortiz repeatedly disclosing the motivation for the arrests to prove a point, and no reasonable officer could have reasonably believed such an arrest would be authorized. Having established that the officers did violate the students' constitutional rights, and those rights were clearly established at the time of the violation, the district court correctly denied their entitlement to qualified immunity.

Holding

The United States Court of Appeals for the Ninth Circuit affirmed the decision of the United States District Court for the Central District of California.

Summary

Forty-nine cases met the criteria to be included in this study. While those cases date as far back as 1987 – within two years of the U.S. Supreme Court's *T.L.O.* decision – since 2000, there have been 35 cases where school resource officers have been involved in searches and seizures in K-12 public schools. That amounts to 72% of the cases included in this study. All but two federal districts have heard cases on the topic of this study, and cases have been primarily concentrated in the Eleventh, Seventh, and Ninth Federal Districts, respectively. Cases have reached the state supreme court level in six states and the federal appellate court level in three federal districts. Thirty-four cases have been argued in state appellate courts.

Legal challenges surrounding this topic continue to rise to the higher courts, and they are doing so with concentrated frequency. The courts are unsettled on the matter, and case law has increasingly withstood scrutiny around this topic, further demonstrating the need for clarity in how to involve school resource officers in a way that meets the letter and the spirit of the law. In Chapter 5, the researcher will perform an inductive data analysis of these cases to identify patterns in the data in order to develop a set of influential factors and their impact on court opinions.

Chapter 5: Findings and Analysis

This chapter will include an examination and analysis of the data extracted from the case briefs in the previous chapter. The researcher entered data from individual cases on a case analysis matrix to organize and massage the data efficiently. The matrix also gives the reader the ability to see how the data is connected to individual cases as well as how it was used in this study. After affinitizing individual pieces of information from these briefs, the researcher identified patterns and themes in the data, which aided in the synthesis of a set of influential factors and their impact on court opinions. The result – a distillation of clearly enunciated legal standards for the involvement of school resource officers in school searches and seizures that protect school administrators, school resource officers, and students against infringement of their rights – is discussed below and further explored in Chapter 6.

Table 5.1 Case Analysis Matrix

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
Cason v. Cook	United States Court of Appeals, Eighth Circuit	1987	Law Enforcement Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
F.P. v. State	District Court of Appeal of Florida, First District	1988	Law Enforcement Official	Non-school Standard	Initiated by outside police officer. School resource officer acted in conjunction with outside law enforcement	N/A	N/A	Remanded
Coronado v. State	Court of Criminal Appeals of Texas, *En Banc*	1992	Law Enforcement Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	No	Remanded
In Interest of S.F.	Superior Court of Pennsylvania	1992	School Official	School Standard	Search initiated and/or directed by school resource officers acting on own authority	Yes	Yes	No
A.J.M. v. State	District Court of Appeal of Florida, First District	1993	Law Enforcement Official	Non-school Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	N/A	N/A	Yes

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
S.A. v. State	Court of Appeals of Indiana	1995	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
People v. Dilworth	Supreme Court of Illinois	1996	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
People v. Pruitt	Appellate Court of Illinois, First District, First Division	1996	Law Enforcement Official	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; outside officer involvement was in the mechanics of the search	Yes Yes No	Yes Yes No	No No Yes
State v. D.S.	District Court of Appeal of Florida, Third District	1996	School Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
In Interest of Angelia D.B.	Supreme Court of Wisconsin	1997	Law Enforcement Official	School Standard	Search with equal participation by school officials and school resource officers	Yes	Yes	No
In Interest of Thomas B.D.	Court of Appeals of South Carolina	1997	Law Enforcement Official	Non-school Standard	Search initiated and/or directed by outside law enforcement agents	N/A	N/A	No Plain View Doctrine
J.A.R. v. State	District Court of Appeal of Florida, Second District	1997	Implicitly referred to as Law Enforcement Official due to specialized training	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Yes	Yes	No
Commonwealth v. J.B.	Superior Court of Pennsylvania	1998	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
In re Josue T.	Court of Appeals of New Mexico	1999	Law Enforcement Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No
C.S. v. State	Court of Appeals of Indiana	2000	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
D.B. v. State	Court of Appeals of Indiana	2000	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
In re D.D.	Court of Appeals of North Carolina	2001	Law Enforcement Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
Russell v. State	Court of Appeals of Texas, Waco	2002	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
Shade v. City of Farmington, Minnesota	United States Court of Appeals, Eighth Circuit	2002	Law Enforcement Official	School Standard	Search with equal participation by school officials and school resource officers	Yes	Yes	No
State v. N.G.B.	District Court of Appeal of Florida, Second District	2002	Law Enforcement Official	School Standard	Search with equal participation by school officials and school resource officers	Yes	Yes	No
In re William V.	Court of Appeal, First District, Division 3, California	2003	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
People v. Williams	Appellate Court of Illinois, Second District	2003	School Official	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
In re J.F.M.	Court of Appeals of North Carolina	2005	Law Enforcement Official	School Standard	Seizure made by school resource officer acting in conjunction with school official	Yes	Yes	No
In re S.W.	Court of Appeals of North Carolina	2005	School Official	School Standard	Search initiated and/or directed by school resource officer in the presence of school officials	Yes	Yes	No
Gray ex rel. Alexander v. Bostic	United States Court of Appeals, Eleventh Circuit	2006	School Official	School Standard	Seizure initiated and/or directed by school resource officer acting on own authority	Yes	No	N/A
State v. K.L.M.	Court of Appeals of Georgia	2006	Law Enforcement Official	Non-school Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	N/A	N/A	Yes
D.L. v. State	Court of Appeals of Indiana	2007	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
T.S. v. State	Court of Appeals of Indiana	2007	School Official	School Standard	Seizure initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
Wilson ex rel. Adams v. Cahokia School Dist. No. 187	United States District Court, S.D. Illinois	2007	School Official	School Standard	Search with equal participation by school officials and school resource officers	Yes	Yes	N/A
R.D.S. v. State	Supreme Court of Tennessee, at Nashville	2008	Remanded	School Standard	Search initiated and/or directed by school resource officer acting on own authority	N/A	N/A	No
State v. R.D.S.	Court of Appeals of Tennessee	2009	Law Enforcement Official	Non-school Standard	Search initiated and/or directed by school resource officer acting on own authority	N/A	N/A	Yes
In re D.L.D.	Court of Appeals of North Carolina	2010	Law Enforcement Official	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
State v. Burdette	Court of Appeals of Kansas	2010	Law Enforcement Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No
Ortiz v. State	Court of Appeals of Georgia	2010	Law Enforcement Official	Law Enforcement Official	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No
In re K.K.	Court of Appeals of Ohio, Fifth District, Fairfield County	2011	Law Enforcement Official	School Standard	Initiated by outside police officer. School official searched based on tip from outside law enforcement	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
In re R.E.	Court of Appeal, Fourth District, Division 3, California	2011	Law Enforcement Official	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Yes	Yes	No
M.D. v. State	District Court of Appeal of Florida, First District	2011	School Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No
State v. J.M.	Court of Appeals of Washington, Division 1	2011	School Official	School Standard	Search initiated and/or directed by school resource officer acting on own authority	Yes	Yes	No
In re A.T.	Court of Appeal, First District, Division 3, California	2012	School Official	School Standard	Search with equal participation by school officials and school resource officer	Yes	Yes	No

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
State v. Alaniz	Supreme Court of North Dakota	2012	School Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No
State v. Meneese	Supreme Court of Washington, *En Banc*	2012	Law Enforcement Official	Non-school Standard	Search initiated and/or directed by school resource officer acting on own authority	N/A	N/A	Yes
Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police	Supreme Court of Delaware	2013	School Official	School Standard	Seizure initiated and/or directed by school resource officer acting on own authority	No	No	N/A
J.V. v. Sanchez	United States District Court, D. New Mexico	2013	Law Enforcement Official	School Standard	Seizure initiated and/or directed by school resource officer acting on own authority	Yes	Yes	N/A

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
K.P. v. State	District Court of Appeal of Florida, Third District	2013	School Official	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Yes	Yes	No
Hoskins v. Cumberland County Bd. of Educ.	United States District Court, M.D. Tennessee, Nashville Division	2014	Law Enforcement Official	Non-school Standard	Seizure initiated and/or directed by school resource officer acting on own authority	No	No	N/A
Ziegler v. Martin County School District	United States Court of Appeals, Eleventh Circuit	2016	School Official	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Yes	Yes	N/A

Case	Court	Year	Role from Court's Purview	Standard Applied	Nature of Search	*TLO* 1	*TLO* 2	Evidence Suppressed
DeCossas v. St. Tammany Paris School Board	United States District Court, E.D. Louisiana	2017	School Official	School Standard	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Yes	Yes	No
In re K.J.	Court of Appeal, First District, Division 4, California	2018	School Official	School Standard	Searches initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Yes	Yes	No
Scott v. County of San Bernardino	United States Court of Appeals, Ninth Circuit	2018	School Official	School Standard	Seizure initiated and/or directed by school resource officer acting on own authority	No	No	N/A

Distinguishing School Resource Officers from Typical Law Enforcement Officers

With few exceptions, school officials in the cases included in this study argued that school resource officers should be considered school officials for Fourth Amendment purposes. Demonstrating that school resource officers are not like other law enforcement

officers would reinforce the holding that "a search conducted by a resource officer placed in the school as a liaison is more akin to a search from a school official than from an outside police officer coming into the school to conduct a search...."[148] Several courts gave factors to consider in defining the position a school resource officer holds in a public school with the purpose of distinguishing them from typical law enforcement officers. The following information highlights ways courts have considered how a school resource officer is different from – or similar to – typical law enforcement officers.

Factors that Define the Role from the Court's Purview

In *R.D.S. v. State*, the Supreme Court of Tennessee said a school resource officer should be held to the reasonable suspicion standard[149] as a school official, but the state had to prove that school resource officers were assigned to the school regularly with school duties beyond those of typical law enforcement officers. The court gave an exhaustive list of suggested factors to consider to determine whether or not a school resource officer should be considered a school official and held to the reasonable suspicion standard or law enforcement official and held to the probable cause standard: whether the school resource officer is in uniform and armed, has an office on the school's

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[148] M.D. v. State, 65 So.3d 563 (2011), 566.

[149] The two-part test to determine the reasonableness of a student search articulated in *New Jersey v. T.L.O.*:

- The search must be justified at its inception.
    - 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.
- The search must be reasonably related in scope to the circumstances which justified the interference in the first place.
    - 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.

campus, how long the officer remains at school each day, whether the school handbook delineates duties of the school resource officer, who employs, pays, and evaluates the school resource officer, whether the primary duty of the school resource officer is to educate students in a safe environment or to detect and deter crime since punishment for committing crime is more severe than consequences for breaking a school rule, how the agreements between the school district and the law enforcement agency define the roles of the school resource officer, any state statutes that outline duties of school resource officers, the school resource officer's daily activities, the nature of the school resource officer's interactions with students, any specialized training the school resource officer has received, how the school resource officer counsels students, and what classes the school resource officer teaches at the school.[150]

On remand, the Court of Appeals of Tennessee analyzed the school resource officer program agreement between the District's Board of Education and the County Sheriff's Department and found that the agreement neither anticipated nor permitted a school resource officer to act as or perform the duties of a school official. Specifically, the school resource officer did not work for the school, take directives from the administration, perform school duties, discipline students, nor was she subject to direct supervision at the school level. Under the agreement, she was an officer of the County Sheriff's Department, governed by the Sheriff's Department policies and procedures, paid a regular deputy's salary by the Sheriff's Department, and her direct supervisor was a lieutenant with the Sheriff's Department. The County Sheriff testified that a school resource officer is primarily a law enforcement officer with arrest authority. Other

[150] R.D.S. v. State, 245 S.W.3d 356 (2008)

considerations that made the school resource officer a law enforcement official: always wore either a dress or less formal uniform, was armed, drove a marked cruiser, called for backup law enforcement officers at times, and participated in drug searches including with drug dogs. The court found that neither the Sheriff, the school resource officer, nor the school administrators considered the school resource officer to be a school official. This case demonstrates the importance and significance of a solid interagency agreement that explicitly outlines the duties of school resource officers. Ironically, the test the court articulated proved too comprehensive to allow the school resource officer to be eligible for the original school standard for student searches the court once proposed.[151]

In *State v. Alaniz*, the Supreme Court of North Dakota considered factors such as whether the school resource officer is in a police uniform, whether the officer has an office on campus, how much time the officer spends at the school, who pays the officer's salary, what the officer's duties entail, who initiates or conducts the search, and the purpose of the search, as indicators of how much police involvement occurred and which standard should apply to searches and seizures involving school resource officers.[152]

In *In Interest of Angelia D.B.*, the court presumed that, since the school resource officer had an office on campus, one of the responsibilities was to "assist school officials in maintaining a safe and proper educational environment."[153] In *K.P. v State*, the District Court of Appeal for the Third District reasoned that a school resource officer who was assigned to work full time at the school was more like a school official than a police officer on the street, and, accordingly, the purpose of a search is to protect students rather

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[151] State v. R.D.S., Slip Copy (2009)
[152] State v. Alaniz, 815 N.W.2d 234 (2012)
[153] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 158.

than to establish guilt.[154] In *In re Josue T.*, the Court of Appeals of New Mexico called the school resource officer "the arm of the school official."[155]

To whom the school resource officer reports and is primarily responsible was another consideration in courts' reasonings. The Court of Appeal for the First District, Division Three of California applied the reasonable suspicion standard afforded to school officials to school resource officers in *In re A.T.*, regardless of whether they were employed by the school district or another government entity.[156] In *In re J.F.M.*, as a matter of first impression, the Court of Appeals of North Carolina said school resource officers qualify for the *T.L.O.* reasonableness standard when they seize or detain students as long as they act in conjunction with school officials when the officers are primarily responsible to the school district rather than law enforcement,[157] reasoning the same court repeated in *In re S.W.*[158]

