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SUPREME COURT OF NEW YORK KINGS COUNTY

People v. Butler¹
(decided April 25, 2001)

Jameel Butler, was indicted on various weapons offenses after he was searched and frisked inside the Dean's Office of Sheepshead Bay High School, and that search uncovered a loaded handgun.² The defendant moved to suppress the handgun based on the protections afforded to individuals against unreasonable search and seizure, as set forth in both the Federal³ and New York State constitutions.⁴ A *Mapp/Huntley*⁵ hearing was held on April 10, 2001, after which the court granted part of defendant's Huntley motion, which sought suppression of statements made by the defendant to police officers. However, the court denied defendant's motion to suppress the gun.⁶ Although the *Butler* court stated that defense counsel was correct in noting that the Fourth Amendment operates to protect students from unreasonable searches and seizures,⁷ the court held that the search of the defendant by school authorities was appropriate, stating, "searches. . .by school authorities do not require *probable cause*."⁸

¹ 188 Misc.2d 48, 725 N.Y.S.2d 534 (Sup. Ct. Kings County 2001).

² *Id.*

³ U.S. CONST. amend IV provides in pertinent part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated"

⁴ N.Y. CONST. art. I, § 12 provides in pertinent part: "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated"; *Butler*, 188 Misc.2d at 49, 725 N.Y.S.2d at 536.

⁵ See *People v. Huntley*, 15 N.Y.2d 72, 204 N.E.2d 179, 255 N.Y.S.2d 848 (1965) (requiring that, before trial, a judge conduct a hearing to determine the voluntariness of a confession prior to the admission of the confession to the jury, and the judge must find voluntariness beyond a reasonable doubt); see also *Mapp v. Ohio*, 367 U.S. 643 (1961). A *Mapp* hearing is a judicial inquiry that is conducted to determine whether evidence was obtained in violation of a defendant's Fourth Amendment right to be free from an unreasonable search and seizure.

⁶ *Butler*, 188 Misc.2d at 49-50, 725 N.Y.S.2d at 536.

⁷ *Id.* at 52, 725 N.Y.S.2d at 538.

⁸ *Id.* at 55, 725 N.Y.S.2d at 540 (emphasis added).

The rationale of the *Butler* court was based upon the standard adopted by the United States Supreme Court in *New Jersey v. T.L.O.*,⁹ which held that searches of students by school authorities may be conducted upon “reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or rules of the school.”¹⁰ As part of its constitutional analysis, the *Butler* court considered the safety implications involved in the searching of students in school. The court recognized that “school is a special kind of place in which serious and dangerous wrongdoing is intolerable.”¹¹ In other words, the court adopted a reasonableness standard for searching students in school, based upon a balancing between student safety and Fourth Amendment protection against unreasonable searches and seizures.

On September 12, 2001 at approximately 1:15 p.m., Glen Coyle, a school safety officer employed by the New York City Police Department and assigned to Sheepshead Bay High School, observed Butler standing in the lobby of the school wearing a gray bandana or headband around his head, and a similar band on his wrist.¹² Coyle approached Butler and asked him to remove the headgear, because such headgear was prohibited by the School Chancellor’s rules, as it was sometimes a sign of gang affiliation.¹³ Failing to recognize Butler, Coyle asked him whether he was a student, and Butler replied that he was, and stated that he had finished his classes for the day.¹⁴ Coyle then asked to see the defendant’s program card in order to establish identification.¹⁵ When Butler could not produce a program card or any other form of identification, Sergeant Thompson, another school safety officer present at the scene, requested he accompany them to the Dean’s

⁹ 469 U.S. 325 (1985).

¹⁰ *Butler* 188 Misc.2d. at 55, 725 N.Y.S.2d at 540 (citing *T.L.O.*, 469 U.S. at 342).

¹¹ *Id.* at 53, 725 N.Y.S.2d at 538 (holding “prevention of the introduction of handguns and other lethal weapons into New York City schools . . . is a government interest of the highest urgency”).

¹² *Id.* at 50, 725 N.Y.S.2d at 536.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Butler*, 188 Misc.2d at 50, 725 N.Y.S.2d at 536.

office, and Butler agreed to do so.¹⁶ “While escorting Butler to the Dean’s office, Coyle and Thompson encountered two other men, one of whom was wearing a bandana. This man was asked for his program card and produced one bearing the name, Kenmar Butler.”¹⁷ Coyle asked the individual purporting to be Butler (the defendant) to accompany him to the Dean’s office, and although the student initially complied, he fled before reaching the Dean’s office.¹⁸

In a cubicle at the Dean’s office, the Dean, who was in charge of discipline at the school, questioned Butler.¹⁹ During questioning, Butler claimed that he recently transferred into Sheepshead Bay High School from Madison High School. However, he was unable to “name any of the guidance counselors or teachers at Sheepshead Bay High School.”²⁰ The defendant produced a program card bearing the name Kenmar Butler, which was identical to the card that Coyle had confiscated from the student that had fled from him.²¹ Butler claimed that he was Kenmar, but he did not know any details about Kenmar other than his date of birth.²² Because he had no other identification, the Dean requested the school safety officers to search the defendant.²³ Coyle conducted the search by patting down the defendant, and subsequently found a handgun.²⁴ A further search revealed that Butler had picture identification from Madison High School, identifying him as Jameel Butler.²⁵

The court commenced its analysis by noting that both the defense and prosecution made “the mistake of analyzing this in-school encounter between a school safety officer and defendant, who professed to be a student, as the functional equivalent of an

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* at 51, 725 N.Y.S.2d at 537.

