

**State v. R.D.S.**  
**2009 WL 2136324 (TN.App 2009)**

DAVID R. FARMER, J.

Upon remand from the Tennessee Supreme Court, the trial court determined that the Sheriff's Deputy assigned to a Williamson County high school as its School Resource Officer was also a school official, and that the "reasonable suspicion" standard therefore applied to her search of a student's vehicle on school property. We reverse and remand for further proceedings.

This appeal concerns the determination of whether a Sheriff's Deputy assigned to Williamson County's Page High School as its School Resource Officer ("SRO") may be considered a school official such that the "reasonable suspicion" standard should apply to the Deputy's search of a student's vehicle on school property, rather than the "probable cause" standard generally applicable to searches conducted by law enforcement officers. This is the second appearance of this case in this Court. The background facts giving rise to the current appeal are recited in *State v. R.D.S.* ("R.D.S.I") as follows:

On November 25, 2003, G.N., a student at Williamson County's Page High School, was taken to the office of Vice-Principal Tim Brown because of concerns that he was under the influence of some type of intoxicating substance. Mr. Brown summoned Deputy Sharon Lambert, a school resource officer ("SRO"), to his office. Deputy Lambert is a sworn law enforcement officer for Williamson County.

When Deputy Lambert arrived at Mr. Brown's office, she noticed that G.N. appeared to be "very sleepy or groggy, and his eyes were really bloodshot." She asked him what he had taken, and he responded that he had drunk a quarter of a bottle of Robitussin cough syrup before coming to school. Because school had started several hours earlier, she was skeptical that the effects from cough syrup would last that long. It had been reported that G.N. had skipped some of his morning classes, so Deputy Lambert asked him where he had been. He said that he had been out in the parking lot in a truck belonging to the defendant, R.D. S.

Deputy Lambert decided to search R.D.S.'s truck. She and Mr. Brown found R.D.S. in the school commons area. He did not appear to be under the influence of any intoxicants. Deputy Lambert explained to R.D. S. that she was going to search his truck based on G.N.'s apparent intoxicated condition and statements he made regarding his earlier whereabouts. She requested that R.D. S. accompany her because it was his vehicle.

As Deputy Lambert, Mr. Brown, and R.D.S. walked out to the parking lot together, the deputy asked R.D. S. if there was anything in his vehicle that should not be there. He stated that there was not. She told him that he was responsible for anything that was in the truck and again asked him if there was anything there that should not be. He again answered no and referenced the sign in front of the school that cited the Tennessee Code provision that any vehicle on school property was subject to search.

The truck was unlocked. When Deputy Lambert opened the driver's side door, she immediately found a plastic bag containing green leafy material in a compartment of that door. She held it up and said, "[o]h, except for this marijuana." R.D.S. admitted that it was his. The deputy continued to search the truck and found a glass pipe containing a tarry residue.

While they were walking back to the school building, Deputy Lambert asked R.D. S. where he had been that morning. He stated that he and G.N. had left school at about 9:30 a.m., smoked marijuana from a pipe, went to the bank, and then returned to school about an hour later. Tapes from the video surveillance cameras located in the parking lot confirmed that the two students left around 9:30 a.m. and returned around 10:30 a.m.

When they arrived back at the school offices, Deputy Lambert transported G.N. to the juvenile detention center while R.D.S. remained at the school pending a special education hearing. After that hearing, Deputy Lambert took R.D.S. to the juvenile detention facility. She filed a petition in juvenile court charging R.D.S. with the delinquent acts of simple possession or casual exchange of marijuana and possession of drug paraphernalia. R.D. S. filed a motion to suppress his incriminating statements on the ground that he was not informed of his Miranda rights prior to "his interrogation by Deputy Lambert and Assistant Principal Tim Brown." He also moved to suppress the evidence seized from the truck.

R.D.S. appealed to the circuit court, where he renewed his motion to suppress his statements and the seized evidence. The court denied his motion, finding that Miranda warnings were not required because R.D.S. was not in custody at the time he made the incriminating statements. The trial court also held that the statements were voluntary and not in response to any specific questions.

