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Search and Seizure: In re Gregory M.

In re Gregory M.[2403]
(decided December 20, 1993)

The appellant claimed that his right to be free from illegal searches and seizures under both the State[2404] and Federal[2405] Constitutions were violated when upon entering his high school, his bag was searched and a .38 special handgun was found.[2406] The court of appeals held that "[a]lthough minimally intrusive, the purposeful investigative touching of the outside of appellant's book bag by the school security officer . . . falls marginally within a search for constitutional purposes."[2407] In so holding the court affirmed the appellate division's decision and denied the defendant's motion to suppress.[2408]

On November 29, 1990, the appellant, then fifteen years old, went to his high school but was not allowed to enter because he lacked a proper student identification card.[2409] A security guard directed the defendant to go to the Dean's office and obtain a new card.[2410] School policy required that all students leave their belongings with the security officer before going to the Dean's office.[2411] As the defendant "tossed" his book bag onto a shelf, the security guard heard a "thud" that sounded "unusual" and metallic.[2412] As a result, the security guard examined the outside of the book bag by touching its surface and he felt the outline of

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2403. 82 N.Y.2d 588, 627 N.E.2d 500, 606 N.Y.S.2d 579 (1993).

2404. N.Y. CONST. art. I, § 12. Section 12 states 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 . . . ." *Id.*

2405. U.S. CONST. amend. IV. The Fourth Amendment states 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 . . . ." *Id.*

2406. *Gregory M.*, 82 N.Y.2d at 590-91, 627 N.E.2d at 501, 606 N.Y.S.2d at 580.

2407. *Id.* at 591, 627 N.E.2d at 501, 606 N.Y.S.2d at 580.

2408. *Id.*

2409. *Id.* at 590, 627 N.E.2d at 501, 606 N.Y.S.2d at 580.

2410. *Id.*

2411. *Id.*

2412. *Id.*

a gun.[2413] The Dean was notified and upon feeling the surface of the bag, he also determined the object to be a gun.[2414] Accordingly, the Dean confiscated the bag and brought it to his office where it was opened by the head of security.[2415] Upon opening the bag, a .38 Titan Tiger Special handgun was revealed.[2416]

The court affirmed both the family court and the appellate division decisions denying the defendant's motion to suppress the gun as evidence.[2417] In reaching its conclusion, the court stated that "although the security guard's investigative touching was only 'minimally intrusive,' it fell 'marginally' within a search for constitutional purposes."[2418] The court agreed with the defendant's argument that the thud heard by the security guard did not by itself give rise to a reasonable suspicion justifying the search of the defendant's bag.[2419] However, the court held that the investigative outer touching of the appellant's bag was justified since "a less rigorous premonition concerning the contents of the bag" was all that was needed.[2420] Once the outer touching revealed an object discernible as a gun-shaped object, there was reasonable suspicion to justify opening the bag.[2421]

The court stated that "for searches by school authorities of the persons and belongings of students," the reasonable suspicion standard should be applied.[2422] In analyzing the circumstances surrounding this case, however, the court ruled that "the investigative touching of the outer surface of appellant's book bag [fell] within a class of searches far less intrusive than those

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2413. *Id.*
2414. *Id.*
2415. *Id.*
2416. *Id.*
2417. *Id.* at 590-91, 627 N.E.2d at 501, 606 N.Y.S.2d at 580.
2418. *Id.* at 591, 627 N.E.2d at 501, 606 N.Y.S.2d at 580.
2419. *Id.* The defendant argued that the "search" by the security guard of touching his bag was itself overly intrusive and violated his constitutional rights against illegal searches and seizures because the security guard did not have reasonable suspicion to conduct such a search. *Id.*
2420. *Id.*
2421. *Id.* at 591, 627 N.E.2d at 501, 606 N.Y.S.2d at 580-81.
2422. *Id.* at 592, 627 N.E.2d at 502, 606 N.Y.S.2d at 581.

which . . . require application of the reasonable suspicion standard."[2423] The court observed that the defendant in this case only had "a minimal expectation of privacy" in the feeling of the outer part of his school bag.[2424] The odd thud justified a touching of the outside part of the school bag.[2425] After feeling a gun-like object inside the bag, school officials had reasonable suspicion to justify the search of the contents of the bag.[2426]

