T.S. v. State of Indiana
2007 Ind. App. LEXIS 572 (Ind Ct App 2007)

ROBB, Judge

T.S., a minor, appeals from a proceeding in which he was adjudicated a juvenile delinquent based on the juvenile court's finding that T.S. committed an act that if committed by an adult would be the crime of possession of marijuana, a Class A misdemeanor. On appeal, T.S. raises the sole issue of whether the trial court erred in denying T.S.'s motion to suppress evidence he claims was obtained in violation of Article I, Section 11 of the Indiana Constitution, and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. Concluding that the procedure through which the evidence against T.S. was obtained did not violate T.S.'s federal or state constitutional rights, we affirm.

On October 13, 2005, Sergeant Mark Driskell, of the Indiana Public Schools Police ("IPSP"), received a phone call in the Broad Ripple High School ("BRHS") IPSP office. Sergeant Driskell testified that "[t]here was a female who [sic] I did not identify. . . . [S]he indicated that there was a student at Broad Ripple high school by the name of [T.S.] and that he had marijuana in right front pant pocket." Sergeant Driskell testified that he had "no idea" who the anonymous caller was. The tipster did not state how she knew T.S had marijuana in his possession.

After receiving this call, Sergeant Driskell went to T.S.'s gym class, and told him to accompany him to the locker room. Sergeant Driskell testified that this call was the only basis on which he removed T.S. from class. After reaching the locker room, Sergeant Driskell told T.S. to change out of his gym uniform into his street clothes. After T.S. had finished dressing, Sergeant Driskell asked T.S. if "he had anything on him that he shouldn't have." Id. at 38. At this point, T.S. pulled a small plastic baggie containing marijuana out of his front pocket and handed it to Sergeant Driskell. Sergeant Driskell then reached into T.S.'s pocket and pulled out another small baggie of marijuana.

T.S. gave a slightly different description of the events. T.S. testified that when they reached the locker room, Sergeant Driskell told T.S. about the anonymous tip, put his hand on T.S.'s chest, and said that he knew T.S. had some marijuana because his heart was beating quickly. T.S. testified he then told Sergeant Driskell that he did have marijuana, walked over to his locker, and opened it. T.S. testified that when he opened his locker, Sergeant Driskell grabbed T.S.'s pants out, went through the pockets, and pulled out the two baggies of marijuana. When asked about T.S.'s version of events, Sergeant Driskell testified that he did not recall placing his hand on T.S.'s chest and that T.S. had handed him the first baggie of marijuana.

The seminal case regarding searches and seizures that occur in schools is New Jersey v. T.L.O., 469 U.S. 325 (1985). In T.L.O., the United States Supreme Court held that the Fourth Amendment does apply to school searches and seizures, but that:

> The accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to

> believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.

The Court developed a two prong test for determining the reasonableness of a search: (1) whether the action was justified at its inception; and (2) whether the search "was reasonably related in scope to the circumstances which justified the interference in the first place." Id. (quoting Terry v. Ohio, 392 U.S. 1, 20 (1968)). The first prong will be satisfied if "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." Id. The second prong will be satisfied if "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." Id. In T.L.O., the Court explicitly left open the question of whether the exclusionary rule applied to school searches. Id. at 333. However, the decisions of Indiana courts subsequent to T.L.O. indicate that the exclusionary rule is the remedy for Fourth Amendment violations occurring in schools. See Myers, 839 N.E.2d at 1161 (holding that trial court properly denied defendant's motion to suppress because search conducted by school officials was reasonable); D.I.R. v. State, 683 N.E.2d 251, 253 (Ind. Ct. App. 1997) (reversing defendant's delinquency adjudication because evidence was discovered during unreasonable search in a school).

T.L.O. left open many questions with which courts still struggle. The case before us raises three questions undecided by T.L.O.: (1) the level of cause required for an IPSP officer who initiates an encounter with a student without the involvement of other school officials; (2) whether the encounter between Sergeant Driskell and T.S. constituted a seizure; and (3) the standard for determining the constitutionality of a seizure occurring in a school.