At the final trial, Deputy Lambert testified to the aforementioned sequence of events that occurred on the day R.D.S. was arrested. R.D.S.'s mother testified as to her activities on the morning of the arrest. Her testimony was supplemented by a showing of the surveillance video tapes of that day taken from the parking lot at the high school. She testified that she arrived at the school for a meeting at about 10:30 a.m. and saw several students around her son's truck. They left as soon as she approached, except for G.N., who was inside the truck. She testified that before she opened the door, she saw G.N. reach into the front pocket of his hooded sweatshirt, take something out, and place it under the front seat. She asked him what he was doing, and he said that he was tired and that R.D. S. had given him permission to take a nap in the truck. The mother suggested that the marijuana found in her son's truck was not his, but had been left there by G.N., and that R.D.S. had said it was his in order to protect his friend.

The circuit court found R.D.S. to be delinquent. The court ordered him to serve forty-eight hours of juvenile detention and to remain on probation until the age of nineteen. His driver's license was revoked for one year, with the proviso that he could apply to have it returned in ninety days. R.D. S. filed a timely appeal with the Court of Appeals. The

Court of Appeals affirmed the trial court as to the admission of the incriminating statements, finding that R.D. S. was not in custody when he made his statements. The intermediate court disagreed with the trial court's finding that the statements were voluntary and not in response to any interrogation by Deputy Lambert. The Court of Appeals also affirmed the trial court with respect to the admission of the evidence, holding that because the search was conducted by a school resource officer, the reasonable suspicion standard should apply, and Deputy Lambert had reasonable suspicion to search the truck. The Court of Appeals also relied in part on Tennessee Code Annotated section 49-6-4204 which allows a school principal to order the search of a vehicle when he or she has reasonable suspicion to believe that there are either drugs or weapons present. *State v. R.D.S.*, 245 S.W.3d 356, 360-62 (Tenn.2008)(footnotes omitted).

On appeal to the supreme court, R.D.S. argued that the trial court erred in violation of his right against self-incrimination where it denied his motion to suppress his incriminating statements because he was in "custody" when questioned by Deputy Lambert. R.D. S. also argued that probable cause was the correct standard to apply to Deputy Lambert's search, and that the trial court erred by admitting the marijuana and pipe into evidence because the search was not based on probable cause and was, therefore, illegal. *Id.* at 362.

The supreme court affirmed in part, reversed in part, and remanded the matter. The supreme court affirmed the court of appeals on the Miranda issue, holding that R.D. S. was not in custody when he made incriminating statements and that, therefore, no Miranda warnings were required. *Id.* at 370. With regard to the admission of evidence seized from R.D.S.'s vehicle, however, the court held that, although the majority of jurisdictions have applied the reasonable suspicion standard to searches conducted by SRO's or law enforcement officers assigned to schools, the parties in this case had not presented "sufficient evidence for the trial court to conclude whether Deputy Lambert's duties allow her to conduct a search based on reasonable suspicion" or whether probable cause was required. *Id.* The supreme court remanded the matter to the trial court to consider additional evidence regarding Deputy Lambert's role at the school and to determine, based on that evidence, whether Deputy Lambert "may be considered a school official as well as a law enforcement officer, whether labeled an 'SRO' or not." *Id.* at 369-70.

The matter upon remand was heard in the Circuit Court for Williamson County on May 6, 2008. On May 8, the trial court entered a Memorandum Opinion in which it determined that Deputy Lambert was a law enforcement officer assigned to Page High School on a regular basis, and that she was assigned duties at the school beyond that of an ordinary law enforcement officer. The trial court concluded that Deputy Lambert should be considered a school official as well as a law enforcement officer, and that the reasonable suspicion standard was therefore the correct standard to apply to her search of R.D.S.'s vehicle. On May 8, the circuit court entered a judgment based upon its memorandum opinion and again found R.D. S. delinquent. It remanded the matter to the juvenile court pursuant to Tennessee Code Annotated § 37-1-159. R.D.S. filed a motion for a new trial, which the trial court denied by order entered July 15, 2008. On July 16, 2008, R.D.S. filed a notice of appeal to this Court and the matter was heard by the Western Section sitting in Nashville on June 24, 2009.

## Issues Presented

R.D.S. presents the following issues for our review:

1. Whether the Williamson County School Resource Officer should be held to [the] probable cause standard in her conduct of the search of the juvenile's property.
2. Is a school resource officer more a police officer or a school official for the purposes of student searches.
3. Did Deputy Lambert have probable cause to search the Appellant's vehicle.