¹⁹ *Id.*

²⁰ *Butler*, 188 Misc.2d at 51, 725 N.Y.S.2d at 537.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Butler*, 188 Misc.2d at 51, 725 N.Y.S.2d at 537.

²⁵ *Id.*

encounter between a police officer and a private citizen.”²⁶ The court stated, that “schools have a very different relationship to their students than police officers have to the private citizens they encounter on the street.”²⁷ The relationship between a school and its students is one in which the school stands *in loco parentis*, having the duty to “exercise such care of [the students] as a parent of ordinary prudence would observe in comparable circumstances.”²⁸ However, in *New Jersey v. T.L.O.*,²⁹ the Court held that the doctrine of *in loco parentis* as it relates to the search of students by school officials, is in “tension with contemporary reality and the teachings of this court.”³⁰

In its Fourth Amendment analysis, the *Butler* court relied on the holding of the United States Supreme Court in *New Jersey v. T.L.O.*³¹ In *T.L.O.*, a female high school student was caught smoking in a school lavatory in violation of school regulations.³² The student was brought to the principal’s office where she denied

²⁶ *Id.* at 52, 725 N.Y.S.2d at 538.

²⁷ *Id.*

²⁸ *Id.* (citing *Mirand v. City of New York*, 84 N.Y.2d 44, 49, 637 N.E.2d 263, 266, 614 N.Y.S.2d 372, 375 (1994)); see also *Bellnier v. Lund*, 438 F. Supp. 47, 52 (N.D.N.Y. 1977) (articulating a list of cases where the courts determined that the Fourth Amendment applied to the search of a student by a school official, but the doctrine of *in loco parentis* lowers the standard applied in determining the reasonableness of the search); *People v. Singletary*, 37 N.Y.2d 310, 311, 333 N.E.2d 369, 370, 372 N.Y.S.2d 68 (1975) (“[I]n conducting the search of [defendant’s] person, the dean acted upon the basis of concrete articulable facts”); *People v. Scott D.*, 34 N.Y.2d 483, 488, 315 N.E.2d 466, 470, 358 N.Y.S.2d 403 (1974) (“Given the special responsibility of school teachers in the control of the school precincts. . . the basis for finding sufficient cause for a school search will be less than that required outside the school precincts.”); *People v. Jackson*, 65 Misc. 2d 909, 913, 319 N.Y.S.2d 731, 736 (1st Dep’t 1971) (“the *in loco parentis* doctrine is so compelling in light of public necessity. . . that any action, including a search taken thereunder upon reasonable suspicion should be accepted as necessary and reasonable.”).

²⁹ 469 U.S. at 325.

³⁰ *Id.* at 336; see also *id.* at 336-37 (“[I]n carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents’ immunity from the strictures of the Fourth Amendment.”).

³¹ *Butler*, 188 Misc. 2d at 52, 55, 725 N.Y.S.2d at 540.

³² *T.L.O.*, 469 U.S. at 328.

that she had been smoking.³³ The Assistant Vice Principal opened the student's purse and found a pack of cigarettes and a package of cigarette rolling papers, which was closely associated with the use of marijuana.³⁴ After finding the rolling papers, the Vice Principal conducted a more thorough search of the student's purse, which yielded a small amount of marijuana and other items, indicating possible involvement in the use and sale of marijuana.³⁵ At trial, the student moved to suppress the evidence found in her purse, contending that the Vice Principal's search violated the Fourth Amendment.³⁶

Before addressing the question of what standard of proof must be applied to conduct a search in compliance with the Fourth Amendment, the Court first determined that the Fourth Amendment's prohibition on unreasonable searches and seizures applied to searches conducted by school officials.³⁷ After addressing this threshold question, the Court recognized that the "school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject."³⁸ Accordingly, the Court stated, "[t]he school setting. . . requires some modification of the level of suspicion of illicit activity needed to justify a search."³⁹ "Ordinarily, a search must be based upon *probable cause to believe* that a violation of the law has occurred."⁴⁰ However, "the legality of a search of a student should depend simply on the *reasonableness*, under all the circumstances, of the search."⁴¹ This conclusion was reached in spite of the

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 329.

³⁷ *T.L.O.*, 469 U.S. at 333; see *Camara v. Municipal Court*, 387 U.S. 523, 528 (1967) (holding the basic purpose of [the Fourth Amendment]. . . is to safeguard the privacy and security of individuals against arbitrary invasions by *government officials*) (emphasis added).