T.L.O. left open the question of what standard applies to searches conducted by police officers on school property, or by police officers employed by the school system. However, the Supreme Court has noted that other jurisdictions divide school searches into three categories and use the following set of standards:

> (1) where school officials initiate the search or police involvement is minimal, the reasonableness standard is applied; (2) where the search is conducted by the school resource officer on his or her own initiative to further educationally related goals, the reasonableness standard is applied; and (3) where "outside" police officers initiate the search of a student for investigative purposes, the probable cause and warrant requirements are applied.
> Myers v. State, 839 N.E.2d at 1160.

The Supreme Court then stated:

> We find this approach and analysis persuasive. Thus, where a search is initiated and conducted by school officials alone, or where school officials initiate a search and police involvement is minimal, the reasonableness standard is applicable. And the ordinary warrant requirement will apply where "outside" police officers initiate, or are predominantly involved in, a school search of a student or student property for police investigative purposes.

We note that the Supreme Court did not explicitly adopt the three categories used by other jurisdictions, and merely found them "persuasive." The language it used in announcing its test adopts the approach taken for the first and third categories, but omits the second category of a school resource officer acting on his or her own initiative. However, this omission can be explained because the facts of Myers made possible only a conclusion that the search fell under either the first or third categories. We thus conclude that the Myers court adopted the three-part test, and that the later statement omitting the second category is merely a restatement of the two categories relevant to the facts of Myers. Therefore, we must decide whether Sergeant Driskell was an "outside" police officer or a school resource officer acting to further educationally related goals.

At the time of the incident, Sergeant Driskell was employed by the IPSP and was working in BRHS. He received the anonymous call in BRHS's IPSP office. We have previously held that employees of the IPSP who act in their capacity as security officers are considered school officials and that their conduct is therefore governed by T.L.O.

Other courts have held that searches conducted by school police officers were governed by the reasonableness standard based on the rationale that by ferreting out drugs, the officers were working in the furtherance of educational goals. Other courts have not based their holding solely on the officer's status as a school police officer, but have examined the involvement of other school administrators in the officer's action. Finally, courts have found relevant the officer's purpose in conducting the search.

We conclude that Sergeant Driskell acted as school resource officer acting to further educationally related goals. Although Sergeant's Driskell's encounter with T.S. ultimately resulted in Sergeant Driskell taking T.S. to the police station, Sergeant Driskell testified that, at the time he initiated the encounter, he intended to take T.S. to the Dean's office. Therefore, although Sergeant Driskell did not act in conjunction with other school officials prior to the initial contact with T.S., when he initiated contact, he had the intent to involve the school's dean. Such intent indicates that Sergeant Driskell was concerned with a possible violation of school rules, and not solely a criminal violation. We also agree with the rationale of the North Carolina and Pennsylvania courts that the presence of drugs on school property presents a serious threat to a learning environment. Therefore, Sergeant Driskell acted not only to ferret out criminal activity, but also to preserve an environment conducive to education.

After considering the reduced expectation of privacy that students enjoy in public schools, we hold that Sergeant Driskell acted reasonably in investigating the tip. Removing T.S. from class, although certainly an intrusion on his privacy, was not an invasive intrusion. Indeed, school officials routinely remove students from class for a variety of reasons. Although, as T.S. points out, it may cause more embarrassment for a student to be removed by a police officer, the officers to which this holding applies are also people whom students routinely see in the hallways, and are in the schools not only to enforce laws, but also to maintain a safe environment conducive to learning. As discussed above, the presence of drugs in schools is a serious problem that jeopardizes the learning environment. We think it reasonable that an officer charged with maintaining this environment investigate a tip indicating that a student has drugs on school property by removing the student from class for questioning with the intent of taking the student

to the dean's office. Therefore, the seizure of T.S. did not violate his Fourth Amendment rights. We [also] conclude that given the totality of the circumstances, most importantly the school setting and Sergeant Driskell's role within the school, Sergeant Driskell's seizure of T.S. was reasonable under the Indiana constitution.