

**In the Matter of M. A. D., a Youth**  
**348 Ore. 381; 233 P.3d 437 (OR 2010)**  
[The Oregon State Exception]

En Banc  
BALMER, J.

This juvenile delinquency case requires us to decide when a public school official's search of a high school student for illegal drugs is permissible under Article I, section 9, of the Oregon Constitution. We conclude that, when school officials at a public high school have a reasonable suspicion, based on specific and articulable facts, that an individual student possesses illegal drugs on school grounds, they may respond to the immediate risk of harm created by the student's possession of the drugs by searching the student without first obtaining a warrant.

After school officials received a tip from a named student that the youth who is the subject of this proceeding (youth) had been attempting to sell drugs earlier that morning near school property, one of the school officials reached into youth's pocket and discovered marijuana and other contraband. The state filed a delinquency petition, alleging that youth had committed an act that, if committed by an adult, would constitute delivery of a controlled substance.

Youth moved to suppress both the evidence found in his jacket and his confession, arguing that the school officials had violated his rights under Article I, section 9, of the Oregon Constitution. <sup>1</sup> The juvenile court concluded that reaching into youth's pocket constituted a search and that the school officials did not have probable cause to believe that youth had drugs in his possession. The court nevertheless upheld the validity of the search, concluding that it was "reasonable to apply a more flexible standard than probable cause" in the context of a school search. In the absence of Oregon appellate cases addressing the application of Article I, section 9, to a search of a public school student by school officials, the juvenile court used the standard applied by the United States Supreme Court in Fourth Amendment cases. Specifically, the juvenile court relied upon the Court's holding in *New Jersey v. TLO*, 469 US 325, 105 S Ct 733, 83 L Ed 2d 720 (1985), that such a search does not require "probable cause," but is valid if the official has "reasonable grounds for suspecting" that the search will reveal evidence of a violation of law or school rules. The court concluded that, here, the school officials had reasonable grounds for suspecting that youth had drugs in his possession and that the search was reasonable in scope; it therefore denied youth's motion and subsequently found youth to be within the jurisdiction of the juvenile court.

<sup>1</sup> Article I, section 9, provides:

"No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

Youth appealed, and the Court of Appeals reversed in a divided opinion. The majority first observed that juveniles are entitled to the protections of Article I, section 9. *M. A. D.*, 226 Ore. App. at 25. Because the school officials had conducted a warrantless search of youth, the majority proceeded to determine whether the search came within any exception to the warrant requirement. It found that the state had not proved that youth had consented to the search or that the school officials had probable cause to believe that youth possessed illegal drugs. *Id.* at 25-29. <sup>3</sup> The majority then turned to the state's alternative argument that the court should adopt an exception to the warrant requirement, similar to that discussed in *TLO*, that would permit school authorities to conduct searches if they reasonably suspected that a student possessed illegal drugs, even if they could not establish probable cause. The majority rejected that argument as inconsistent with the protection of privacy interests afforded by Article I, section 9. *Id.* at 31-32. It therefore concluded that the juvenile court had erred in denying youth's motion to suppress.

2 Consent to a search is one exception to the warrant requirement. *State v. Paulson*, 313 Ore. 346, 351, 833 P2d 1278 (1992). Similarly, a warrantless search can be justified by a showing of probable cause and exigent circumstances. *State v. Meharry*, 342 Ore. 173, 177, 149 P3d 1155 (2006). Because the Court of Appeals concluded that the state had not demonstrated probable cause, it did not consider whether exigent circumstances existed. *M. A. D.*, 226 Ore. App. at 29 n 3.

## ARTICLE I, SECTION 9, ANALYSIS

The threshold inquiry in any Article I, section 9, analysis is whether the government action at issue constitutes a "search" for constitutional purposes. *State v. Wacker*, 317 Ore. 419, 426, 856 P2d 1029 (1993). This court has repeatedly emphasized that Article I, section 9, protects individuals' "privacy" interests and that, as a result, when government conduct invades those privacy interests, a search has occurred for purposes of the state constitution. *See, e.g., State v. Howard/Dawson*, 342 Ore. 635, 640, 157 P3d 1189 (2007) (stating principle). Although a Fourth Amendment search occurs when government conduct infringes an individual's reasonable expectation of privacy, "the privacy protected by Article I, section 9, is not the privacy that one reasonably *expects* but the privacy to which one has a *right*." *Id.* at 643 (quoting *State v. Campbell*, 306 Ore. 157, 164, 759 P2d 1040 (1988)) (emphases in *Campbell*).