³⁸ *T.L.O.*, 469 U.S. at 340.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 341 (emphasis added). The Court further stated that:

Determining the reasonableness of any search involves a twofold inquiry: first, one must determine whether the action was justified at its inception, and second, one must determine

inapplicability of the doctrine of *in loco parentis* to the search of a student by a school official.⁴²

In rendering its decision in *Butler*, the court also relied upon precedent set by the New York Court of Appeals, in *In the Matter of Gregory M.*⁴³ In this case, the defendant was present at the high school he attended without a proper identification card and was directed by a school security officer to report to the office of the Dean to obtain a new card.⁴⁴

Prior to proceeding to the Dean's office, the defendant tossed his book bag on a metal shelf, resulting in a metallic thud heard by the security officer. The security officer ran his fingers over the surface of the book bag and felt the outline of a gun. The bag was brought to the Dean's office and opened by the head of security, revealing a small handgun.⁴⁵

The Family Court's denial of appellant's motion to suppress the gun was upheld on appeal to the appellate division.⁴⁶ The Court of Appeals affirmed the appellate division's decision, holding, "we agree that for searches by school authorities of the persons and belongings of students, such as that conducted in *New Jersey v. T.L.O.*, the reasonable suspicion standard adopted in that case for

whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place. Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when 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. Such a search will be permissible in scope when 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.

⁴² *Id.* at 336-37.

⁴³ 82 N.Y.2d 588, 627 N.E.2d 500, 606 N.Y.S.2d 579 (1993).

⁴⁴ *Id.* at 590, 627 N.E.2d at 501, 606 N.Y.S.2d at 580.

⁴⁵ *Id.*

⁴⁶ *Gregory M.*, 82 N.Y.2d at 591, 627 N.E.2d at 501, 606 N.Y.S.2d at 580.

Fourth Amendment purposes is also appropriate under our State Constitution.”⁴⁷ Similarly, in *People v. Scott D.*,⁴⁸ the Court of Appeals held that “[g]iven the special responsibility of school teachers in the control of the school precincts . . . the basis for finding sufficient cause for a school search will be less than that required outside the school precincts.”⁴⁹

In conclusion, the language of the federal and New York State Constitutions are essentially identical.⁵⁰ Both provide for the protection of individuals against unreasonable searches and seizures. In addition, both the federal and New York courts have held that a standard less than probable cause is sufficient to satisfy the requirements of both the federal and state constitutions as they relate to searches of students by school officials.⁵¹ The decision by the New York Court of Appeals in *In The Matter of Gregory M.*, highlighted the overlap and similarity in federal and New York constitutional interpretation when it stated that “[w]e agree that for searches by school authorities of the persons and belongings of

⁴⁷ N.Y. CONST. art. I, § 12; *Gregory M.*, 82 N.Y.2d at 592, 627 N.E.2d at 502, 606 N.Y.S.2d at 581.

⁴⁸ 34 N.Y.2d 483, 315 N.E.2d 466, 358 N.Y.S.2d 403 (1974).

⁴⁹ *Id.* at 488, 315 N.E.2d at 469, 358 N.Y.S.2d 403. The court in *Scott D.* found the search conducted by the school official of a student to be unreasonable, thus granting suppression of the evidence obtained during the search. Although the court stated that youngsters in school may not be treated with the same circumspection required outside the school or to which self-sufficient adults are entitled, the court held that this analysis does not permit random causeless searches. *Id.*; see also *M.M. v. Anker*, 607 F.2d 588 (2d Cir. 1979) (holding that there are searches in the school enclave that satisfy Fourth Amendment requirements when based on less than probable cause).

⁵⁰ U.S. CONST. amend. IV; N.Y. CONST. art. I § 12.

⁵¹ *T.L.O.*, 469 U.S. at 341 (holding the legality of a search should depend simply on the reasonableness, under all the circumstances of the search); *Butler*, 188 Misc.2d at 55, 725 N.Y.S.2d at 540 (holding searches [of students] may be made upon reasonable grounds for suspecting that the search will turn up evidence); *Gregory M.*, 82 N.Y.2d at 592, 627 N.E.2d at 502, 606 N.Y.S.2d at 581 (holding for searches by school authorities of the persons and belongings of students the reasonable suspicion standard satisfies the Fourth Amendment and the New York State Constitution); *Jackson*, 65 Misc.2d at 913, 319 N.Y.S.2d at 736 (holding search and seizure based at least upon reasonable grounds for suspecting that something unlawful was being committed must be deemed a reasonable search and seizure within the intentment of the Fourth Amendment).

students, such as that conducted in *New Jersey v. T.L.O.*, the reasonable suspicion standard adopted in that case for Fourth Amendment purposes is also appropriate under our State Constitution.”⁵² The holdings from both the state and federal courts are identical; the standard of reasonableness, rather than probable cause, is sufficient to meet the constitutional standards of both the State and Federal Constitutions.

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⁵² *Gregory M.*, 82 N.Y.2d at 592, 627 N.E.2d at 502, 606 N.Y.S.2d at 581.