## Analysis

It is undisputed that Deputy Lambert is a law enforcement officer assigned to an SRO position at a public school. The determinative question here is whether the trial court erred by determining that Deputy Lambert was "assigned duties at the school beyond those of a[n] ordinary law enforcement officer such that ... she may be considered a school official as well a law enforcement officer[.]" *State v. R.D.S.*, 245 S.W.3d 356, 369 (Tenn.2008). In *R.D.S.I*, the supreme court stated: The trial court should consider any evidence introduced regarding the specific duties of Deputy Lambert, including information about her daily activities, any interactions with students she has, any specialized training she has received, any agreements between the Williamson County Sheriff's Office and Board of Education about the SRO program, any stated policies in regards to the SRO program in Williamson County, which governmental entity pays her salary, who are Deputy Lambert's direct supervisors, what classes she teaches, what topics she lectures, what topics she counsels students, and whether she is in a uniform and armed. This is not an exhaustive list of factors for the trial court to take into account, but this evidence would be appropriate for deciding whether to hold Deputy Lambert to either a reasonable suspicion or probable cause standard.

Reviewing courts should apply the reasonable suspicion standard when a law enforcement officer, whose duties more closely align with the duties of a school official, conducts a search of a student in a school setting.

*Id.* at 369-70.

We begin our analysis with the Agreement between the Williamson County Board of Education and the Williamson County Sheriff's Department providing for the SRO Program.<sup>1</sup> In the Agreement, the parties stated that the SRO Program arose from their mutual "desire to provide law enforcement and related services to the public schools of Williamson County[.]" The Agreement provides that the Sheriff would provide "one regularly employed deputy sheriff" to serve as SRO in each of eight middle schools and seven high schools. It provides that the Sheriff will assign a supervisor to oversee the SRO's, to visit the high schools, and to work with the school administration to implement and make adjustments to the SRO program. The Agreement additionally provides that an SRO will be assigned to a school on a "full-time basis" and that the SRO "may be assigned additional requirements determined by the Principal and/or the Sheriff's Department as relates to the mission of the SRO Program " (emphasis added). The Agreement provides that an SRO "may" act as an instructor or guest speaker for short term programs, including drug abuse resistance education, basic understanding of the law, and the role of the police officer and the police mission, when invited to do so by the principal. Under the

Agreement, the SRO is required to “coordinate” activities with the school principal and staff, and to “seek permission, advice and guidance” when enacting a new program. The Agreement requires the SRO to be available to assist students, parents and faculty with “problems of law enforcement or crime prevention nature.” It also requires the SRO to act as a resource person for community service agencies and to make referrals to those agencies as necessary. It requires the SRO to notify the principal of any referrals and to assist the principal “in developing plans and strategies to prevent and/or minimize dangerous situations present in or around the school or school activities.” The Agreement provides that the SRO will “take law enforcement action as required;” will inform the principal of such action; and will conduct formal police interviews with the students in adherence with Board and Sheriff’s Department policies as well as with the Tennessee Code.

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We note that the agreement contained in the record is dated May 21, 2007. The parties do not assert, however, that the terms of the agreement in force in 2003 differed from those contained in the agreement in the record.

The Agreement in the record specifically provides that the SRO “will not act as a school disciplinarian” and that “disciplining students is a school responsibility.” It states that a principal may contact the SRO if he believes an incident is a violation of the law, and that the SRO will “determine whether law enforcement action is appropriate.” It provides that an SRO will not be assigned regular lunchroom or hall monitoring duties, but may assist school staff with a particular problem area until the problem is resolved.

The Agreement requires the SRO to take “appropriate law enforcement action against intruders and unwanted guests ... to the extent that the SRO may do so under the authority of the law.” The Agreement permits the SRO to request additional police assistance, and requires the SRO to assist other law enforcement officers with school-related matters. The Agreement states that the SRO “may be assigned to investigations relating to runaways, thefts or any other crime,” and that the cases would be assigned at the direction of the Criminal Investigations Division.

The Agreement requires the School Board to provide the SRO with a private office at the school, equipped with a telephone, location for files, desk, computer, and general supplies. It provides that funding for the SRO high school program would be included in the Williamson County Schools General Purpose School Budget, and that funding for the middle school program would be included in the County’s General Fund budget.