The *Gregory M.* court relied on *People v. Scott D.*[2427] in rendering its conclusion that a less rigorous test was to be applied when dealing with what the court characterized as "minimal levels of intrusiveness" to search a student's bag.[2428] In *Scott D.*, the court broadly held that students who attended public schools were protected against unreasonable searches and seizures.[2429] The court explained that to determine whether a search is reasonable required a "balancing of basic personal rights against urgent social necessities."[2430] However, the court held that

> [g]iven the special responsibility of school teachers in the control of the school precincts and the grave threat, even lethal threat, of drug abuse among school children, the basis for finding sufficient

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2423. *Id.* at 592-93, 627 N.E.2d at 502-03, 606 N.Y.S.2d at 581. The court relied on Camara v. Municipal Court, 387 U.S. 523 (1967), for support in its holding that "reasonable suspicion is [not] a constitutional floor for purposes of all types of searches . . . ." *Gregory M.*, 82 N.Y.2d at 594, 627 N.E.2d at 503, 606 N.Y.S.2d at 582. In *Camara*, the United States Supreme Court held that a warrantless search of an apartment without consent of the tenant did not necessarily violate the Fourth Amendment because no probable cause existed. *Camara*, 387 U.S. at 538. "Reasonableness is still the ultimate standard." *Id.* at 539.

2424. *Gregory M.*, 82 N.Y.2d at 593, 627 N.E.2d at 502, 606 N.Y.S.2d at 581.

2425. *Id.* at 593-94, 627 N.E.2d at 503, 606 N.Y.S.2d at 582.

2426. *Id.* at 594, 627 N.E.2d at 503, 606 N.Y.S.2d at 583.

2427. 34 N.Y.2d 483, 315 N.E.2d 466, 358 N.Y.S.2d 403 (1974).

2428. *Gregory M.*, 82 N.Y.2d at 595, 627 N.E.2d at 504, 606 N.Y.S.2d at 583.

2429. *Scott D.*, 34 N.Y.2d at 487, 315 N.E.2d at 469, 358 N.Y.S.2d at 407.

2430. *Id.* at 488, 315 N.E.2d at 469, 358 N.Y.S.2d at 408.

> cause for a school search will be less than that required outside the school precincts.[2431]

In a more recent case, *In re Ronnie H.*,[2432] a high school student was in the hallway of his school when the assistant principal stopped him because he thought the student was wearing a stolen jacket.[2433] The student "agreed to leave the jacket with the principal until it could be identified. When the [student] asked to retrieve his property from the jacket, the principal, in removing the contents from one of the pockets, found a plastic bag containing four vials of crack cocaine."[2434] Interestingly, the court noted that the student himself had asked the principal to remove the contents.[2435] The court held that the action of the principal in searching the student's pocket was not a search, "but merely compli[ance] with a request for the return of [the student's] property . . . ."[2436] Moreover, the court stated that had a search been conducted, it "would find that [the principal's] actions were reasonable under all the circumstances."[2437]

In arriving at its conclusion, the court examined federal precedent and relied on the United States Supreme Court decision in *New Jersey v. T.L.O.*[2438] In *T.L.O.*, the Supreme Court ruled

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2431. *Id.* The court further stated that "the child's age, history and record in the school, the prevalence and seriousness of the problem in the school to which the search was directed, and, of course, the exigency to make the search without delay," are all factors to determine the reasonableness of a search of a student. *Id.* at 489, 315 N.E.2d at 470, 358 N.Y.S.2d at 408.

2432. ___ A.D.2d ___, 603 N.Y.S.2d 579 (2d Dep't 1993).

2433. *Id.* at ___, 603 N.Y.S.2d at 579-80.

2434. *Id.* at ___, 603 N.Y.S.2d at 579-80.

2435. *Id.* at ___, 603 N.Y.S.2d at 580.

2436. *Id.* at ___, 603 N.Y.S.2d at 580.

2437. *Id.* at ___, 603 N.Y.S.2d at 580.