Capturing agreements in policy was viewed favorably by the Court of Appeals of Indiana in *S.A v. State*. The court acknowledged that the school policy regarding searches of students and their lockers was clearly articulated in multiple formats, including the student handbook, the district policies and procedures manual, the district calendar, and the district handbook. The court found that all documents accurately reflected students' lowered expectations of privacy in the school setting and the

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[154] K.P. v. State, 129 So.3d 1121 (2013)
[155] In re Josue T., 128 N.M. 56 (1999), 62.
[156] In re A.T., Not Reported in Cal.Rptr.3d (2012)
[157] In re J.F.M., 168 N.C.App. 143 (2005)
[158] In re S.W., 171 N.C.App. 335 (2005)

subsequent application of the reasonable suspicion standard announced in *T.L.O.*, even when school resource officers were involved in searches.[159]

The Court of Appeals of Washington declined to be so explicit. In *State v. J.M.*, as a matter of first impression, the court refused to differentiate between school officials, school security guards, and school resource officers conducting a search since "the invasion of privacy is identical. Any distinction focuses on the insignificant factor of who pays the officer's salary, rather than on the officer's function at the school and the special nature of a public school."[160] However, on appeal to the Supreme Court of Washington heard *en banc*, the court took a much more definitive stance by identifying a fundamental difference between school officials and school resource officers – school resource officers are law enforcement officers whose job concerns the discovery and prevention of crime. In this case, the court found that the school resource officer had no authority to discipline students, was a uniformed police officer, and at times was still called upon to answer police matters unrelated to the school. According to the court, the school resource officer further demonstrated his role as a law enforcement officer when he arrested and handcuffed the student in the case.[161]

Conversely, in *Gray ex rel. Alexander v Bostic*, the United States Court of Appeals for the Eleventh Circuit reasoned that a school resource officer had a responsibility to investigate criminal activity at the school, which could include detaining, questioning, arresting, and handcuffing students under the right circumstances. However, the court still applied the reasonableness standard to school seizures by law

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[159] S.A. v. State, 654 N.E.2d 791 (1995)
[160] State v. J.M., 162 Wash.App. 27 (2011), 40, n.3.
[161] State v. Meneese, 174 Wash.2d 937 (2012)

enforcement officers. Since the school resource officer, in this case, believed the student had committed a misdemeanor with her threat to her teacher and detained the student to discuss the incident with her, the court reasoned that the officer's actions were within his discretionary duties.[162]

Primary Functions of School Resource Officers

School Official or Law Enforcement Official

The cases included in this study emphasized with general consistency the primary function of school resource officers in the school setting as a significant factor in their decisions. Courts considered how a school resource officer acted to further educational-related or law enforcement-related goals. This finding, in turn, influenced the role of school resource officers from the courts' purview as either school officials or law enforcement officials, which bears on the constitutionality of their involvement in the total school program, including their involvement in searches and seizures.

The difference between a school official and a law enforcement official is in the primary functions of the position. School officials are charged with maintaining a safe, secure, and orderly learning environment, while law enforcement officials are primarily concerned with discovering and preventing crimes.[163] In *In re William V.*, the Court of Appeal for the First District, Division Three of California declined to differentiate between school security officers and school resource officers "…because the first is employed by the school district and the other by the city. This distinction focuses on the insignificant factor of who pays the officer's salary, rather than on the officer's function at

[162] Gray ex rel. Alexander v. Bostic, 458 F.3d 1295 (2006)
[163] State v. J.M., 162 Wash.App. 27 (2011)

the school and the special nature of a public school."[164] According to the Court of Appeals of New Mexico in *In re Josue T.*, when school officials bring police officers into the school setting, officers are to "assist the school administration in creating and sustaining a safe environment conducive to learning."[165] The Court of Appeal for the First District, Division Four of California ruled in *In re K.J.* that, though an outside police officer was not a school official, the school resource officer followed police protocol when she called for backup before searching a student for a weapon. The court reasoned that the relationship between students and the school resource officer and the backup officer and students was not different just because one was assigned to work at the school and the other was not. Instead, the school resource officer's function at the school and the special nature of public schools should be the distinguishing factors.

Education-Related Goals and Searches

With few exceptions, courts tended to find the primary functions of school resource officers were to promote educational-related goals. In *In Interest of Angelia D.B.* the Supreme Court of Wisconsin presumed that since the school resource officer had an office on campus, one of his responsibilities was to "assist school officials in maintaining a safe and proper educational environment."[166] In *State v. Alaniz*, the Supreme Court of North Dakota recognized that as a full-time school resource officer funded by the school district, one of the goals as a school resource officer was to provide a clean, safe, and secure learning environment.[167]

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[164] In re William V., 111 Cal.App.4th 1464 (2003), 1471.
[165] In re Josue T., 128 N.M. 56 (1999), 62.
[166] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 158.
[167] State v. Alaniz, 815 N.W.2d 234 (2012)

The Supreme Court of Illinois in *People v. Dilworth* ruled that the school resource officer was the same as a school official for Fourth Amendment purposes, even though his primary purpose at the school was to prevent criminal activity.[168] In this case, since the officer handled both criminal and disciplinary matters, the court focused on his function to maintain a proper educational environment.

In *State v. Burdette*, the Court of Appeals of Kansas modified the categories of searches articulated initially in *People v. Dilworth* to clarify the function of school resource officers when involved in school searches as either school officials or law enforcement officials. According to the court, when school officials initiate the search and police involvement is minimal or where school officials act in conjunction with, but not at the behest of law enforcement, the *T.L.O.* reasonableness standard applies. When a search performed by law enforcement fulfills a police function such as obtaining evidence of a crime, not to maintain discipline, order, or student safety, or if it is performed by or at the behest of outside law enforcement officers, probable cause is required to justify the search.[169]

The purpose of the search was a key factor in searches involving school resource officers. Rather than searching for evidence of criminal activity, courts have looked favorably on school resource officers acting in the interest of maintaining a proper educational environment.[170] In *D.L. v. State*, as a matter of first impression, the Court of Appeals of Indiana ruled that a school resource officer's pat-down search for a school-issued identification card pursuant to school policy and in the interest of school safety

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[168] People v. Dilworth, 169 Ill.2d 195 (1996)
[169] State v. Burdette, 43 Kan.App.2d 320 (2010)
[170] In re Josue T., 128 N.M. 56 (1999)

was permissible. In *People v. Pruitt*, the Appellate Court of Illinois for the First District, First Division held that, though outside police officers performed the metal detector searches, they were done so at the direction and control of school officials. The purpose of the search was to protect and maintain a proper educational environment, not to harvest evidence of a crime.[171] In *Commonwealth v. J.B.*, the Superior Court of Pennsylvania found that a school resource officer searching for drugs was working in the furtherance of educational goals.[172] In *In re S.W.*, the Court of Appeals of North Carolina recognized a school resource officer's search for drugs in conjunction with school officials was to further the educational goals of the school.[173] In *K.P. v. State*, a school resource officer conducted a search of a student's backpack for a gun. The District Court of Appeal of Florida for the Third District applied the *T.L.O.* standard, reasoning that a school resource officer is more like a school official than a police officer on the street and the primary objective of the search was to protect students rather than to establish guilt.[174]

Education-Related Goals and Seizures of Students

Even when school resource officers seized students in the cases included in this study, the courts continued to focus on whether the school resource officers were promoting education-related goals or law enforcement-related goals. As the United States District Court for the Sixth District in Tennessee stated in *Hoskins v. Cumberland County Bd. of Educ.*, "When a law enforcement official seizes a child at school, it is more likely that the seizure is a law-enforcement action, not an action for the purposes of

[171] People v. Pruitt, 278 Ill.App.3d 194 (1996)
[172] Commonwealth v. J.B., 719 A.2d 1058 (1998)
[173] In re S.W., 171 N.C.App. 335 (2005)
[174] K.P. v. State, 129 So.3d 1121 (2013)

educating a child. [In this case] the law enforcement officer used law-enforcement tools – handcuffs – for the stated purpose of arresting a child and taking him to detention."[175] However, seizures of students by school resource officers are permissible. In *In re J.F.M.*, the Court of Appeals of North Carolina ruled that a school resource officer was furthering education-related goals and rules of the school rather than criminal purposes when he seized a student as part of an investigation of an affray that occurred on the school's campus earlier in the day.[176] In *T.S. v. State*, The Court of Appeals of Indiana also found that the school resource officer acted to further education-related goals when he seized a student by taking him to the locker room and ordering him to change into his street clothes before searching him for drugs based on an anonymous tip.[177] In *J.V. v. Sanchez*, the United States District Court for the Tenth Circuit in New Mexico extended the *T.L.O.* reasonableness standard to a school resource officer's handcuffing of a student who had been running around the school and evading school personnel for several hours since her purpose was to maintain school order and security. According to the court, the detention was conducted in conjunction with school officials in the school setting with the goal of maintaining a safe environment for students and staff members.[178]

Law Enforcement-Related Goals and School Resource Officers

Surprisingly, few cases involved searches or seizures where the court found the school resource officer to be acting to further law enforcement-related goals and crime prevention. In *State v. Meneese*, the Supreme Court of Washington ruled that the school

[175] Hoskins v. Cumberland County Bd. Of Educ., Not Reported in F.Supp.3d (2014), 10.
[176] In re J.F.M., 168 N.C.App. 143 (2005)
[177] T.S. v. State, 863 N.E.2d 362 (2007)
[178] J.V. v. Sanchez, Slip Copy (2013)

resource officer's "overwhelming indicia of police action"[179] in his post-arrest search distinguished his actions as a law enforcement officer rather than a school official. Any search beyond that point was to promote criminal prosecution rather than educational-related goals, discipline, or order in the school setting. The court reasoned that once the school resource officer made the arrest, the officer's search that followed the arrest was subject to the probable cause standard and, as with any law enforcement officer, a warrant was necessary to proceed.

Specialized Training and Expertise

Officers Receive More and Better Training

Several courts considered the law enforcement training school resource officers received and the expertise school resource officers possessed to be more appropriately utilized in school searches and seizures. Though many appellants argued that it was the involvement of a school resource officer in a search or seizure that violated their Fourth Amendment rights to be free from unreasonable searches and seizures, courts consistently promoted the skills incumbent with law enforcement preparation as an asset in searches and seizures conducted in the school setting. The Court of Appeal for the First District, Division Three of California reasoned in *In re William V.* that the higher level of training in constitutional law a school resource officer receives should not determine a higher standard of probable cause be applied to their searches in the school setting.[180]

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[179] State v. Meneese, 174 Wash.2d 937 (2012), 940.
[180] In re William V., 111 Cal.App.4th 1464 (2003)

Weapons Training Tilts Balance Toward Officers' Searches

Courts were particularly lenient when the threat of a dangerous weapon was involved. In *J.A.R. v. State*, the District Court of Appeal of Florida for the Second District resisted differentiating between school resource officers and other police officers when dealing with searches for dangerous weapons on school campuses. The court reasoned that if school officials have a reasonable suspicion that a person possesses a dangerous weapon on a school campus, they can request *any* police officer to perform a constitutionally permissible pat-down search without activating the higher probable cause standard.[181] Judge Altenbernd wrote,

> It would be foolhardy and dangerous to hold that a teacher or school administrator, who often is untrained in firearms, can search a child reasonably suspected of carrying a gun or other dangerous weapon at school only if the teacher or administrator does not involve the school's trained resource officer or some other police officer. At least when it comes to guns and other dangerous weapons, we do not wish to draw fine lines between police officers who are "school resource officers" and those who are not.[182]

That same year, the Supreme Court of Wisconsin echoed the importance of school officials utilizing school resource officers in school searches for dangerous weapons in *In Interest of Angelia D.B.* According to the court, discouraging the involvement of trained police resources to assist school personnel in searches of dangerous weapons based on a concern of constitutional reasonableness "could be hazardous."[183]

In *People v Williams*, the Appellate Court of Illinois for the Second District reasoned that school officials acted prudently in asking the school resource officer, who

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[181] J.A.R. v. State, 689 So.2d 1242 (1997)
[182] Ibid., 1244.
[183] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 159.

had proper training and experience, to conduct a search of a student's car for a stolen handgun.

In *Russell v. State*, a student refused to empty his pockets when the principal directed him to do so. The principal invited the school resource officer into the office and explained that the student had refused to empty his pockets. The Court of Appeals of Texas in Waco supported the school resource officer conducting a pat-down search of the student based on his prior experience that when a student refused to empty pockets for an administrator, they were either hiding drugs or weapons.[184]

Probable Cause Standard Could Encourage Dangerous Searches by Administrators

In *Shade v. City of Farmington, Minnesota*, the United States Court of Appeals for the Eighth Circuit ruled that though school officials initiated and directed the search, they reasonably believed that the police officers were more capable and better trained to conduct a search for weapons. Because a teacher observed a student with a knife while on the bus, it was reasonable for the officers to play a more significant role in the search to discover the weapon. Citing the Supreme Court of Wisconsin's reasoning in *In re Angelia D.B.*, the court agreed that maintaining the higher standard of probable cause solely based on the choice to involve school liaison officers "might serve to encourage teachers and school officials, who generally are untrained in proper pat-down procedures or in neutralizing dangerous weapons, to conduct a search of a student suspected of carrying a dangerous weapon on school grounds without the assistance of a school liaison officer or other law enforcement official[s]."[185]

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[184] Russell v. State, 74 S.W.3d 887 (2002)
[185] Shade v. City of Farmington, Minnesota, 309 F.3d 1054 (2002), 1061, quoting In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 159.