The Agreement specifically states that SRO’s “shall remain employees of the Williamson County Sheriff’s Department, and shall not be employees of the Board of Education of Williamson County.” It stipulates that the SRO will “remain responsive to the chain of command of the Williamson County Sheriff’s Department” and that the Sheriff or his designee would assign deputies to the SRO position. The Agreement requires that SRO’s have a minimum of two years of service or experience and be a Tennessee Certified Law Enforcement Officer. The Agreement provides that if the principal of the school to which an SRO is assigned determines that the SRO is not performing his or her duties effectively, the principal shall recommend to the Director of Schools or the Director’s designee that the SRO assignment be reviewed, and shall state the reasons for the recommendation in writing. It provides that the Director of Schools shall then advise the Sheriff of the principal’s request, and that the Sheriff may meet with the SRO to

mediate or resolve any problems “[i]f the Sheriff so desires.” The Sheriff may also choose to remove the SRO without mediation, and obtain a replacement. Under the Agreement, the authority to appoint, dismiss or transfer an SRO is with the Sheriff.

This Agreement, as we perceive it, neither anticipates nor permits an SRO to act as or perform the duties of a school official. The transcript of the May 6, 2008, hearing further supports our reading of the Agreement. At the hearing, Vice Principal Brown testified that Deputy Lambert did not work for either himself or the principal; that she did not work for the school or take directives from the school administration; and that she had no direct supervisor at the school. Mr. Brown testified that Deputy Lambert was “there to help us with anything that may arise during the day that might be illegal;” that “she was also there to make sure that the students did behave in accordance to a good, safe, lawful manner;” and that she would become involved with disciplinary actions involving a crime. He testified that SRO’s do not receive any training by the school board that he was aware of, but are trained by the Sheriff’s Department. Mr. Brown testified that Deputy Lambert would sometimes speak in classes such as the forensic class; that she occasionally attended ball games and other functions; and that she sometimes wore her uniform to extra-curricular functions and sometimes did not.

Deputy Lambert testified at the May hearing that she was hired by the Sheriff and reported to Lieutenant David Brewer in the Sheriff’s Department. She testified that she lectured on subjects “about various issues of law enforcement,” particularly driving under the influence, about once a month. When asked whether she was “really” at the school “as a law enforcement presence,” she replied, “right.” Deputy Lambert stated that she was not required to perform school duties such as monitoring halls, and that she was not “on any type of set schedule to do anything.” She testified that she did not keep weapons, evidence, uniforms or official files in her school office. Deputy Lambert testified that the Sheriff’s Department promulgated the policies and procedures which she followed; that she had two years as a field officer; that she was paid a regular deputy’s salary by the Sheriff’s department; that her chain of command was through the Crime Prevention Program of the Sheriff’s Department; and that she was not responsible for discipline at the school. Deputy Lambert stated that she became involved in situations involving criminal acts and crime prevention in the school.

Williamson County Sheriff Robert Rhodes testified that an SRO is primarily a law enforcement officer. The transcript in the record reads:

Q: In your position as sheriff, is the school resource officer primarily a law enforcement officer?

A: Yes, sir.

Q: And do they work in schools?

A: They’re assigned to schools, yes, sir.

Q: And each one of them has an assigned school?

A: Right.

When asked whether the School Board or anyone associated with the school has any supervisory authority over an SRO, the Sheriff replied, “[t]o a certain extent, yes.” He stated,

[w]ell, as the school resource officer is a sheriff’s department employee and he’s assigned to a certain school, he is also responsible to the administration of that school to try to, you

know, work with them and any-for lack of better words-for any directives that they give them to a certain extent, try to accommodate the administration on those directives.

Sheriff Rhodes testified that SRO's have the authority to make searches at school ball games "[i]ncident to an arrest," and as part of something "they're investigating" if they have probable cause. When asked, "[t]he bottom line is that the SRO's are really sheriff's department employees, aren't they," Sheriff Rhodes responded, "[y]es, sir."

It is undisputed in this case that Deputy Lambert always wore either a dress uniform or a less formal uniform bearing the Sheriff's Department's insignia while at duty at the school. It is undisputed that she was armed; arrived at the school in a marked cruiser; called for backup law enforcement officers at times; participated in drug searches, including searches involving dogs; was not involved in school discipline other than responding to or preventing criminal activity; was not assigned any school duties other than those relating to law enforcement, prevention and education; and reported to the chain of command at the Sheriff's Department. It is clear from the testimony in the record that neither the Sheriff, the school administrators, nor Deputy Lambert considered her to be a school official. Although the School Board reimburses the Sheriff's Department for high school SRO salaries, Deputy Lambert was hired by the Sheriff's Department, reported to and was supervised by the chain of command at the Sheriff's Department, and did not undertake administrative or educational duties not related to law enforcement and crime prevention.