2438. 469 U.S. 325 (1985). In *T.L.O.* a high school student was found smoking in the bathroom by a teacher. *Id.* at 328. The student was directed to the principal's office, where she was later questioned. *Id.* Upon the student's denial of the allegations, the principal opened the student's purse and found not only cigarettes, but marihuana and other drug paraphernalia as well. *Id.* In addition, a list of names of the students who owed money to the offender was also found, indicating that she was selling drugs. *Id.* The New Jersey Supreme Court reversed the decision of the lower court which ruled that the search was

on the appropriateness of student searches conducted by school officials.[2439] In its reasoning, the Court stated that the "school setting requires some easing of restrictions to which searches by public authorities are ordinarily subject."[2440] The Supreme Court further stated that the "legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."[2441] Ordinarily, a search will be satisfy this standard if the school official has "reasonable grounds" for believing that a student has violated school rules or laws, and a search would likely reveal evidence of this belief.[2442]

The New York Court of Appeals has held that under certain circumstances, students will have only a minimal expectation of privacy and school officials will be allowed to conduct limited

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reasonable and did not violate the Fourth Amendment. *Id.* at 330-31. The United States Supreme Court, in reversing the state court, ruled that the search did not violate the Fourth Amendment. *Id.* at 333.

2439. *Id.* at 327-28.

2440. *Id.* at 340.

2441. *Id.* at 341.

2442. *Id.* at 341-42. The search must be permissible in scope by being "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.* at 342. However, Judge Titone, in his lone dissent in *Gregory M.*, stated that the security guard's actions did constitute a "full blown search for purposes of constitutional analysis." 82 N.Y.2d at 596, 672 N.E.2d at 504, 606 N.Y.S.2d at 583 (Titone, J., dissenting). Relying on the court of appeals' earlier decision in People v. Diaz, 81 N.Y.2d 106, 612 N.E.2d 298, 595 N.Y.S.2d 940 (1993), Judge Titone stated that the investigative touching of the defendant's bag was of the type that was previously held unconstitutional without a warrant. *Gregory M.*, 82 N.Y.2d at 596-97, 672 N.E.2d at 504-05, 606 N.Y.S.2d at 584 (Titone, J., dissenting). Judge Titone further stated that *New Jersey v. T.L.O.* stood for the proposition that searches upon students were permitted on the grounds of reasonable suspicion only and that a lesser standard was not contemplated by the Supreme Court. *Id.* at 598-99, 672 N.E.2d at 506, 606 N.Y.S.2d at 585 (Titone, J., dissenting). In *Diaz*, a police officer feared that the suspect had a weapon in his possession, and thus he squeezed the suspect's pocket. *Diaz*, 81 N.Y.2d at 108, 612 N.E.2d at 299, 595 N.Y.S.2d at 941. The court of appeals held that the investigative touching of the police officer violated the suspect's Fourth Amendment rights because it involved "a degree of pinching, squeezing or probing" beyond that which is allowed by police officers in a protective pat-down according to Terry v. Ohio. *Diaz*, 81 N.Y.2d at 112, 612 N.E.2d at 302, 595 N.Y.S.2d at 944.

and minimally intrusive searches even though that official had less than reasonable suspicion that the student was violating school rules. Under the Federal Constitution's protection against unreasonable searches and seizures, the Supreme Court has held that reasonable suspicion is enough to give rise to a constitutionally valid search of a student. Therefore, the New York standard provides less protection to the student than does the federal standard.

People v. Holmes[2443]
(decided June 15, 1993)

The state appealed the appellate division's reversal of defendant's criminal conviction for possession of a controlled substance.[2444] The court of appeals affirmed the appellate division holding that the crack cocaine recovered by police officers during pursuit of the defendant should have been suppressed since it was the result of an illegal seizure.[2445]

A police officer, on car patrol with another officer, observed a bulge in the jacket pocket of defendant, who was among a group congregating in a "known narcotics location."[2446] As the police car approached the group, the defendant walked away.[2447] The police officer called the defendant over to the car and as the officer stepped out of the car, the defendant ran.[2448] The two officers pursued the defendant, who discarded a plastic bag during the chase.[2449] Subsequently, the defendant was apprehended, and the bag, later found to contain crack cocaine, was recovered.[2450] Holmes pled guilty to criminal possession of a controlled substance after his motion to suppress the evidence was denied.[2451]

2443. 81 N.Y.2d 1056, 619 N.E.2d 396, 601 N.Y.S.2d 459 (1993).
2444. *Id.* at 1057, 619 N.E.2d at 397, 601 N.Y.S.2d at 460.
2445. *Id.* at 1058, 619 N.E.2d at 398, 601 N.Y.S.2d at 461.
2446. *Id.* at 1057, 619 N.E.2d at 397, 601 N.Y.S.2d at 460.
2447. *Id.*
2448. *Id.*
2449. *Id.*
2450. *Id.*
2451. *Id.*