

Scenario 2 Response
“The Search”
Keith David Reeves

The Scenario

During lunch, a student entered the assistant principal’s office at Chance High School. The student reported to the assistant principal, Mr. Smith, that Mildred Morgan, a senior, was selling marijuana in the school parking lot. Mr. Smith believed the information to be reliable because of past experiences with both students, and because he had received information earlier from other concerned students that Mildred was involved with drugs.

Mr. Smith called Mildred to his office. When she entered the room, Mr. Smith asked her to open her purse, and she did so willingly. Mr. Smith saw, in plain view, a large roll of dollar bills and a pager. Mr. Smith immediately called for the school’s Resource Officer.

The Resource Office, along with Mr. Smith, took Mildred to her school locker. Mr. Smith asked her to open the locker, and she did. Mr. Smith searched the locker and found nothing. The Resource Officer told Mildred that he would need to search her car in the school parking lot. At first, Mildred refused. After speaking with her mother by telephone, Mildred gave the Resource Officer her car keys.

The Resource Officer and Mr. Smith searched the car while Mildred waited in the office. They found a notebook and another pager. The notebook contained the names of students at the school along with dollar amounts written next to their names. In the trunk of the car, they found an unlocked briefcase. A search of the trunk and the briefcase produced no marijuana or other evidence that lead conclusively to illegal activity. They returned to the school building and Mr. Smith sent Mildred back to class.

Early the next morning, Mr. Smith received a phone call from Mrs. Morgan. In an angry voice she said that she would be in contact with her lawyer, and that a “law suit would be coming in the near future.” She said, “You and the Resource Officer harassed my daughter, her reputation is ruined, and you violated her rights to privacy by looking in her purse and in her car. You will both pay dearly for your actions!”

What are the issues? Does Mrs. Morgan have a case? Can you defend Mr. Smith’s actions and that of the Resource Officer?

My Summary

Summary: The school division was NOT in the wrong in three out of three instances.

Action: School conducts search of personal belonging.

New Jersey v. T.L.O. (469 U.S. 325 [1985]) does not require a school division to have “probable cause,” but explicitly uses the language “reasonableness” as a standard for authorizing search and seizure. *New Jersey* is the operant test in all three tests in this case. As *New Jersey* dealt with a minor,

A student reported a violation of law on school property by an enrolled student. This report was echoed by multiple students. This meets the standard of “reasonableness” for a basic questioning of the student. Mildred was called into the office and asked to open her purse. It is reasonable to ask a student to open her purse when there is a question about her possession and distribution of marijuana.

My opinion: The school acted properly within its rights and under its responsibilities.

Action: School conducts search of locker.

The discovery of a pager alone would probably not constitute “reasonableness” for further search. However, a “large roll of dollar bills” is not something students generally carry, and is consistent with the alleged illegal conduct. I believe this would further meet the charge of “reasonableness,” particularly as the principal in *New Jersey* used his professional experience to determine that a particular item was associated closely enough with the offending behavior to warrant further search.

Moreover, the roll was in plain view once the purse was opened, which under *New Jersey* is further held to be exempt from warrant requirements under the Fourth Amendment.

The fact that the locker did not contain anything does not reasonably preclude the search of the car. Had the car been the next step in the search, the “finding nothing” test would be invalid. Indeed, the offending behavior was reported to have occurred in the parking lot.

My opinion: The school acted properly within its rights and under its responsibilities.

Action: School conducts search of car and contents.

The discovery of a second pager would again probably not constitute “reasonableness” for further search. However, the notebook in question is once again a damning piece of evidence that would lead a reasonable adult to suspect that the allegations of illegal behavior may have merit.

Mr. Smith did not, in the scenario, discipline the student or contact the authorities beyond the School Resource Officer. Consequently, there is no disciplinary or judicial action to analyze in the case; only the searches themselves.

Under *New Jersey*, a clear test is established: school officials must limit their non-warrant-based search and seizure to “reasonable suspicion.” The report from another student began the process, but it was the discovery of materials reasonably thought to be associated with the alleged misconduct that proffered the subsequent search. According to *New Jersey*, the searches can be quite extensive, including opening lockers, zippered compartments, and so forth.

My opinion: The school acted properly within its rights and under its responsibilities.

Conclusion

The school acted within its authority and did not violate the rights of the student in question. In all three tests, the school operated within the authority granted it under *New Jersey*.

Mrs. Morgan does not have a case on the bases of harassment and/or the violation of right(s) to privacy. A student’s reputation in this case is not a legal consideration, as no action was designed to or would have a reasonably-estimated impact on the welfare of the child.