Searches of Students

In *New Jersey v. T.L.O.*, the U.S. Supreme Court declined to address "the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies."[186] Since then, courts have wrestled the topic repeatedly, gradually granting more lenience to school resource officers when conducting searches of students in the public school setting.

A First Case Paves the Way for Future Cases

Cason v. Cook was the first post-*T.L.O.* case to address whether the reasonableness standard would apply when a school official acts in conjunction with a school resource officer. The United States Court of Appeals for the Eighth Circuit held that the *T.L.O.* standard applied to a school resource officer's limited involvement in questioning and conducting a pat-down search of a student since the officer was working in conjunction with and at the direction of the school official who led all aspects of the search.[187] The court reasoned that the traditional Fourth Amendment probable cause and a warrant requirement based on the limited involvement of the school resource officer "would not serve the interest of preserving swift and informal disciplinary procedures in schools."[188]

Categories of Police Involvement in Searches and the Appropriate Standard to Apply

People v. Dilworth was the first post-*T.L.O.* case that involved police officers in school settings to make it to the highest state appellate court. In its reasoning, the Supreme Court of Illinois grouped cases involving these types of cases into three

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[186] New Jersey v. T.L.O., 469 U.S. 325 (1985), 341, n.7.
[187] Cason v. Cook, 810 F.2d 188 (1987)
[188] Ibid., 192.

categories: (1) those where school officials initiate a search or where police involvement is minimal, (2) those involving school police or liaison officers acting on their own authority, and (3) those where outside police officers initiate a search.[189] The court found that when a search could be classified into one of the first two categories, most courts to that point had applied the reasonableness standard articulated in *T.L.O.* If a search fell in the third category, the traditional Fourth Amendment standard of probable cause applied.[190] Though this case was adjudicated in 1996, this rationale has generally withstood the test of time.

A Further Relaxed Standard Regardless of the Role from the Court's Purview

In *State v. D.S.*, the District Court of Appeal of Florida for the Third District ruled that a legal search conducted by a school resource officer required only reasonable suspicion rather than probable cause, even to the point of directing, participating in, or acquiescing in the search, since the school police officer is a school official employed by the district school board. Extending the standard even further, the court said 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.[191]

Courts have not been as willing to grant the reasonableness standard to school resource officers carte blanche as the court did in *State v. D.S.* However, the standard has been relaxed to the point where school resource officers are generally held to the lower

[189] People v. Dilworth, 169 Ill.2d 195 (1996), 206.
[190] Ibid.
[191] State v. D.S., 685 So.2d 41 (1996)

standard even when acting on their own authority as long as they are doing so as a school official to further the goals of the school.

Level of Police Involvement

School officials acting with minimal school resource officer participation

Several courts considered the presence and level of participation the school resource officer demonstrated in the search as a factor in their reasoning. In *State v. D.S.*, the school resource officer was present in the room but had nothing to do with the search. D.S. argued that the presence of a police officer during the search elevated the appropriate standard for the search to one of probable cause, and the trial court agreed. However, the District Court of Appeal of Florida for the Third District reversed the decision, ruling that not only was his presence permissible but that even if the officer had conducted the search, it would have been authorized since the school resource officer is a school official employed by the district school board.[192] Similarly, in *State v. Burdette*, the Court of Appeals of Kansas ruled that the mere presence of the school resource officer and an outside police officer in the office during the search did not activate the higher standard. In this case, the acting principal did the searching. Though these law enforcement officers were present, their negligible involvement did not trigger the higher level of probable cause.[193] In *Ortiz v. State*, the school resource officer was present during the search for safety reasons but did not physically conduct the search. The Court of Appeals of Georgia held that the presence of the school resource officer with no

[192] Ibid.
[193] State v. Burdette, 43 Kan.App.2d 320 (2010)

further evidence of his involvement would not constitute police participation in the search and would therefore not implicate the exclusionary rule.[194]

School resource officers acting with minimal school administrator participation

In some cases, school resource officers demonstrated that they understood the importance of acting in conjunction with school officials to conduct a search, even if they had already determined the search of a student was necessary. In those cases, though the school officials served only an optical purpose, the courts consistently granted the lower standard despite the inaction of the school officials.

Some cases made mention of school administrators or other school officials, but their involvement in the searches in those cases was minimal. In *In Interest of S.F.*, a school resource officer asked a student to step into an office to be searched for drugs. He also asked an assistant principal to step in, but there were no indicators of the involvement of the assistant principal beyond his presence in the room. The Superior Court of Pennsylvania found the search to be constitutionally permissible.[195] Likewise, in *In re S.W.*, a school resource officer ushered a student and two assistant principals into a school weight room to conduct a search for drugs. Though the school resource officer was the one who questioned the students and conducted the search, the Court of Appeals of North Carolina found that he acted in conjunction with school officials to further the goals of the school.[196] In *M.D. v. State*, the District Court of Appeal of Florida for the First District found that when a school resource officer received an anonymous tip that a student had carried a gun on campus three months earlier, it was permissible for him to

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[194] Ortiz v. State, 306 Ga.App. 598 (2010)
[195] In Interest of S.F., 414 Pa.Super. 529 (1992)
[196] In re S.W., 171 N.C.App. 335 (2005)

request that a school security guard escort himself and the student to the security office. The school resource officer did this knowing that, consistent with school policy, all students were searched before entering the office.[197] In *Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police*, the school resource officer began questioning a student in conjunction with and at the direction of the assistant principal. However, when the assistant principal got called away for a school emergency, the school resource officer continued the investigation. The Supreme Court of Delaware considered the school resource officer a school official and applied the *T.L.O.* standard.

School resource officers acting on their own authority in isolation

Other cases included in this study involved searches conducted by school resource officers with no mention of a school administrator or any other school official. *In F.P v. State*, a school resource officer received a tip from an investigator with the local police department that a student had stolen a car. The school resource officer located the student and questioned him while the investigator was on the way to the school. Over the phone, the investigator told the school resource officer to have the student empty his pockets, which produced car keys and a paper. The District Court of Appeal of Florida for the First District said that the school resource officer acted at the behest of the investigator and the proper standard to apply was probable cause.[198] In *Commonwealth v. J.B.*, a school resource officer discovered a bag of marijuana and a pocketknife in the cuff of a student's pant leg. The officer placed the evidence in an envelope and contacted the

[197] M.D. v. State, 65 So.3d 563 (2011)
[198] F.P. v. State, 528 So.2d 1253 (1988)

police department. As a matter of first impression, the Superior Court of Pennsylvania held that a search conducted solely by a school resource officer who acted as a school official was permissible.[199] The Court of Appeals of Indiana has heard four cases – *C.S. v. State*, *D.B. v. State*, *D.L. v. State*, and *T.S. v. State* – all of which included instances of school resource officers conducting searches on their own. *T.S. v. State* also included the seizure of a student as part of the school resource officer's investigation. In all cases, the school resource officers were viewed as school officials.[200] In *In re William V.*, a case heard by the Court of Appeal for the First District, Division Three of California, a school resource officer was escorting a student to the principal's office for discipline after the officer observed a red bandana hanging from the student's pocket. Before entering the office, the school resource officer conducted a pat-down search of the student and discovered a knife with a five-inch serrated blade. Viewing the school resource officer as a school official, the court applied the *T.L.O.* reasonableness standard to the search.[201]

The Location of Searches

Searches "On school grounds"

The U.S. Supreme Court established in *New Jersey v. T.L.O.* that searches of students on school grounds qualified for an exception to the traditional Fourth Amendment requirements of a warrant and probable cause. According to Justice White,

> Schoolchildren have legitimate expectations of privacy. They may find it necessary to carry with them a variety of legitimate, noncontraband items, and there is no reason to conclude that they have necessarily waived all rights to privacy in such items by bringing them *onto school grounds*[202].... Against the

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[199] Commonwealth v. J.B., 719 A.2d 1058 (1998)
[200] C.S. v. State, 735 N.E.2d 273 (2000); D.B. v. State, 728 N.E.2d 179 (2000); D.L. v. State, 877 N.E.2d 500 (2007); T.S. v. State, 863 N.E.2d 362 (2007)
[201] In re William V., 111 Cal.App.4th 1464 (2003)
[202] New Jersey v. T.L.O., 469 U.S. 325 (1985), 326, emphasis added.

> child's interest in privacy must be set the substantial interest of teachers and administrators in maintaining discipline in the classroom and *on school grounds*.[203]

The Court specified *on school grounds*, and since then several lower courts have integrated the phrase "on school grounds" in their reasonings. In *M.D. v. State*, the District Court of Appeal of Florida for the First District distinguished the school setting from other settings. The court began its reasoning with five precepts for guidance, one of which was that "allegations of possession of a gun on a school campus should be treated differently than similar allegations in other settings."[204] According to the Supreme Court of Wisconsin in *In Interest of Angelia D.B.*, "The proper standard for the constitutional reasonableness of searches conducted *on public school grounds* by school officials, or by police working at the request of and in conjunction with school officials, should not promote unreasonable risk-taking."[205] In *In Interest of Thomas B.D.*, the defendants, who were outside law enforcement officers, claimed that because the search was conducted *on school grounds*, they should have been afforded the lower *T.L.O.* standard. However, the Court of Appeals of South Carolina held them to the higher probable cause standard because they were not connected to the school in any way. In *In re Josue T.*, the Court of Appeals of New Mexico found that "school resource officers may lawfully search a student *on school grounds* at the behest of a school official as long as the search is reasonable under the circumstances."[206] According to the United States District Court of Illinois in *Wilson ex rel. Adams v. Cahokia School Dist. No. 187*, "a search of a student

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[203] Ibid., 339, emphasis added.
[204] M.D. v. State, 65 So.3d 563 (2011), 565.
[205] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 159, emphasis added.
[206] In re Josue T., 128 N.M. 56 (1999), 64, emphasis added.

on school grounds by a school resource officer at the request of school officials should be deemed a search by a school employee for Fourth Amendment purposes."[207]

School's custodial responsibility expands school grounds

Ten years after *New Jersey v. T.L.O.*, the U.S. Supreme Court reinforced the school search exception, ruling that while in school, students are "committed to the temporary custody of the State as schoolmaster; in that capacity, the State may exercise a degree of supervision and control greater than it could exercise over free adults."[208] Since then, courts have considered the nature and degree of responsibility school officials have when school searches occur off campus.

In *Shade v. City of Farmington, Minnesota*, the U.S. Court of Appeals for the Eighth Circuit extended traditional school grounds to include any location where students were under the custody and care of teachers or administrators for purposes of the Fourth Amendment. In this case, a student at an alternative high school loaned another student his folding knife to open an orange juice during a trip to an off-campus auto body shop class. The teacher saw the knife and contacted the school. The principal decided the students should be searched off campus, prior to returning to school. The students were held at the shop until school officials – including two school resource officers – arrived to conduct the search. The search yielded the folding knife as well as a tactical baton. The court concluded that, though the search occurred off campus, the students remained under the control and responsibility of school officials at all times. Therefore, the search occurred within the context of school and reasonable suspicion was the proper standard

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[207] Wilson ex rel. Adams v. Cahokia School Dist. No. 187, 470 F.Supp.2d 897 (2007), 910.
[208] Vernonia School Dist. 47J v. Acton, 515 U.S. 646 (1995), 646.

for the search.[209] According to Judge Hansen who delivered the opinion of the court, "The fact that the search occurred away from what one would consider traditional school grounds…does not elevate the Fourth Amendment standard to one of probable cause. The nature of administrators' and teachers' responsibilities for the students entrusted to their care, not school boundary lines, renders the Fourth Amendment standard in the public- school context less onerous."[210]

In *Ziegler v. Martin County School District*, the United States Court of Appeals for the Eleventh Circuit applied the *T.L.O.* reasonableness standard to a search conducted off campus after hours. In this case, students were late for their prom. When they arrived in a rented party bus, the school resource officer searched the bus before the students were allowed to enter the prom. When the school resource officer found an empty champagne bottle and plastic cups, the principal determined that every person on the bus would be administered a breathalyzer test. The court reasoned that, though the prom occurred off-campus and after hours, since it was organized by the school and supervised by school officials in all aspects, the event was a school event. Accordingly, students who voluntarily attended had a diminished expectation of privacy that made the *T.L.O.* reasonableness standard applicable. The court found the school resource officer's search of the party bus did not violate the students' Fourth Amendment rights.

Level of Suspicion as a Function of Potential Threat

The threat of dangerous weapons on school campuses is one concern with which an increasing number of school administrators and school resource officers must contend.

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[209] Shade v. City of Farmington, Minnesota, 309 F.3d 1054 (2002)
[210] Ibid., 1061.

The national news is fraught with episodes of school violence involving dangerous weapons on a regular basis. In the aftermath of this phenomenon, students' Fourth Amendment rights continue to erode, and courts' rulings remind us that students' expectations of privacy are tempered by the school's need to maintain a safe learning environment.

Anonymous tips carry weighted value and priority when those tips allege dangerous weapons on school grounds. The Superior Court of Pennsylvania reasoned in *Commonwealth v. J.B.* that corroborating physical evidence is not a prerequisite to justify a search by a school official or a school resource officer – both are subject to the reasonable suspicion standard.[211] The courts have encouraged the involvement of school resource officers in the hunt for dangerous weapons because discouraging the involvement of trained police resources to assist in searches of dangerous weapons "could be hazardous."[212] School officials have a responsibility to protect the students under their custody. Therefore, the level of suspicion required is lower when the level of threat is elevated. As long as school resource officers act in conjunction with and at the behest of traditional school officials, the courts have extended this lower level of suspicion to not only them but the backup officers they call for additional support.