Upon review of this record, it is clear to this Court that Deputy Lambert was neither assigned nor undertook "duties more closely align[ed] with the duties of a school official" than with those of a law enforcement officer. Her function as an SRO was to be a law enforcement presence at the school. Although she occasionally lectured in classes, she lectured on law enforcement topics. Although she cooperated with and maintained daily communication with the school administration and staff, she had no regular duties assigned by the principal and was not supervised by the principal or administration. As provided for in the Agreement between the School Board and the Sheriff's Department, Deputy Lambert's function was to "provide law enforcement and related services to the public schools of Williamson County." This record does not support a determination that Deputy Lambert may be considered a school official as well as a law enforcement officer. Accordingly, the trial court erred by applying the reasonable suspicion standard in this case. The probable cause standard is the correct standard to apply to judicial review of the November 2003 search of R.D. S.'s vehicle.

As the partial dissent noted in *R.D. S. I*, the issue of which standard should apply to searches made by SRO's was not addressed in the original trial of this matter in the trial court. *State v. R.D.S.*, 245 S.W.3d 356, 371 (Tenn.2008) (Holder, J., dissenting). The record before us reflects that in his 2003 motion to suppress in the trial court, R.D.S. asserted any statements made by him were "made without an intelligent, knowing or voluntary waiver of his constitutional right to counsel" and that "any evidence obtained as a result of his statements should be considered fruits of the poisonous tree and thereby suppressed." He did not assert the lack of probable cause. Similarly, it does not appear that R.D. S.'s motion to suppress in the circuit court included an assertion that the evidence was seized upon a search conducted without probable cause. The majority in *R.D.S. I*

stated that R.D.S. moved to suppress the evidence in the trial court as being “fruits of the poisonous tree.” *Id.* at 361. The majority stated,

R.D.S. appealed to the circuit court, where he renewed his motion to suppress his statements and the seized evidence. The court denied his motion, finding that Miranda warnings were not required because R.D. S. was not in custody at the time he made the incriminating statements. The trial court also held that the statements were voluntary and not in response to any specific questions.

*Id.* Further, in her partial dissent, Justice Holder dissented to the majority’s holding regarding the motion to suppress the evidence seized from R.D.S.’s vehicle. The dissent observed that counsel for R.D.S. argued in the trial court that R.D. S.’s statements were involuntary and that “[a]t no time did he argue any other ground for the suppression of evidence .... it is overwhelmingly clear from the totality of the record that neither party questioned whether the search was valid.” In the first appeal of this matter, this Court also noted that “[t]here [was] some dispute as to whether the motion [in the trial court] included the seized evidence.” *State v. R.D.S.*, No. M2005-00213-COA-R3-JV, 2006 WL 3350699, at \*2, n. 3 (Tenn.Ct.App.2006), perm. app. granted (Tenn. Mar. 12, 2007).

In our analysis of the search of R.D. S.’s vehicle on appeal in 2006, this Court did not address whether probable cause existed to search the vehicle. Rather, we noted that warrantless searches by school officials on school grounds are subject to the “reasonableness under all the circumstances” test. *Id.* at 8. We disagreed with R.D. S.’s assertion that the probable cause standard applied in this case, holding that, as an SRO, Deputy Lambert was subject to the reasonable suspicion standard. *Id.* at 11. We additionally stated that the search based on reasonable suspicion was authorized by Tennessee Code Annotated § 49-6-4204. *Id.* at \*9. The supreme court declined to extend the provisions of section 49-6-4204 to vice principals or other school officials, and remanded the matter for determination of whether reasonable suspicion was the appropriate standard in this case. *State v. R.D. S.*, 245 S.W.3d at 369, n. 6.

It appears to us that no court has held that there was not probable cause in this case. As the dissent in *R.D.S.* I strongly urges, nothing in the record suggests that R.D.S. argued a lack of probable cause in the trial court. At the appellate level, the question addressed was whether the search was legal under the reasonable suspicion standard. Upon remand, moreover, the only issue addressed by the trial court was whether Deputy Lambert was a school official such that the reasonable standard was appropriate. Accordingly, we remand this matter to the trial court for additional proceedings to determine whether Deputy Lambert’s search was legal under the probable cause standard.

## **Holding**

We conclude that the trial court erred in determining that Deputy Lambert may be considered a school official as well as a law enforcement officer such that the reasonable suspicion standard should apply to her search of R.D. S.’s vehicle. In light of the foregoing, the judgment of the trial court is reversed. This matter is remanded to the trial court for further proceedings consistent with this opinion. Costs of this appeal are taxed to the State of Tennessee.