



## Don't Arrest Someone Just to Make a Point



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In *Scott v. County of San Bernardino*, \_\_\_ F.3d \_\_\_, 2018 WL 4288899 (9th Cir. Sept. 10, 2018), the United States Court of Appeals for the Ninth Circuit was asked to review the District Court's denial of some arresting officers' assertion that they were immune from a civil rights suit filed against them by three middle school students. Specifically, the three girls sued the arresting officers under 42 U.S.C. § 1983 for unlawful arrest in violation of the girls' Fourth Amendment rights, and the officers argued that they were immune from the suit based upon the doctrine of qualified immunity. The District Court disagreed with the officer's invocation of the qualified immunity defense and entered judgment in the girls' favor. The relevant facts on appeal are as follows.

In September and October 2013, seventh-grade student L.V. harassed and bullied several classmates, including Plaintiffs L.R. and S.S., at the Etiwanda Intermediate Middle School ("EIS") in Rancho Cucamonga, California. On September 6, 2013, L.V. assaulted L.R. on the school's playground. L.V. approached L.R. during a classroom break, grabbed her hair, and punched her in the face. R.H., the third plaintiff in this case, tried to pull L.V. off L.R. L.R. did not hit L.V. back, but the school suspended both girls. According to L.R.'s mother, Angelica Santana, the Assistant Principal, Balbina Kendall, told L.R. and Santana that it was school policy to suspend any student involved in a fight, regardless of who was at fault.

After the incident, Santana asked school officials for help in filing a police report with the San Bernardino County Sheriff's Department. Deputy Anthony Thomas, a school resource officer, met with L.R. and Santana about the altercation. Santana asked Deputy Thomas about filing a restraining order against L.V. to protect her daughter (L.R.), but Deputy Thomas replied that it would not be "practical" since the girls attended school together. Deputy Thomas also told his colleague, Deputy Ortiz, that he had taken a report regarding a fight on campus, but Deputy Thomas did not share any further details with Deputy Ortiz.

A few weeks later, L.V. told other students that she was going to assault S.S. On October 2, 2013, S.S. confronted L.V. and said, "[i]f you're going to beat me up, get it over with," and "hit me, bitch." L.V. made good on her threat by punching S.S. who did not hit L.V. back. S.S. later successfully asked the school to change her schedule to separate her from L.V. Over the following weekend, L.V. and another student, A.J., attempted to assault L.R. and S.S. in a local park. The victims fled, seeking assistance at the home of a stranger, who allowed them to call their parents to pick them up.

On the morning of October 8, 2013, Santana notified the school that L.V. had attacked her daughter, L.R., over the weekend, and that she was afraid that L.V. would attack L.R. again at school. That same morning, L.R., S.S., and R.H. went together to the school office and asked to speak with someone about L.V.'s bullying and threats. No administrator was available to speak with them, and the girls were sent to class. Later, the three girls and two other students, L.V. and A.J., were summoned to a group meeting to discuss the conflict. Two other students, M.L. and H.P., were brought to the room shortly after.

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Assistant Principal Kendall had asked Deputy Ortiz to come to the school in order to speak with the students. Kendall, Deputy Ortiz, and the school's principal, Janella Cantu-Myricks, were present at the meeting. Kendall told Deputy Ortiz that she had gathered a group of female students who had been involved in an "on-going feud." Kendall had previously told Deputy Ortiz that EIS had made multiple unsuccessful attempts to stop the conflict and that the problem was escalating. Deputy Ortiz had responded to an "unusually high" number of physical fights between students since the start of the school year.

Kendall addressed the students first by stating that "the threats, the fights after school, the threats [to] fight [at] school . . . this needs to end." She told them that, "[s]o far as I know, all five . . . all seven of you are, have been part of this continuous argument, on campus and off campus. And that is why the officer, Officer Ortiz, is here today. We are going to put an end to this." Deputy Ortiz then spoke to the students in an "attempt[ ] to mediate the problems between the two factions of students and verify[ ] the information provided" to him by Kendall. Deputy Ortiz quickly formed the view that the students were unresponsive to his efforts and were behaving disrespectfully based on their "body language and continued whispering." However, an audio tape of the incident reflected mostly silence in response to Deputy Ortiz's questioning, and no student was captured on the audio speaking loudly or being verbally aggressive.

Within minutes after his arrival, Deputy Ortiz threatened to take all of the students to jail to "prove a point." He told the students: "And for the one lady laughing that thinks it's funny, I am not playing around. I am dead serious that we are taking you guys to jail. That might [be], it might be-is, the most easiest thing to do . . . to wanting to prove a point . . . that I am not playing around. . . . Eventually, maybe, you guys will make it into high school, then I will have to deal with you even more. Here is a good opportunity for me to prove a point and make you guys mature a lot faster." Deputy Ortiz also said that he did not care "who is at fault, who did what. . . . To me, it is the same, same ticket, same pair of handcuffs."