The Supreme Court of Wisconsin acknowledged in *In Interest of Angelia D.B.* that some modification of the typical standards for a school search is necessary when that search is for items such as dangerous weapons. According to the court, the level of suspicion necessary to conduct a search on school grounds by school officials and school

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[211] Commonwealth v. J.B., 719 A.2d 1058 (1998)
[212] In Interest of Angelia D.B., 211 Wis.2d 140 (1997), 159.

resource officers or other law enforcement officers acting in conjunction with and at the behest of school officials "should not promote unreasonable risk-taking."[213] Instead, reasonable suspicion is the proper standard to apply, even when law enforcement assists in the search.[214]

In *M.D. v. State*, the District Court of Appeal of Florida for the First District began its reasoning by listing five precepts that guided the ruling, one of which was that "allegations of possession of a gun on a school campus should be treated differently than similar allegations in other settings."[215] The court reasoned that gun possession on school campuses should be viewed differently because of the seriousness and location of the threat, the vulnerability and number of potential victims, and the lowered expectation of privacy students have in the school setting.[216]

In dealing with anonymous tips, the District Court of Appeal of Florida for the Third District ruled in *K.P. v. State* that the level of reliability an anonymous tip needs to pass Fourth Amendment muster is lower when extraordinary danger is threatened or legitimate expectations of privacy are reduced. Anonymous tips that carry significant allegations such as firearms or other dangerous weapons on a school campus require swift action given the substantial governmental interest in protecting students from gun violence coupled with the lowered expectation of privacy in the school setting.[217]

In *J.A.R. v. State*, the District Court of Appeal of Florida for the Second District ruled that because the search, in that case, involved a student potentially having a weapon

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[213] Ibid.
[214] Ibid.
[215] M.D. v. State, 65 So.3d 563 (2011), 565.
[216] Ibid.
[217] K.P. v. State, 129 So.3d 1121 (2013)

on campus during the school day, either a school official or a police officer needed only reasonable suspicion to conduct a search. The court resisted differentiating between school resource officers and other police officers when dealing with searches for dangerous weapons on school campuses. The court ruled that if school officials have a reasonable suspicion that a person possesses a dangerous weapon on a school campus, they can request *any* police officer to perform a constitutionally permissible pat-down search without activating the higher probable cause standard.[218]

In *Shade v. City of Farmington, Minnesota*, the United States Court of Appeals for the Eighth Circuit found that though school officials initiated and directed the search, they reasonably believed that the police officers were more capable and better trained to conduct a search for weapons. Because the teacher observed a student with a knife while on the bus, it was reasonable for the officers to play a more significant role in the search to discover the weapon. Therefore, the court ruled that when school officials work in conjunction with school resource officers to conduct searches of students under their custody, whether on school grounds or not, based on reasonable suspicion, the school standard is the proper standard to apply when students are suspected of carrying dangerous weapons; anything to the contrary would promote unreasonable risk-taking.[219]

The Involvement of Outside Police Officers

Though most cases included in the study focused on the involvement of school resource officers acting in conjunction with school officials or on their own in the schools to which they were assigned, a few cases did involve outside law enforcement officers.

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[218] J.A.R. v. State, 689 So.2d 1242 (1997)
[219] Shade v. City of Farmington, Minnesota, 309 F.3d 1054 (2002)

Generally, if a law enforcement officer not associated with the school system searches a student in a school setting, the officer will be held to the probable cause standard. However, there are exceptions.

In 1988, the District Court of Appeal of Florida for the First District heard *F.P. v. State*. In this case, the school resource officer worked in conjunction with and at the behest of an investigator for the local police department. There was no mention of a school administrator or any other school official in this case. The court held that the search of the student did not meet the school official exception outlined in *New Jersey v. T.L.O.* and that probable cause was the proper standard to apply.[220]

In *People v. Pruitt*, school officials in Chicago public high schools involved Chicago police officers in searches of students. Each search yielded a firearm. The Appellate Court of Illinois for the First District, First Division held that, though the search was carried out by outside police officers, it was done so at the direction and control of school officials. The court applied the *T.L.O.* standard to the searches.[221]

In *In Interest of Thomas B.D.*, when outside police who transported a student to a local high school conducted a search of the student on school grounds, they claimed they were eligible for the relaxed *T.L.O.* standard. The Court of Appeals of South Carolina reasoned that the outside police officers who were not connected to the school in any way conducted the search on their own authority to further a law enforcement objective; though the search was conducted on school grounds, they could not be considered school officials and were therefore held to the probable cause standard.[222]

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[220] F.P. v. State, 528 So.2d 1253 (1988)
[221] People v. Pruitt, 278 Ill.App.3d 194 (1996)
[222] In Interest of Thomas B.D., 326 S.C. 614 (1997)

In *J.A.R. v. State*, the District Court of Appeal of Florida for the Second District held that searches for dangerous weapons are an exceptional circumstance that extends reasonable suspicion to school resource officers and outside police officers. If a school official has a reasonable suspicion that a student is carrying a dangerous weapon on his or her person, that official may request *any* police officer to perform the pat-down search for weapons without fear that the involvement of the police will somehow violate the student's Fourth Amendment rights or require probable cause for such a search. [223] According to Judge Altenbernd, "At least when it comes to guns and other dangerous weapons, we do not wish to draw fine lines between police officers who are "school resource officers" and those who are not."[224] In a factually similar case, *In re K.J.*, the Court of Appeal for the First District, Division Four of California found that the relationship between students and the school resource officer and the backup officer and students was not different just because one was assigned to work at the school and the other was not.

Furthermore, not allowing the school resource officer to follow the protocol of calling for a backup officer would jeopardize students and staff members. Therefore, the court extended the school official exception expressed in *T.L.O.* one step further to include outside backup police officers who are called to assist school resource officers.[225] According to the court, "For purposes of Fourth Amendment analysis, 'school officials,'

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[223] J.A.R. v. State, 689 So.2d 1242 (1997)
[224] Ibid., 1244.
[225] In re K.J., 18 Cal.App.5th 1123 (2018)

include police officers…who are assigned to high schools as resource officers, as well as the backup officers who are called to assist them."[226]

In *State v. K.L.M.*, the Court of Appeals of Georgia, relying on *State v. Young*, a Georgia State Supreme Court case from 1975, determined that if a law enforcement officer participates in a search in any way, the probable cause standard is the proper standard to apply. In this case, since the school resource officer was at an off-campus training when the principal needed to investigate a report that a student was planning to sell drugs during an in-school suspension. The principal contacted the Director of Public Safety – a certified law enforcement officer – and requested that he assist her. After questioning the student, the principal asked the director to search the student; the search yielded a bag of marijuana, and the director placed the student under arrest. The court ruled that since the director was an outside law enforcement officer, the search required probable cause and a search warrant even though the officer acted at the direction of the principal. However, under Georgia case law, even if the school resource officer would have been there to investigate, the standard most likely would have still been probable cause.[227]

Seizures of Students

Court cases that included seizures involving school resource officers were much less bountiful than those containing searches. Interestingly, in all but one of the seven seizure cases that met the criteria to be included in this study, the seizure was initiated and directed by the school resource officer acting on his or her own authority. A

[226] Ibid., 1131.
[227] State v. K.L.M., 278 Ga.App. 219 (2006)

commanding majority of the cases applied the school standard to seizures, which closely resembles the *T.L.O.* reasonableness standard for searches. In *T.S. v. State*, the Court of Appeals of Indiana articulated the test. According to the court, "the fundamental inquiry into school seizures is the two-prong test of *T.L.O.*: (1) whether the seizure was justified at its inception, and (2) whether the scope and nature of the seizure was reasonable."[228]

A Seizure in the School Setting

The United States District Court in Nashville, Tennessee, established in *Hoskins v. Cumberland County Bd. Of Educ.* that for purposes of the Fourth Amendment in the school setting, the standard used to determine whether a student is seized is whether or not the freedom of a student's movement is significantly different than what is inherent in compulsory attendance. This case was the only seizure case included in the study that did not apply the relaxed *T.L.O.* standard. The court found that the school resource officer seized a second-grade student from the time he placed the student in handcuffs. The court then considered the student's young age, the nature of his conduct in the school gym, the fact that the handcuffing occurred on school grounds, and the fact that while he threatened to hit the principal and school resource officer, the student never actually swung his fist at either. The court deduced under those circumstances that the school resource officer's initial handcuffing of the student was not objectively reasonable and that the subsequent forty-five-minute stint during a meeting with the student's parents was even less reasonable. The court determined that the appropriate standard was the traditional Fourth Amendment standard for seizures because the court recognized a difference between school officials and law enforcement officers. According to the court,

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[228] T.S. v. State, 863 N.E.2d 362 (2007), 375.

school officials require that students attend school, be in the classroom where they are told to be, sit in the chair when and where they are told to sit, and move about the school property from activity to activity when told to do so.[229] Chief Judge Sharp wrote in the opinion,

> When a law enforcement official seizes a child at school, it is more likely that the seizure is a law-enforcement action, not an action for the purposes of educating a child. That is particularly true under the facts of this case, in which the law enforcement officer used law-enforcement tools – handcuffs – for the stated purpose of arresting a child and taking him to detention.[230]

Disciplinary Seizures Ruled Unlawful

Courts have consistently taken a firm stance against school resource officers seizing students to punish them or teach them a lesson. The *T.L.O.* reasonableness standard will not protect school officials or school resource officers if the seizure is intended to punish or teach a lesson, which is contrary to the Fourth Amendment. However, this stance was not apparent until the United States Court of Appeals for the Eleventh Circuit heard *Gray ex rel. Alexander v. Bostic* in 2006. In a situation that could have likely been handled by classroom teachers, the school resource officer stepped in when he heard a student verbalize threats to a physical education teacher. He took the student out in the hall to discuss the incident with her, and during their interaction, he handcuffed her for at least five minutes to teach her a lesson about disrespect and breaking the law. Since the school resource officer believed the student had committed a misdemeanor when she made threats to her teacher, the court found that he acted within his discretionary duties since he had a responsibility to investigate criminal activity at the

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[229] Hoskins v. Cumberland County Bd. Of Educ., Not Reported in F.Supp.3d (2014)
[230] Ibid., 10.

school, which could include detaining, questioning, arresting, and handcuffing students under the right circumstances. The court viewed the school resource officer as a school official and applied the *T.L.O.* reasonableness standard. The court found that the detention was justified at its inception, but the handcuffing of a compliant, nine-year-old girl to punish her was both unreasonable and a blatant violation of her Fourth Amendment rights. Since the court found no factually similar cases that would have prohibited the use of handcuffs to discipline a student as objectively unreasonable for Fourth Amendment purposes, the school resource officer was entitled to qualified immunity. However, this ruling notified other courts that using handcuffs to punish students or teach them a lesson is disallowed and unconstitutional.[231]

Seven years later, in *Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police*, the Supreme Court of Delaware reiterated that school resource officers could not seize students to teach them a lesson. In this case, a school resource officer used one student in an interrogation to coerce a confession from another student. The court viewed the school resource officer as a school official and applied the *T.L.O.* standard. The court found the seizure to be unreasonable. According to the court, the school resource officer should have known that interrogating a student for the purpose of scaring him and eliciting a confession from another student or teaching another student a lesson was unreasonable.[232]

In 2018, the United States Court of Appeals for the Ninth Circuit heard *Scott v. County of San Bernardino*. Again, the court applied the *T.L.O.* reasonableness standard

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[231] Gray ex rel. Alexander v. Bostic, 458 F.3d 1295 (2006)
[232] Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police, 69 A.3d 360 (2013)

to the seizure of a group of students who were involved in an ongoing conflict. When the school resource officer was attempting to speak to the group and help them reach a resolution, he perceived the students to be unresponsive and disrespectful, and in response, he arrested all seven students. This case failed both prongs of the *T.L.O.* test. The school resource officer expressed to the group multiple times that his motivation for arresting the students was to punish them and teach them a lesson. The court found that the school resource officer could not meaningfully contest repeatedly disclosing the motivation for the arrests to prove a point, and no reasonable officer could have reasonably believed such an arrest would be authorized.[233]

A Focus on Student Safety

Conversely, in *J.V. v. Sanchez*, the United States District Court of New Mexico found that a school resource officer's handcuffing of a student was not done for punishment, but rather to keep the student safe. The court extended the lower *T.L.O.* standard of reasonableness as the proper standard, since the detention was conducted in conjunction with school officials in the school setting with the goal of maintaining a safe environment for students and staff members. However, the court reasoned that such an analysis was not necessary since case law regarding the school resource officer's actions had not been settled at the time the student was seized. Unlike the previously discussed cases, the seizure, in this case, was not done for punishment, but rather to keep the student safe. A reasonable officer would not have known handcuffing a student under the circumstances of this case would be a violation of that student's Fourth Amendment right to be free from unreasonable seizure. Furthermore, the school resource officer sought

[233] Scott v. County of San Bernardino, 903 F.3d 943 (2018)

and obtained the student's mother's consent to restrain him, though their presumption of restraint methods was different.[234]

Role from Court's Purview vs. Standard Applied

In order to analyze the relationship between the role of school resource officers and the standard applied, components of the case analysis matrix are organized below in the following order: Role from the Court's Purview, Standard Applied, Role/Standard, Year, Geographic Federal District, and Case.