Having determined that the school officials conducted a search of youth, the next question is whether that search was valid under Article I, section 9. Ordinarily, a warrantless search is *per se* unreasonable, and therefore invalid, unless it comes within one of the exceptions to the warrant requirement that this court has recognized. *State v. Meharry*, 342 Ore. 173, 177, 149 P3d 1155 (2006). Although the state concedes that the school officials had no warrant to search youth, it does not rely on any of the exceptions that this court has identified in past cases. In particular, it does not contend that the search was conducted pursuant to an appropriate statutorily authorized administrative program, which, as we have held, may justify a search without a warrant and without any individualized suspicion at all. *See State v. Atkinson*, 298 Ore. 1, 8-10, 688 P2d 832 (1984) (so holding). Nor does the state argue that youth voluntarily consented to the search or that the telephone call that the school officials made to youth's mother constituted a request that she consent to a search of youth. *See State v. Paulson*, 313 Ore. 346, 351-52, 833 P2d 1278 (1992) (describing consent exception to warrant requirement). As noted, the state also concedes that probable cause was lacking here, thus making unavailable to the state another well-recognized exception to the warrant requirement -- a search based on a combination of probable cause and exigent circumstances. *See State v. Machuca*, 347 Ore. 644, 652-57, 227 P3d 729 (2010) (warrantless search permissible if officer has probable cause to believe that crime was committed and exigent circumstances exist).

Instead of relying on a previously established exception to the warrant requirement, the state urges us to hold that searches of public school students that are conducted by school officials, on school grounds, and during school hours, are constitutionally permissible if school officials have "reasonable suspicion" that the search will reveal evidence of a crime or a violation of school rules. In other words, the state argues that the ordinary level of certainty necessary for a search -- probable cause -- should not apply in the school setting and that this court should adopt the approach that the United States Supreme Court took in interpreting the Fourth Amendment in *TLO*.

The state bases its argument for a "reasonable suspicion" test for school searches on the "unique mission and circumstances of public schools." Specifically, the state points to the schools' mission to educate children and argues that "school officials must take reasonable steps to foster that learning environment." According to the state, the school context -- including the responsibility of protecting students from harm, maintaining order, and fulfilling the schools' educational mission --

makes it inappropriate to hold school officials to the "probable cause" standard applicable to searches by law enforcement officials. Instead, the state argues, this court should adopt the less exacting "reasonable suspicion" test that the Court used in *TLO*. We agree -- in part -- with the state's argument.

The state is correct that the unique context of the school setting distinguishes school searches from searches conducted by law enforcement officers in other settings. Oregon statutes require children to attend school, unless they come within a specific exemption. ORS 339.010. For that reason, large numbers of children are required to gather each day in an institutional setting where government employees are responsible for their safety and education and where the necessity for "swift and informal disciplinary procedures," *TLO*, 469 US at 340, is apparent. Further, various statutes emphasize the responsibility of school districts to provide a safe school environment for students, teaching faculty, and classified workers, *see, e.g.*, ORS 339.315 (requiring reporting to officials of any persons believed to possess unlawful firearms in a school); ORS 339.250(3) (authorizing suspension or expulsion of student who assaults or menaces a school employee or other student), and our cases recognize the "special duty arising from the relationship between educators and children entrusted to their care." *Fazzolari v. Portland School Dist. No. 1J*, 303 Ore. 1, 19-20, 734 P2d 1326 (1987). From the classroom to the cafeteria to the sports field, we require students to follow the directions of teachers and other school officials in order to preserve the safety of all students and further the schools' educational objectives.

We conclude that the school context is sufficiently different from the setting in which ordinary police-citizen interactions occur to justify an exception to the warrant requirement in certain circumstances, and we turn to the scope and application of the state's proposed exception. First, we describe what we view as the closest analogy to that exception, the long-standing and well-defined "officer-safety exception" to the warrant requirement of Article I, section 9. Under the officer-safety exception, a police officer may take "reasonable steps" -- including a limited search -- to protect the officer or others if, "during the course of a lawful encounter with a citizen, the officer develops a reasonable suspicion, based upon specific and articulable facts, that the citizen might pose an immediate threat of serious physical injury to the officer or to others then present." *State v. Foster*, 347 Ore. 1, 8, 217 P3d 168 (2009) (quoting *State v. Bates*, 304 Ore. 519, 524, 747 P2d 991 (1987)) (internal quotation marks omitted). The officer-safety exception is necessary because of the unique circumstances to which it applies:

"A police officer in the field frequently must make life-or-death decisions in a matter of seconds. There may be little or no time in which to weigh the magnitude of a potential safety risk against the intrusiveness of protective measures. An officer must be allowed considerable latitude to take safety precautions in such situations. Our inquiry therefore is limited to whether the precautions taken were reasonable under the circumstances as they reasonably appeared at the time that the decision was made." *Id.* (quoting *Bates*, 304 Ore. at 524-25).

As noted, the officer-safety exception requires reasonable suspicion of an immediate threat of serious physical injury to the officer or others, based on specific, articulable facts. In assessing whether an officer's actions are permitted based on those facts, the court "asks only whether safety precautions chosen by the officer were reasonable under the perceived circumstances." *Id.* at 11. Because such "reasonable steps," which may include at least a limited search, do not violate Article I, section 9, evidence of wrongdoing obtained as a result of the search will not be suppressed.<sup>3</sup>

3 Our officer-safety cases make it clear that the permissible scope of a search depends on the nature of the safety threat. *See State v. Morgan*, 348 Ore. 283, 290, 230 P3d 928 (2010) (officer may take "reasonable steps" to protect officer's safety). If the safety threat is based, for example, on reasonable suspicion that the person searched is carrying a rifle, that suspicion would not ordinarily be sufficient to justify a strip search of the person or a search of the person's wallet.

In our view, the concerns underlying the officer-safety exception also apply to some searches conducted by school officials. As described above, the school context -- characterized by compulsory attendance and large numbers of students and educators present each day in a relatively confined area -- raises heightened safety concerns. As persons responsible for maintaining a safe learning environment, when school officials perceive there to be an immediate threat to student or staff safety at a school, they must be able to take prompt, reasonable steps to remove that threat. As with an officer-safety search, when a school official develops a "reasonable suspicion," based on "specific and articulable facts," that a particular individual on school property either personally poses or is in the possession of some item that poses an "immediate threat" to the safety of the student, the official, or others at the school, the school official "must be allowed considerable latitude to take safety precautions." *See Foster*, 347 Ore. at 8 (quoting *Bates*, 304 Ore. at 524) (internal quotation marks omitted). Moreover, as this court has noted with respect to an officer's judgment in that context, it is not our function to "uncharitably second-guess" the considered protective actions taken by school officials. *See id.* (quoting *Bates*, 304 Ore. at 524) (internal quotation marks omitted).

For the same reasons that we have applied the less exacting "reasonable suspicion" standard, rather than the probable cause standard, to determine whether a limited officer-safety search is permissible under Article I, section 9, we conclude that the reasonable suspicion standard should apply to a search, like the one here, for illegal drugs that is conducted on school property by school officials acting in their official capacity. We do not mean to suggest that the officer-safety doctrine and a school official's search of a student for drugs are identical in all respects. However, we agree with the state that the public school setting and the obligation of school officials to provide a safe learning environment requires that they be able to respond quickly to credible information, based on specific and articulable facts, about immediate threats of serious harm to students and staff, such as the presence of illegal drugs on school grounds.

There are important limits on the kinds of searches that may be permitted under this approach. Consistently with the standards that we have developed in the officer-safety cases, a school official may not rely on generalizations about suspected drug use or on information that is not specific or current. Moreover, we specifically reject the state's request that we adopt, in this case, a general rule that *all* school searches should be subject to a "reasonable suspicion" standard. The state's argument that we should follow *TLO* and sanction warrantless searches whenever a school official has reasonable suspicion that a student possesses evidence of a violation of a school rule or policy goes further than necessary to decide this case. This case involves a present threat to student safety and a search by a school official acting in his official capacity and in furtherance of his responsibility to protect students and staff; our holding is based on those circumstances. The permissibility of other kinds of searches by school officials is not before us.

The decision of the Court of Appeals is reversed. The judgment of the circuit court is affirmed.