Table 5.2 Role vs. Standard Applied

Case	Court	Year	Geographic Federal District	Role from Court's Purview	Standard Applied	Role/Standard
F.P. v. State	District Court of Appeal of Florida, First District	1988	11	Law Enforcement Official	Non-school Standard	Law / Non-school
A.J.M. v. State	District Court of Appeal of Florida, First District	1993	11	Law Enforcement Official	Non-school Standard	Law / Non-school
In Interest of Thomas B.D.	Court of Appeals of South Carolina	1997	4	Law Enforcement Official	Non-school Standard	Law / Non-school
State v. K.L.M.	Court of Appeals of Georgia	2006	11	Law Enforcement Official	Non-school Standard	Law / Non-school
State v. R.D.S.	Court of Appeals of Tennessee	2009	6	Law Enforcement Official	Non-school Standard	Law / Non-school
State v. Meneese	Supreme Court of Washington, *En Banc*	2012	9	Law Enforcement Official	Non-school Standard	Law / Non-school
Hoskins v. Cumberland County Bd. of Educ.	United States District Court, M.D. Tennessee, Nashville Division	2014	6	Law Enforcement Official	Non-school Standard	Law / Non-school
Cason v. Cook	United States Court of Appeals, Eighth Circuit	1987	8	Law Enforcement Official	School Standard	Law / School

[234] J.V. v. Sanchez, Slip Copy (2013)

Case	Court	Year	Geographic Federal District	Role from Court's Purview	Standard Applied	Role/Standard
Coronado v. State	Court of Criminal Appeals of Texas, En Banc	1992	5	Law Enforcement Official	School Standard	Law / School
People v. Pruitt	Appellate Court of Illinois, First District, First Division	1996	7	Law Enforcement Official	School Standard	Law / School
In Interest of Angelia D.B.	Supreme Court of Wisconsin	1997	7	Law Enforcement Official	School Standard	Law / School
J.A.R. v. State	District Court of Appeal of Florida, Second District	1997	11	Law Enforcement Official (implicit, due to specialized training)	School Standard	Law / School
In re Josue T.	Court of Appeals of New Mexico	1999	10	Law Enforcement Official	School Standard	Law / School
In re D.D.	Court of Appeals of North Carolina	2001	4	Law Enforcement Official	School Standard	Law / School
Shade v. City of Farmington, Minnesota	United States Court of Appeals, Eighth Circuit	2002	8	Law Enforcement Official	School Standard	Law / School
State v. N.G.B.	District Court of Appeal of Florida, Second District	2002	11	Law Enforcement Official	School Standard	Law / School
In re J.F.M.	Court of Appeals of North Carolina	2005	4	Law Enforcement Official	School Standard	Law / School
R.D.S. v. State	Supreme Court of Tennessee, at Nashville	2008	6	Law Enforcement Official	School Standard	Law / School
In re D.L.D.	Court of Appeals of North Carolina	2010	4	Law Enforcement Official	School Standard	Law / School
State v. Burdette	Court of Appeals of Kansas	2010	10	Law Enforcement Official	School Standard	Law / School
Ortiz v. State	Court of Appeals of Georgia	2010	11	Law Enforcement Official	School Standard	Law / School
In re K.K.	Court of Appeals of Ohio, Fifth District, Fairfield County	2011	6	Law Enforcement Official	School Standard	Law / School

Case	Court	Year	Geographic Federal District	Role from Court's Purview	Standard Applied	Role/Standard
In re R.E.	Court of Appeal, Fourth District, Division 3, California	2011	9	Law Enforcement Official	School Standard	Law / School
J.V. v. Sanchez	United States District Court, D. New Mexico	2013	10	Law Enforcement Official	School Standard	Law / School
In Interest of S.F.	Superior Court of Pennsylvania	1992	3	School Official	School Standard	School / School
S.A. v. State	Court of Appeals of Indiana	1995	7	School Official	School Standard	School / School
People v. Dilworth	Supreme Court of Illinois	1996	7	School Official	School Standard	School / School
State v. D.S.	District Court of Appeal of Florida, Third District	1996	11	School Official	School Standard	School / School
Commonwealth v. J.B.	Superior Court of Pennsylvania	1998	3	School Official	School Standard	School / School
C.S. v. State	Court of Appeals of Indiana	2000	7	School Official	School Standard	School / School
D.B. v. State	Court of Appeals of Indiana	2000	7	School Official	School Standard	School / School
Russell v. State	Court of Appeals of Texas, Waco	2002	5	School Official	School Standard	School / School
People v. Williams	Appellate Court of Illinois, Second District	2003	7	School Official	School Standard	School / School
In re William V.	Court of Appeal, First District, Division 3, California	2003	9	School Official	School Standard	School / School
In re S.W.	Court of Appeals of North Carolina	2005	4	School Official	School Standard	School / School
Gray ex rel. Alexander v. Bostic	United States Court of Appeals, Eleventh Circuit	2006	11	School Official	School Standard	School / School
D.L. v. State	Court of Appeals of Indiana	2007	7	School Official	School Standard	School / School
T.S. v. State	Court of Appeals of Indiana	2007	7	School Official	School Standard	School / School

Case	Court	Year	Geographic Federal District	Role from Court's Purview	Standard Applied	Role/Standard
Wilson ex rel. Adams v. Cahokia School Dist. No. 187	United States District Court, S.D. Illinois	2007	7	School Official	School Standard	School / School
State v. J.M.	Court of Appeals of Washington, Division 1	2011	9	School Official	School Standard	School / School
M.D. v. State	District Court of Appeal of Florida, First District	2011	11	School Official	School Standard	School / School
State v. Alaniz	Supreme Court of North Dakota	2012	8	School Official	School Standard	School / School
In re A.T.	Court of Appeal, First District, Division 3, California	2012	9	School Official	School Standard	School / School
Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police	Supreme Court of Delaware	2013	3	School Official	School Standard	School / School
K.P. v. State	District Court of Appeal of Florida, Third District	2013	11	School Official	School Standard	School / School
Ziegler v. Martin County School District	United States Court of Appeals, Eleventh Circuit	2016	11	School Official	School Standard	School / School
DeCossas v. St. Tammany Parish School Board.	United States District Court, E.D. Louisiana	2017	5	School Official	School Standard	School / School
In re K.J.	Court of Appeal, First District, Division 4, California	2018	9	School Official	School Standard	School / School
Scott v. County of San Bernardino	United States Court of Appeals, Ninth Circuit	2018	9	School Official	School Standard	School / School

In every case analyzed for this study, the courts articulated their view of the role and function the school resource officer fulfilled in the school setting as either a law enforcement official or a school official. Of the 49 cases included in this study, the

courts were nearly evenly split on whether they considered a school resource officer a law enforcement official or a school official. Based on the information contained in the reasonings of each case, in 24 cases, the court considered the school resource officer to be a law enforcement official, and in 25 cases, the court considered the school resource officer to be a school official.

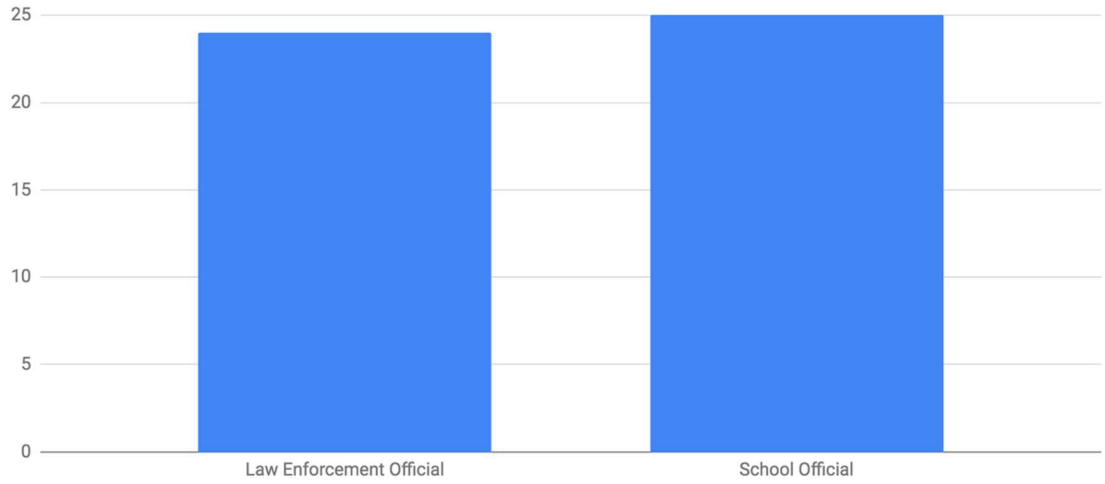

Figure 5.1 Role from Court's Purview Column Chart

The courts also assigned one of two standards to the searches or seizures conducted involving school resource officers: the school standard or the non-school standard. The school standard is the reasonableness standard as outlined in *T.L.O.* The non-school standard is the traditional requirements of probable cause and a warrant issued as described in the Fourth Amendment. When comparing the role of the school resource officer from the court's purview with the standard the court applied to the search or seizure involving the school resource officer, the results were unexpected.

When the role of the school resource officer was that of a school official, the less stringent standard of reasonable suspicion was consistently applied. However, even when the courts considered school resource officers to be law enforcement officials, they applied the lower school standard to the searches in 17 cases. In fact, only seven cases

included in this study considered the school resource officers to be law enforcement officials *and* applied the non-school standard to searches and seizures. Surprisingly, the courts tended to apply the school standard to searches and seizures involving school resource officers regardless of the role they fulfilled. Furthermore, in three of the five cases included in this study that involved outside law enforcement in some capacity, courts applied the school standard for searches.

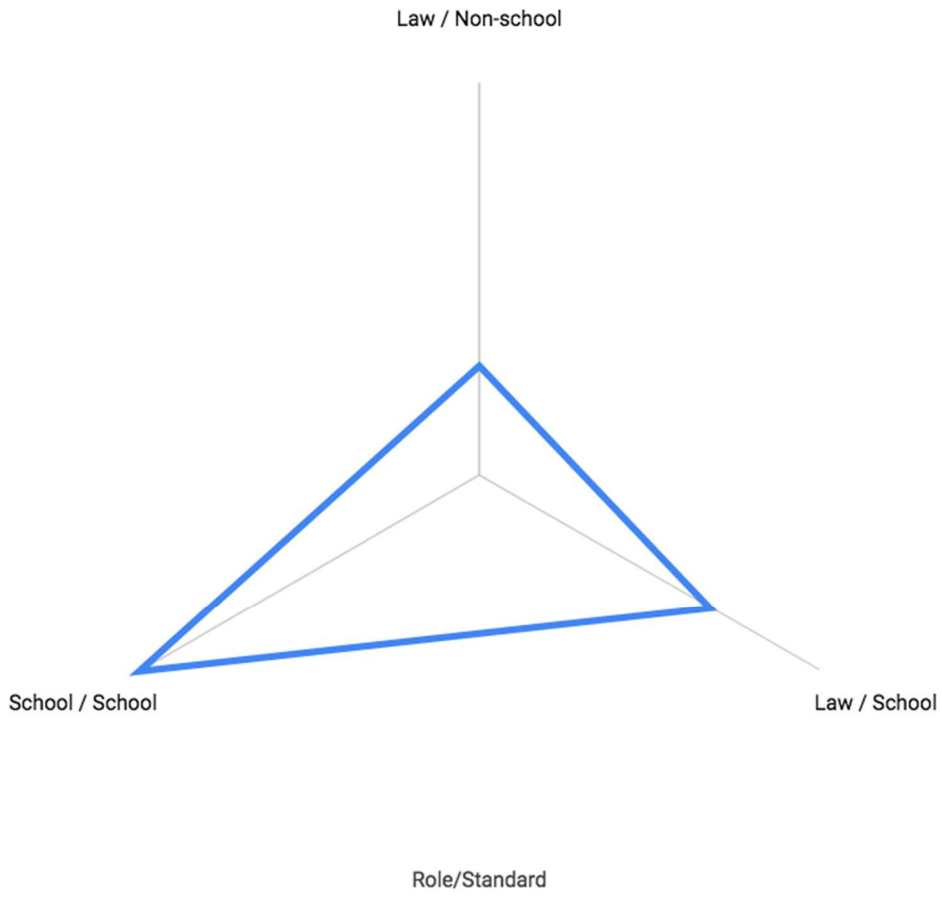

Figure 5.2 Role/Standard Chart

Evolution of Role/Standard by District

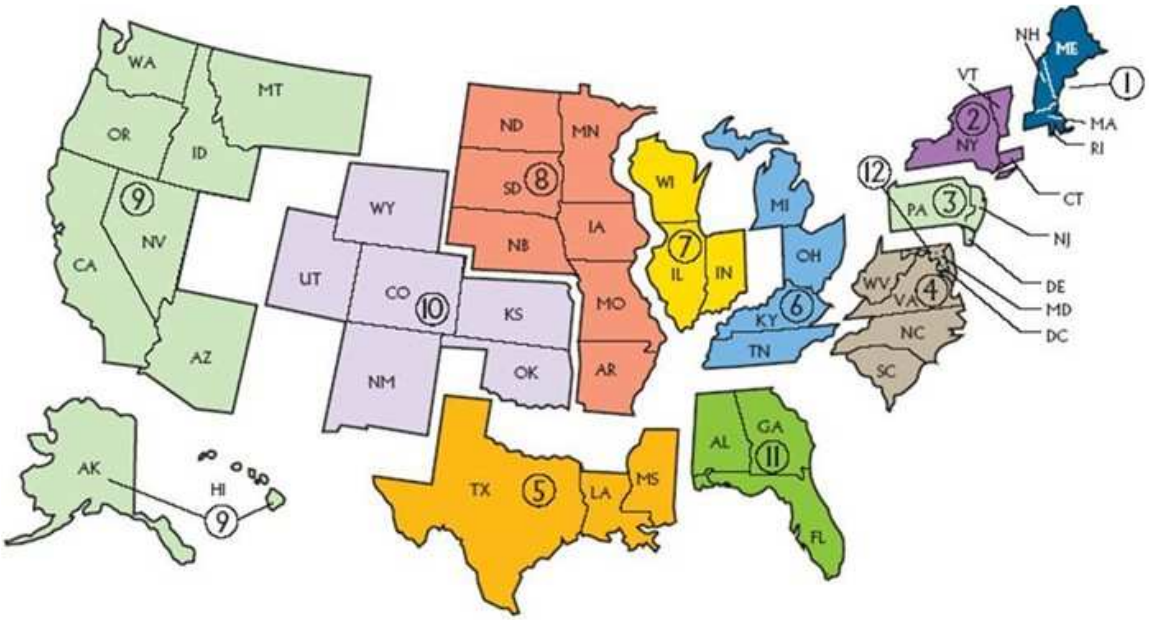

Figure 5.3 Map of Geographic Federal Districts. *Source*: https://slideplayer.com/slide/9903620/. Accessed on April 7, 2019.

To understand how the role/standard has developed across geographic federal districts over time, components of the case analysis matrix are organized below in the following order: Geographic Federal District, Year, and Role/Standard. Cases from the same district are banded to view them in groups.[235]

Table 5.3 Role vs. Standard Applied Geographic Federal District 3

Case	Court	Year	Geographic Federal District	Role/Standard
In Interest of S.F.	Superior Court of Pennsylvania	1992	3	School / School
Commonwealth v. J.B.	Superior Court of Pennsylvania	1998	3	School / School
Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police	Supreme Court of Delaware	2013	3	School / School

[235] Neither the First nor Second Districts were represented in the data since no cases from these Federal Judicial Districts met the criteria to be included in the study.

Courts in the Third District, including the highest court in Delaware, have consistently viewed school resource officers as school officials and have applied the school standard to searches and seizures.

Table 5.4 Role vs. Standard Applied Geographic Federal District 4

Case	Court	Year	Geographic Federal District	Role/Standard
In Interest of Thomas B.D.	Court of Appeals of South Carolina	1997	4	Law / Non-school
In re D.D.	Court of Appeals of North Carolina	2001	4	Law / School
In re J.F.M.	Court of Appeals of North Carolina	2005	4	Law / School
In re S.W.	Court of Appeals of North Carolina	2005	4	School / School
In re D.L.D.	Court of Appeals of North Carolina	2010	4	Law / School

The first case involving a school resource officer in a search in the Fourth District was *In Interest of Thomas B.D.* In that case, outside law enforcement officers claimed they were eligible for the *T.L.O.* standard since they conducted a search of the student they were dropping off at school on school grounds. However, the Court of Appeals of South Carolina recognized that they were outside law enforcement officers and probable cause was the proper standard to apply.[236] Since that case, the Court of Appeals of North Carolina as the only Fourth District representative has consistently applied the school standard for searches and seizures despite its tendency to view school resource officers as law enforcement officials.

[236] In Interest of Thomas B.D., 326 S.C. 614 (1997)

Table 5.5 Role vs. Standard Applied Geographic Federal District 5

Case	Court	Year	Geographic Federal District	Role/Standard
Coronado v. State	Court of Criminal Appeals of Texas, En Banc	1992	5	Law / School
Russell v. State	Court of Appeals of Texas, Waco	2002	5	School / School
DeCossas v. St. Tammany Paris School Board.	United States District Court, E.D. Louisiana	2017	5	School / School

Courts in the Fifth District have consistently applied the school standard for searches. In *Russell v. State*, the Court of Appeals of Texas at Waco applied the school standard to a school resource officer who acted on his own authority to conduct a pat-down search of a student for a weapon.[237] In a federal case, the United States District Court of Louisiana ruled in *DeCossas v. St. Tammany Paris School Board* that the presence and minimal participation of a school resource officer in a search did not prompt a higher standard. Courts in the Fifth District have heard no cases involving school resource officers in seizures.

Table 5.6 Role vs. Standard Applied Geographic Federal District 6

Case	Court	Year	Geographic Federal District	Role/Standard
R.D.S. v. State	Supreme Court of Tennessee, at Nashville	2008	6	Law / School
State v. R.D.S.	Court of Appeals of Tennessee	2009	6	Law / Non-school
In re K.K.	Court of Appeals of Ohio, Fifth District, Fairfield County	2011	6	Law / School
Hoskins v. Cumberland County Bd. of Educ.	United States District Court, M.D. Tennessee, Nashville Division	2014	6	Law / Non-school

The courts in the Sixth District have consistently viewed a school resource officer as a law enforcement officer. Yet they have inconsistently applied the school and non-school standards based on the facts of the cases. In *State v. R.D.S.*, a case that was on

[237] Russell v. State, 74 S.W.3d 887 (2002)

remand from the Supreme Court of Tennessee, the Court of Appeals of Tennessee found that the school resource officer was a law enforcement official based on an in-depth examination of the nature of her duties at the school. Therefore, the court applied the non-school standard to her search of a student.[238] In *Hoskins v. Cumberland County Bd. Of Educ.*, a federal case, the United States District Court of Tennessee ruled that a seizure of a student by a school resource officer acting as a law enforcement officer on his own authority was a violation of the student's Fourth Amendment rights.[239]

Table 5.7 Role vs. Standard Applied Geographic Federal District 7

Case	Court	Year	Geographic Federal District	Role/Standard
S.A. v. State	Court of Appeals of Indiana	1995	7	School / School
People v. Pruitt	Appellate Court of Illinois, First District, First Division	1996	7	Law / School
People v. Dilworth	Supreme Court of Illinois	1996	7	School / School
In Interest of Angelia D.B.	Supreme Court of Wisconsin	1997	7	Law / School
C.S. v. State	Court of Appeals of Indiana	2000	7	School / School
D.B. v. State	Court of Appeals of Indiana	2000	7	School / School
People v. Williams	Appellate Court of Illinois, Second District	2003	7	School / School
D.L. v. State	Court of Appeals of Indiana	2007	7	School / School
T.S. v. State	Court of Appeals of Indiana	2007	7	School / School
Wilson ex rel. Adams v. Cahokia School Dist. No. 187	United States District Court, S.D. Illinois	2007	7	School / School

The Seventh District has the second highest number of cases that met the criteria to be included in this study. Two of the most referenced and influential cases in this study, *People v. Dilworth* and *In Interest of Angelia D.B.*, are both in the Seventh District. In every case that was heard in this district, the courts applied the school

[238] State v. R.D.S., Slip Copy (2009)
[239] Hoskins v. Cumberland County Bd. Of Educ., Not Reported in F.Supp.3d (2014)

standard. Courts in this district have viewed school resource officers as school officials in all cases since 2000.

Table 5.8 Role vs. Standard Applied Geographic Federal District 8

Case	Court	Year	Geographic Federal District	Role/Standard
Cason v. Cook	United States Court of Appeals, Eighth Circuit	1987	8	Law / School
Shade v. City of Farmington, Minnesota	United States Court of Appeals, Eighth Circuit	2002	8	Law / School
State v. Alaniz	Supreme Court of North Dakota	2012	8	School / School

Though the Eighth District is represented by just three cases, two of them are federal appellate cases and one is a state supreme court case. The Eighth District boasts the first post-*T.L.O.* case to consider the legal standards for the involvement of a school resource officer in a search. Regardless of whether the courts in the Eighth District view the school resource officer as a law enforcement official or a school official, they have consistently applied the school standard to searches.

Table 5.9 Role vs. Standard Applied Geographic Federal District 9

Case	Court	Year	Geographic Federal District	Role/Standard
In re William V.	Court of Appeal, First District, Division 3, California	2003	9	School / School
In re R.E.	Court of Appeal, Fourth District, Division 3, California	2011	9	Law / School
State v. J.M.	Court of Appeals of Washington, Division 1	2011	9	School / School
State v. Meneese	Supreme Court of Washington, En Banc	2012	9	Law / Non-school
In re A.T.	Court of Appeal, First District, Division 3, California	2012	9	School / School
Scott v. County of San Bernardino	United States Court of Appeals, Ninth Circuit	2018	9	School / School
In re K.J.	Court of Appeal, First District, Division 4, California	2018	9	School / School

California is represented in four state cases and one federal appellate case in the Ninth District, including the two most recent cases included in this study. With the exception of *State v. Meneese*, the District has consistently applied the school standard to both searches and seizures involving school resource officers.

Table 5.10 Role vs. Standard Applied Geographic Federal District 10

Case	Court	Year	Geographic Federal District	Role/Standard
In re Josue T.	Court of Appeals of New Mexico	1999	10	Law / School
State v. Burdette	Court of Appeals of Kansas	2010	10	Law / School
J.V. v. Sanchez	United States District Court, D. New Mexico	2013	10	Law / School

The Tenth District has consistently held that school resource officers are law enforcement officials and that the proper standard to apply to both searches and seizures is the school standard.

Table 5.11 Role vs. Standard Applied Geographic Federal District 11

Case	Court	Year	Geographic Federal District	Role/Standard
F.P. v. State	District Court of Appeal of Florida, First District	1988	11	Law / Non-school
A.J.M. v. State	District Court of Appeal of Florida, First District	1993	11	Law / Non-school
State v. D.S.	District Court of Appeal of Florida, Third District	1996	11	School / School
J.A.R. v. State	District Court of Appeal of Florida, Second District	1997	11	Law / School
State v. N.G.B.	District Court of Appeal of Florida, Second District	2002	11	Law / School
State v. K.L.M.	Court of Appeals of Georgia	2006	11	Law / Non-school
Gray ex rel. Alexander v. Bostic	United States Court of Appeals, Eleventh Circuit	2006	11	School / School
Ortiz v. State	Court of Appeals of Georgia	2010	11	Law / School
M.D. v. State	District Court of Appeal of Florida, First District	2011	11	School / School
K.P. v. State	District Court of Appeal of Florida, Third District	2013	11	School / School
Ziegler v. Martin County School District	United States Court of Appeals, Eleventh Circuit	2016	11	School / School

The Eleventh District has more cases involving school resource officers in searches and seizures than any other district. Florida is represented in seven of the state cases, and it is the state of origin for *Ziegler v. Martin County School District*, one of the two federal appellate cases, as well. Though Florida courts initially viewed school resource officers as law enforcement officials and applied the non-school standard, the courts eventually established case law viewing school resource officers as school officials and applying the school standard to searches. Other courts in the District have followed suit, applying the school standard to searches and seizures as well.

The Nature of Searches and Seizures Involving School Resource Officers

Throughout this study, seven distinct categories of searches and seizures emerged through the facts of cases and the courts' reasonings. Listed in order of frequency, they are:

- Search initiated and/or directed by school resource officer acting on own authority
- Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement
- Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search
- Seizure initiated and/or directed by school resource officer acting on own authority
- Search with equal participation by school officials and school resource officer
- Search involved outside law enforcement agents
- Seizure made by school resource officer acting in conjunction with school official

A remarkable phenomenon in this data is that searches in the cases included in this study were initiated and/or directed by school resource officers acting on their own authority nearly 30% of the time. Additionally, 12% of the cases analyzed involved seizures that were initiated and/or directed by school resource officers acting on their own authority. Therefore, in the cases included in this study, school resource officers acted on their own over 40% of the time. Juxtaposed to that phenomenon is that 22% of the searches had minimal – if any – actual school resource officer involvement. Both findings are extreme. Extrapolating from this fact, in nearly two-thirds of all cases included in this study, school resource officers are either heavily involved in searches and seizures to the point of acting on their own, or underutilized as a resource to conduct searches and seize students. School officials directed searches or worked in conjunction with school resource officers to search students in just over one-fourth of the cases analyzed, and a school official directed only one seizure.

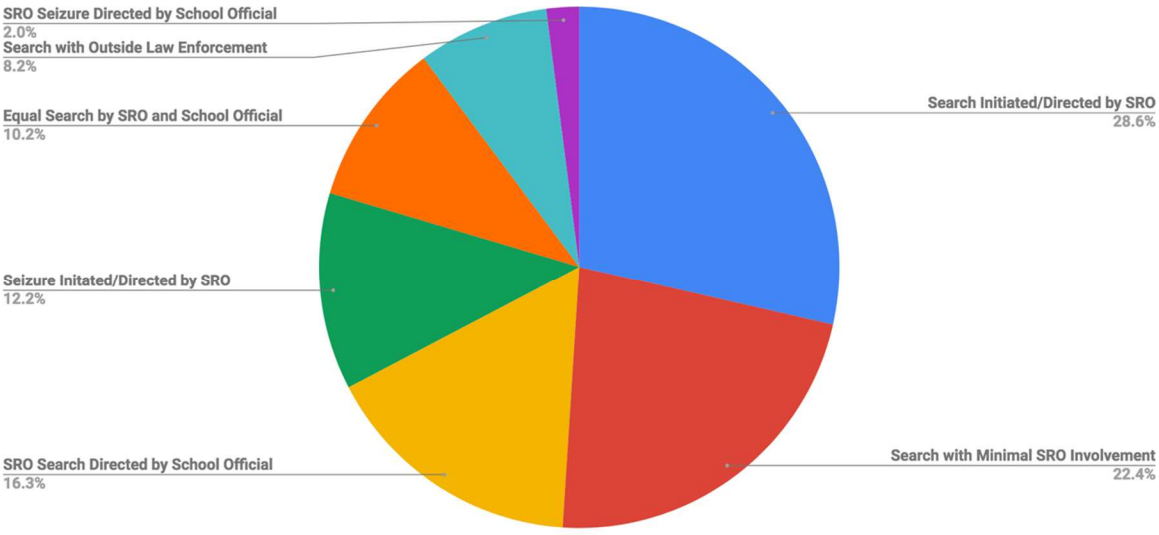

Figure 5.4 Nature of Search Pie Chart

Treatment of Evidence

In order to analyze how the courts treated the evidence in the cases included in this study, several components were extracted from the case analysis matrix to create pairings. The pairings helped the researcher to understand the relationships among the nature of the searches included in the study, the role of school resource officers, the standard applied, the two prongs of the reasonableness test articulated in *New Jersey v. T.L.O.*, and whether or not the evidence was suppressed. The components of the case analysis matrix are organized below in the following order: Nature of Search, Year, and Case.[240] The information is banded by the nature of the searches included in the study.

Table 5.12 Treatment of Evidence by Nature of Search Category 1

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
Cason v. Cook	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Law / School	Y	Y	No
Coronado v. State	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Law / School	Y	N	Yes
State v. D.S.	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	School / School	Y	Y	No
In re Josue T.	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Law / School	Y	Y	No
In re D.D.	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Law / School	Y	Y	No
State v. K.L.M.	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Law / Non-school	N/A	N/A	Yes

[240] Evidence suppressed is N/A for seizures since no evidence is produced as the product of a seizure.

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
Ortiz v. State	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Law / School	Y	Y	No
State v. Burdette	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	Law / School	Y	Y	No
M.D. v. State	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	School / School	Y	Y	No
State v. Alaniz	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	School / School	Y	Y	No
DeCossas v. St. Tammany Paris School Board.	Search initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement	School / School	Y	Y	No

When a search is initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement, the courts have readily deemed evidence admissible as long as both prongs of the *T.L.O.* reasonableness test are met. The anomalies are *Coronado v. State* and *State v. K.L.M.*

In *Coronado v. State*, the assistant principal was the primary focus of the case. The school resource officer had a significant role in the search since he escorted the student to the office and conducted the search of the student's car – both at the direction of the assistant principal. The Court of Criminal Appeals of Texas, hearing the case *en banc*, ruled that the search violated the student's rights not because a school resource officer viewed as a law enforcement officer by the court was involved, but because the assistant principal's direction to further the search to the student's clothing, locker, and

car, were beyond the scope of determining whether or not the student was attempting to skip school.[241]

In *State v. K.L.M.*, the Court of Appeals of Georgia viewed the school resource officer as a law enforcement official. The court followed the rationale of its state supreme court from 1975 in *State v. Young*, which required probable cause if law enforcement officers participate in a school search in any way. The court ruled that since the state failed to demonstrate that probable cause existed for the search, the evidence was rightfully suppressed by the trial court.[242]

Table 5.13 Treatment of Evidence by Nature of Search Category 2

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
In Interest of S.F.	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
S.A. v. State	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
People v. Dilworth	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
Commonwealth v. J.B.	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
C.S. v. State	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
D.B. v. State	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
Russell v. State	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
In re William V.	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
In re S.W.	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
D.L. v. State	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No
R.D.S. v. State	Search initiated and/or directed by school resource officer acting on own authority	Law / School	N/A	N/A	No
State v. R.D.S.	Search initiated and/or directed by school resource officer acting on own authority	Law / Non-school	N/A	N/A	Yes
State v. J.M.	Search initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	No

[241] Coronado v. State, 835 S.W.2d 636 (1992)
[242] State v. K.L.M., 278 Ga.App. 219 (2006)

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
State v. Meneese	Search initiated and/or directed by school resource officer acting on own authority	Law / Non-school	N/A	N/A	Yes

As mentioned previously, searches initiated and/or directed by school resource officers acting on their own authority occurred with the highest frequency in the cases included in this study. Generally, courts have denied suppression of evidence obtained through these types of searches. The anomalies are *State v. R.D.S.* and *State v. Meneese* – both cases that passed through their respective state supreme courts, and both with reasonings that collided with other courts across jurisdictions. In both cases, the courts viewed the school resource officers as law enforcement officials and applied the non-school standard to their searches.

Ironically, in *R.D.S. v. State*, the Supreme Court of Tennessee initially ruled that school resource officers should be held to the reasonable suspicion standard, provided the school district prove that the officer was assigned to the school on a regular basis with duties beyond those of typical law enforcement officers.[243] However, on remand, the Court of Appeals of Tennessee found that, in light of all the evidence, the school resource officer was a law enforcement official who lacked probable cause when she searched a student's vehicle. Therefore, the search was unlawful and the evidence was suppressed.[244]

In *State v. Meneese*, the Supreme Court of Washington, hearing the case *en banc*, found that when a school resource officer handcuffed a student, searched him for keys to

[243] R.D.S. v. State, 245 S.W.3d 356 (2008)
[244] State v. R.D.S., Slip Copy (2009)

the padlock on his bookbag, found the keys, used them to open the padlock, and searched the bookbag, the officer behaved more like a law enforcement official than a school official. Since the officer lacked both probable cause and a warrant to search, the search was unlawful and the evidence was suppressed.[245]

Table 5.14 Treatment of Evidence by Nature of Search Category 3

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
F.P. v. State	Search involved outside law enforcement agents	Law / Non-school	N/A	N/A	Remanded
People v. Pruitt	Search involved outside law enforcement agents	Law / School	Y Y N	Y Y N	No No Yes
In Interest of Thomas B.D.	Search involved outside law enforcement agents	Law / Non-school	N/A	N/A	No Plain View Doctrine
In re K.K.	Search involved outside law enforcement agents	Law / School	Y	Y	No

Cases including searches that involved outside law enforcement agents were more inconsistent in their treatment of evidence, most likely due to the highly contextualized natures of these types of searches.

In *F.P. v. State*, the District Court of Appeal of Florida for the First District denied that the school official exception applied when a detective with the local police department passed a tip to a school resource officer that a student had stolen a car and then directed the school resource officer in retrieving the student from class and searching him. However, the court remanded to the trial court for clarification as to whether or not the student voluntarily produced the evidence.[246]

People v. Pruitt contained three separate searches by Chicago Police Officers. In all searches, the Appellate Court of Illinois for the First District, First Division applied

[245] State v. Meneese, 174 Wash.2d 937 (2012)
[246] F.P. v. State, 528 So.2d 1253 (1988)

the *T.L.O.* reasonableness standard to the searches. The court found the first two searches were lawful even though they involved outside police officers because the police officers acted in conjunction with and at the direction of school officials. The outside officers were involved in the mechanics of the searches. In the third search, however, the officer delayed conducting a search until after interacting with the student in his office for nearly an hour. The court said that although he would have had reasonable suspicion to search the student initially based on the facts of the case, the officer no longer had reason to believe the student posed a threat when the search was conducted nearly an hour after their initial interaction.[247]

In *In Interest of Thomas B.D.*, the officers had no connection to the school beyond dropping the student off at school after retrieving him from a girlfriend's house, both at the mother's request. Therefore, the Court of Appeals of South Carolina viewed the officers as law enforcement officials and applied the probable cause standard. However, the evidence was admissible on other grounds.[248]

In *In re K.K.*, an outside police officer passed a tip on to the school resource officer who then passed the tip on to a school resource officer. The tip prompted an investigation that produced a plastic wrapper containing illegal drugs. The student filed a motion to suppress the evidence on the grounds that the search was performed at the request and direction of law enforcement. The Court of Appeals of Ohio for the Fifth District found that after the tip was passed to the assistant principal, neither the outside

[247] People v. Pruitt, 278 Ill.App.3d 194 (1996)
[248] In Interest of Thomas B.D., 326 S.C. 614 (1997)

police officer nor the school resource officer had any further involvement in the search. The court affirmed the decision of the lower court to admit the evidence.[249]

Table 5.15 Treatment of Evidence by Nature of Search Category 4

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
In re A.T.	Search with equal participation by school officials and school resource officer	School / School	Y	Y	No
In Interest of Angelia D.B.	Search with equal participation by school officials and school resource officer	Law / School	Y	Y	No
Shade v. City of Farmington, Minnesota	Search with equal participation by school officials and school resource officer	Law / School	Y	Y	No
State v. N.G.B.	Search with equal participation by school officials and school resource officer	Law / School	Y	Y	No
Wilson ex rel. Adams v. Cahokia School Dist. No. 187	Search with equal participation by school officials and school resource officer	School / School	Y	Y	No

When the search involved equal participation by school officials and school resource officers, regardless of the courts' views of the school resource officers in these cases as law enforcement officials or school officials, the school standard was applied. All cases met both prongs of the *T.L.O.* reasonableness test and no evidence was suppressed.

Table 5.16 Treatment of Evidence by Nature of Search Category 5

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
A.J.M. v. State	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Law / Non-school	N/A	N/A	Yes
J.A.R. v. State	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Law / School	Y	Y	No

[249] In re K.K., 192 Ohio App.3d 650 (2011)

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
People v. Williams	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	School / School	Y	Y	No
In re D.L.D.	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Law / School	Y	Y	No
In re R.E.	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	Law / School	Y	Y	No
K.P. v. State	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	School / School	Y	Y	No
Ziegler v. Martin County School District	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	School / School	Y	Y	No
In re K.J.	Search initiated and/or directed by school officials such as a member of the administrative team; school resource officer involvement was in the mechanics of the search	School / School	Y	Y	No

When searches were initiated and/or directed by school officials such as a member of the administrative team and the school resource officers were involved in the mechanics of the search, the school standard was applied regardless of the courts' views of the school resource officers in these cases as law enforcement officials or school officials.

The anomaly is *A.J.M. v. State*. In this case, a principal had several students in his office. The principal told the school resource officer he wanted the students searched. When *A.J.M.* heard that, he ran out of the office and tried to leave the building. The school resource officer caught him, brought him back to the office, and conducted a pat-

down search at the principal's request. The District Court of Appeal of Florida for the First District, using the reasoning in a state case from 1981, *M.J. v. State*, determined that since the school resource officer conducted the search, he would be held to the probable cause standard.[250] However, two subsequent cases in Florida disagreed with the court's reasoning. *State v. D.S.* overruled this case, and *M.J. v. State*, the case upon which the court reasoned, in 1993, and *State v. N.G.B.* cited conflict with this case in 2002.[251]

Table 5.17 Treatment of Evidence by Nature of Search Category 6

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
Gray ex rel. Alexander v. Bostic	Seizure initiated and/or directed by school resource officer acting on own authority	School / School	Y	N	N/A
T.S. v. State	Seizure initiated and/or directed by school resource officer acting on own authority	School / School	Y	Y	N/A
Hunt ex rel. DeSombre v. State, Dept. of Safety and Homeland Security, Division of Delaware State Police	Seizure initiated and/or directed by school resource officer acting on own authority	School / School	N	N	N/A
J.V. v. Sanchez	Seizure initiated and/or directed by school resource officer acting on own authority	Law / School	Y	Y	N/A
Hoskins v. Cumberland County Bd. of Educ.	Seizure initiated and/or directed by school resource officer acting on own authority	Law / Non-school	N	N	N/A
Scott v. County of San Bernardino	Seizure initiated and/or directed by school resource officer acting on own authority	School / School	N	N	N/A

While these cases produced no evidence to be suppressed since they all involved seizures initiated and/or directed by school resource officers acting on their own authority, the courts consistently applied the *T.L.O.* reasonableness standard to each seizure. It is important to note that only one-third of these cases were held to be

[250] A.J.M. v. State, 617 So.2d 1137 (1993)
[251] State v. D.S., 685 So.2d 41 (1996); State v. N.G.B., 806 So.2d 567 (2002)

constitutional seizures of students under the Fourth Amendment, highlighting the fact that courts typically grant less latitude to school resource officers acting on their own authority when their objective is to further law enforcement-related goals.

Table 5.18 Treatment of Evidence by Nature of Search Category 7

Case	Nature of Search	Role/ Standard	TLO 1	TLO 2	Evidence Suppressed
In re J.F.M.	Seizure made by school resource officer acting in conjunction with school official	Law / School	Y	Y	N/A

In re J.F.M. was the only case where a school official directed the school resource officer to detain a student. The court determined that the school resource officer was indeed acting in conjunction with the school administrator when he attempted to detain the student. The court applied the *T.L.O.* standard and found that the officer had reasonable grounds to detain the student since the school administrator confirmed the student was involved in the affray and the seizure was necessary to mitigate the potential danger of allowing the affray to carry over into another school day.[252]

Summary

In this chapter, the researcher examined and analyzed the data extracted from the case briefs. Patterns and themes that emerged from the data – factors used to define the role of school resource officers, primary functions of school resource officers, goals they promote, specialized training and expertise, categories and levels of involvement in searches, location of searches, concessions when dangerous weapons are involved, inclusion of outside police officers, purposes for seizures, standards applied, and treatment of evidence – were highlighted and discussed.

[252] In re J.F.M., 168 N.C.App. 143 (2005)

In Chapter 6, the researcher will revisit the original research questions to report findings and conclusions based on the legal standards outlined in this study. Finally, the researcher will propose a set of recommendations for the integration of school resource officers in searches and seizures in K-12 public schools that meets both the letter and spirit of the law.

Chapter 6: Conclusions and Recommendations

This study considered what factors have influenced court cases when school resource officers are involved in searches and seizures. In the context of modern public schools, due to the popularity of the school resource officer program coupled with its rapid and pervasive expansion, the original consideration has blossomed into a complex issue. Because of the convergence of schools and law enforcement agencies – two agencies not traditionally closely linked – a primary purpose of this study is to prompt further discussion and thought on the legal standards necessary for the appropriate integration of school resource officers in searches and seizures in K-12 public schools. Based on the outcomes of the study, this concluding chapter introduces a contemporary perspective to a set of guiding principles that were initialized by the U.S. Supreme Court over three decades ago.

The researcher will revisit the original research questions to report findings and conclusions based on a synthesis of specific, court-defined legal principles from lower court rulings. Finally, the researcher will propose a set of recommendations for the integration of school resource officers in searches and seizures in K-12 public schools that meets both the letter and spirit of the law. This information could aid in the creation of professional development sessions or workshops on how to create and sustain a partnership between law enforcement agencies and schools, inform principal and teacher preparation programs, and influence specialized trainings for school resource officers and other law enforcement officials.

Research Question One: How have Courts Ruled on the Role of School Resource Officers through Holdings?

Findings

As discussed in Chapter 5, in the cases included in this study, courts labeled school resource officers as law enforcement officials nearly as many times as they labeled them as school officials. Furthermore, the label courts affixed to the school resource officers predominantly had little bearing on the outcome of the case. The more conclusive predictor of case outcome was whether or not the school resource officer acted to further education-related goals or law enforcement-related goals.

Inferences

School resource officers are law enforcement officers. Their training, their experience, their uniform, the tools of their trade, the authority to enforce the law, to whom they report – all fundamental differences between school officials and law enforcement officials. School resource officers have the responsibility to discover and prevent crime. Amid their school-related functions, they can be dispatched to answer police matters unrelated to the school.

However, in the view of most courts, the departure from regular police activity such as counseling students, teaching classes on drug prevention and gang awareness, and being assigned full-time to the school, also duly qualify the school resource officer to be considered a school official. While this qualification does grant law enforcement more latitude in investigating and preventing criminal activity on the school campus, the courts have limited this concession to furthering the educational program.

Therefore, the school resource officer selection process should be rigorous enough to ensure the officer filling the role is the right person for the job. Promoting

school goals while at the same time neutralizing criminal activity at the school level demands a discerning individual to guarantee preservation and realization of students' rights, even when the students and their families are unaware of precisely what their rights are.

Research Question Two: What Legal Standards have Courts Applied in Searches and Seizures Involving School Resource Officers – School or Non-School Fourth Amendment Standards? Did Court Reasonings Expand on *T.L.O.*?

Findings

Based on the inclusion criteria established at the onset of this study, every case involved a school resource officer or some law enforcement official acting in that capacity based on the details of the case, and every case involved a search or seizure. Of the 49 cases included in this study, courts applied the *T.L.O.* reasonableness standard 86% of the time. This percentage is despite the fact that courts considered the school resource officer a law enforcement official 49% of the time. As mentioned previously, the primary determiner of the standard applied was the purpose of the school resource officer's search or seizure.

Searches involving school resource officers initiating and conducting searches on their own authority occurred with the greatest frequency of the cases included in this study. Perhaps the most surprising consistency of these cases was the willingness of courts to afford this scenario the lesser standard of reasonable suspicion. In these searches, when the role of the school resource officer and the purpose of the search were connected to the furtherance of the educational program and the search was necessary to preserve this advancement, the search was lawful.

In searches initiated and/or directed by school officials such as a member of the administrative team with minimal school resource officer involvement, the courts have ruled that the reasonable suspicion standard is applicable as long as the search is in furtherance of the educational program.

The data from court cases showed no consistency in searches involving outside law enforcement agents. However, based on reasonings of courts even when outside law enforcement agents were not involved, courts articulated that when outside law enforcement acts at the behest and direction of school officials, the *T.L.O.* reasonableness standard would apply.

In the only case that involved a school resource officer acting at the behest of outside law enforcement, the probable cause standard applied. The reasoning in the opinions of several other cases pointed to the probable cause standard as the legal expectation in such scenarios as well.

In searches where both school officials and school resource officers acted in a more collaborative nature where both parties were equal participants, the *T.L.O.* reasonableness standard applied.

In searches where the school resource officer was involved only in the mechanics of the search, the *T.L.O.* reasonableness standard was applied.

Seizures initiated and/or directed by the school resource officer acting on his or her own authority was the least permissible action in the cases included in this study. When seizures were intended to punish or teach a lesson, the seizure was ruled unlawful. However, the one case where a school official directed a school resource officer to detain and eventually handcuff a student was found to be a lawful seizure.

Expansions of *T.L.O.*

- When school officials work in conjunction with school resource officers to conduct searches on school grounds or off-campus school events where students are in the custody of school officials based on reasonable suspicion, the school standard is the proper standard to apply – especially when students are suspected of carrying dangerous weapons.
- School resource officers are subject to the *T.L.O.* reasonableness standard even when conducting searches on their own authority as long as they are working to promote educational-related goals.
- School searches are permissible at any location where students are under the sole custody and responsibility of school officials.
- When school resource officers fulfill their duties to schools, searches will be governed by *T.L.O.*
- The *T.L.O.* reasonableness standard applies to school seizures as well.

Inferences

As the school search doctrine of common law continues to develop, school officials, school resource officers, and the agencies they represent must continue to refine their understanding of the law regarding searches in the school setting. The agencies should work collaboratively to explore the meaning of the phrase “furtherance of the educational program" to ensure they act in a way that upholds students' rights while remaining eligible for the *T.L.O.* reasonableness standard. School officials should also ensure that students, staff members, and families are informed of their rights, and those rights are protected when issues of law arise.

Research Question Three: What have been the Key Factors that Influenced Court Rulings in Cases where School Resource Officers are Involved in the Searches?

Findings

The primary factor that influenced court rulings was the purpose of the search. When a school resource officer was acting to promote education-related goals, the searches were lawful using the *T.L.O.* reasonableness standard. When a school resource officer was acting to promote law enforcement-related goals, the officer was held to probable cause.

The Supreme Court of Tennessee listed the most comprehensive collection of factors that would influence a court's ability to distinguish a school resource officer from other law enforcement officials. The factors were:

- Whether the school resource officer is in uniform and armed
- Whether the school resource officer has an office on the school's campus
- How long the officer remains at school each day
- Whether the school handbook delineates duties of the school resource officer
- Who employs, pays, and evaluates the school resource officer
- Whether the primary duty of the school resource officer is to educate students in a safe environment or to detect and deter crime since the punishment for committing a crime is more severe than consequences for breaking a school rule
- How the agreements between the school district and the law enforcement agency define the roles of the school resource officer
- Any state statutes that outline duties of school resource officers
- The school resource officer's daily activities
- The nature of the school resource officer's interactions with students

- Any specialized training the school resource officer has received
- How the school resource officer counsels students
- What classes the school resource officer teaches at the school[253]

The additional training and subsequent skill set a school resource officer receives was another factor several courts considered – especially when it came to searching for dangerous weapons. Courts consistently held that school officials acted prudently when they involved school resource officers in searches of cars and pat-down searches.

The potential threat of dangerous weapons on campus was another distinguishing factor. When the potential threat was high, as it is with the threat of a handgun in a school, the level of suspicion necessary to justify a search was low. Even anonymous tips were given enough credence to prompt investigations.

In some cases, the level of involvement of the school resource officer in the search mattered. Naturally, a school resource officer's lower level of involvement in the search would invite less scrutiny than initiating or directing the search or conducting the search on his or her own authority. Surprisingly though, this was a relatively minor factor in many courts' reasonings.

Inferences

The primary duties, roles, and assignments of school resource officers should be well-documented and clearly outlined in interagency agreements or MOUs. These documents should be reviewed and revised regularly to ensure they are consistent with current laws, policies, and case law. School officials and school resource officers should

[253] R.D.S. v. State, 245 S.W.3d 356 (2008)

work closely and collaboratively to explicitly define the education-related goals as well as the school resource officer's role in furthering those goals.

Research Question Four: How have Courts Treated Evidence Obtained through Searches Involving School Resource Officers as Compared to School Administrator-Only Searches and School Administrator-Led Searches with School Resource Officer Involvement?

Findings

In general, courts have been reluctant to suppress evidence based on the cases analyzed for this study.[254] The courts chose to suppress evidence in only five cases – just 10% of the time.[255] In four of those cases, the courts viewed the school resource officers as law enforcement officials and applied the non-school standard to the searches. Two of those searches were initiated by the school resource officers acting on their own authority, two searches were initiated and/or directed by school officials with minimal school resource officer involvement, and one search involved the school resource officer in the mechanics of the search.

Inferences

As long as a search is conducted to further education-related goals or to search for dangerous weapons, it will most likely be subjected to the *T.L.O.* reasonableness standard, regardless of whether or not school resource officers are involved in the search, and, if they are, regardless of whether the courts find them to be school officials or law enforcement officials. If the search is both justified at its inception and reasonably

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[254] Seizures produce no evidence to be suppressed. However, as noted previously, two-thirds of seizures initiated by school resource officers acting on their own authority were found to be unlawful.

[255] State v. R.D.S., Slip Copy (2009); State v. Meneese, 174 Wash.2d 937 (2012); Coronado v. State, 835 S.W.2d 636 (1992); State v. K.L.M., 278 Ga.App. 219 (2006); and A.J.M. v. State, 617 So.2d 1137 (1993)

related in scope to the nature of the intrusion that justified the search, any evidence obtained as a result of the search will be admissible.

Recommendations

Based on the findings and conclusions of this study, the researcher makes the following recommendations:

- School officials should initiate and direct all searches in the school setting. The school resource officer's role should be as minimal as possible given the circumstances. However, when there is a threat of dangerous weapons, school resource officers should conduct the search in conjunction with and at the direction of the school official.
- School officials should meet regularly with school resource officers to discuss expectations and guarantee a continued common understanding of roles, responsibilities, and protocols regarding campus safety and security issues and how the school resource officers can engage in the furtherance of the educational program and not just police-type activities.
- Though courts have generally allowed school resource officers to initiate searches on their own authority as school officials, school resource officers should notify a member of the administrative team and request assistance prior to searches involving school disciplinary matters except in cases of health or safety.
- The school resource officer should refer routine or minor discipline matters to a member of the administrative team.
- School officials should refer criminal activity to the school resource officer.

- School seizures by school resource officers should only be done at the direction of a school official.
- School resource officers should only employ handcuffs as the last option.
- School resource officers should not employ handcuffs as a means of punishing students or teaching them a lesson.
- School resource officers should attend professional development and training on effective discipline strategies and any other relevant professional development in the particularized school setting.
- Staff members should be explicitly trained regarding the relationship of the school resource officer to the school, the legal expectations regarding school searches, and other areas of the law.
- In order to ensure students, staff members, and families are informed of their rights, a section of the student/parent handbook should be devoted to delineating and clearly explaining the roles and responsibilities of the school resource officer. A sheet acknowledging an understanding of the school resource officer's roles and responsibilities section of the student/parent handbook should have parent and student signatures. This document should be kept on file at the school.
- School resource officers should be selected through a rigorous application and vetting process to ensure the right people are filling this interagency role.
- School resource officers and school officials should receive adequate and timely training on case law. As the school search and seizure doctrine of common law continues to evolve around the legal standards for involving school resource

officers, school officials must continue to refine their understanding of the law regarding searches and seizures in the school setting.

- If school resource officers are expected to behave as school officials, their evaluation should have a component that addresses furthering the educational program.
- Principals should have input in the school resource officer's evaluation.
- A school district's integration of a school resource officer program should be a component of a broader plan for school safety.
- Districts should create a safety task force comprised of school resource officers, school and district officials, board of education members, teachers, parents, students, and other stakeholders to guide the implementation of the school resource officer program as part of the broader plan for school safety.
- Districts should install an interagency agreement or MOU between the school district and the law enforcement agency. This step will give school districts an opportunity to tailor a program that proactively establishes the school resource officer as an authentic school official based on duties beyond those of typical law enforcement officers.
- If outside law enforcement officers are involved in a school search or school seizure, school officials should clarify which agency has custody.
- School officials or school resource officers should never act at the behest of outside law enforcement without them first presenting probable cause and a warrant to search.

Concluding Thoughts

While the issue of the participation of school resource officers in school searches and seizures continues to reach the highest level of appellate courts in a growing collection of states and federal districts, a case regarding this issue has yet to appear before the U.S. Supreme Court. Two relatively recent cases offered additional insight regarding the status of school resource officers in the school setting. These cases also accentuate the wisdom in conservatively utilizing school resource officers in the school setting due to the lack of a U.S. Supreme Court ruling on the issue.

In the fourth footnote of its *Scott v. County of San Bernardino* opinion in 2018, The United States Court of Appeals for the Ninth Circuit demonstrated its unwillingness to tackle the issue by noting that the court "assume[d] – without deciding – that *T.L.O.*'s lower standard of reasonableness applied to seizures by law enforcement in a school setting."[256] A federal appellate court's hesitation to conduct an analysis when given the opportunity to do so fails to inspire confidence in the solidarity of the current legal status of school resource officers.

In *K.W. v. State*, which had no bearing on this study based on the facts of the case, the Supreme Court of Indiana made a compelling statement that highlights the turbulent nature of this issue. According to the court,

> We recognize it is somewhat anomalous that two uniformed law-enforcement officers responding to the same school incident could be treated differently for purposes of resisting law enforcement, if one was purely an "outside" officer while the other was a school-resource officer. School-resource officers serve a vitally important role in maintaining school safety and order against a growing range of discipline problems and threats, and we in no way diminish the value of their work. Yet we are also reluctant to risk blurring the already-fine Fourth Amendment line between school-discipline and law-enforcement duties by

[256] Scott v. County of San Bernardino, 903 F.3d 943 (2018), 953, n.4.

> allowing the same officer to invisibly "switch hats"—taking a disciplinary role to conduct a warrantless search in one moment, then in the next taking a law-enforcement role to make an arrest based on the fruits of that search.[257]

The court went on to compel legislatures to approach the issue rather than judiciaries in order to limit the unintended consequences inherent in developing the issue through case law – a premonition of the current situation regarding the involvement of school resource officers in searches and seizures.

According to Beger, "Instead of safeguarding the rights of students against arbitrary police power, our nation's courts are granting police and school officials more authority to conduct searches of students. Tragically, little if any Fourth Amendment protection now exists to shield students from the raw exercise of police power in public schools."[258] Courts have shown great deference to schools involving school resource officers in searches and seizures, and, in the process, continue to move further away from the traditional role of protecting the citizenry from that for which the Fourth Amendment was penned – unreasonable searches and seizures by law enforcement officials.

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[257] K.W. v. State, 984 N.E.2d 610 (2013), 613.
[258] Beger, "Expansion of Police Power in Public Schools and the Vanishing Rights of Students," 119-120.

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