Deputy Ortiz then announced that he was arresting all of the students for unlawful fighting in violation of California law and called Deputy Thomas for backup. Together, the two deputies cited and handcuffed all seven students. L.R. and S.S. were handcuffed in the classroom, and R.H. was handcuffed outside of the school while waiting for police transport. Six of the seven girls, including the three Plaintiffs, were driven in police vehicles to the San Bernardino County Sheriff's Department where they were separated, interviewed, and released to their parents. L.V.—the alleged aggressor—was released to her father on the school campus. Deputy Ortiz later stated that he decided to arrest all seven girls, instead of releasing them to their parents, to avoid what he believed would be further disruption to the school's campus and to prevent potential conflict between the girls' parents. The school took no disciplinary action against any of the seven students, and no criminal charges were ever filed.

Thereafter, the parents of L.R., S.S., and R.H. sued Deputy Ortiz, Deputy Thomas, and the County of San Bernardino under 42 U.S.C. § 1983 in federal court alleging that the arresting officers had unlawfully arrested the girls in violation of their Fourth Amendment rights. The District Court granted partial summary judgment to Defendants on several claims but set the case for trial on the students' Fourth Amendment claims, as well as their state law false arrest and imprisonment claims. On the day that the trial was to begin, the District Court allowed Plaintiffs to move for summary judgment on the remaining claims based on newly-discovered authority regarding the scope of California Penal Code § 415 which Defendants had claimed justified the girls' arrests. The District Court then granted summary judgment to the students, and Defendants timely appealed.

The Ninth Circuit began its Opinion by noting that, in determining whether a police officer is entitled to qualified immunity, federal courts are to ask: (1) whether the officer violated a constitutional right and (2) whether the right was clearly established at the time of the violation. Both prongs of the qualified immunity analysis must be satisfied in order for a plaintiff to overcome a qualified immunity defense.

As for whether the arresting officers violated the girls' Fourth Amendment rights, the Ninth Circuit agreed with the District Court that they had. In *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the United States Supreme Court held that the Fourth Amendment's "prohibition on unreasonable searches and seizures applies to searches conducted by public school officials." *Id.* at 333. The Supreme Court, then, noted that due to the school setting, some easing of the warrant requirements was required and held that whether a warrantless search is permissible depended on the reasonableness, under all of the circumstances, of the search. *Id.* at 341.

A determination of reasonableness requires "a twofold inquiry: first, one must consider whether the action was justified at its inception; second, one must determine whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place." *Id.* Therefore, T.L.O.'s two-part test in the school setting operates as a limited "special needs" exception to the warrant and probable cause requirements of the Fourth Amendment. The Ninth Circuit had previously extended this "special needs" exception to include seizures conducted by school officials.

In this case, the Ninth Circuit agreed with the District Court that the girls' arrests were unreasonable because they were not justified at their inception. The arresting officers were given very little information about the commission of any crimes; instead, they were given generalized allegations of bickering and fighting. Perhaps more importantly, Deputy Ortiz's stated reason for arresting the girls was to "teach them a lesson" and not because the girls had committed any crimes.

The Ninth Circuit explained that the arrest of a middle schooler cannot be justified as a scare tactic, a lesson in maturity, or a chastisement for perceived disrespect. The special needs exception to the Fourth Amendment's warrant requirement simply does not apply where the officer's purpose is not to attend to the special need in question. In other words, an arrest meant only to "teach a lesson" and arbitrarily punish perceived disrespect is clearly unreasonable. Accordingly, the Ninth Circuit agreed with the District Court that the arresting officers had violated the girls' Fourth Amendment right in unlawfully arresting the girls.

Furthermore, the Ninth Circuit concurred with the District Court that the girl's Fourth Amendment right was clear established at the time of their arrest. Under the second prong of the qualified immunity analysis, the constitutional right in question must be clearly established such that a reasonable official would understand that what he is doing violates that right.

Here, the Ninth Circuit explained that, at the time of the students' arrest, it was clearly established that a police seizure at the behest of school officials must, at a minimum, be reasonably related to its purpose and must not be excessively intrusive in light of the age and sex of the student and the nature of the infraction. The arresting officers did not—and indeed, could not—meaningfully contest Deputy Ortiz's motivation for the arrests which he stated multiple times. As such, the Ninth Circuit held that no reasonable officer could have reasonably believed that the law authorizes the arrest of a group of middle schoolers in order to prove a point. Accordingly, the Ninth Circuit concluded that the arresting officers were not entitled to immunity from the girls' civil rights suit against them based upon the doctrine of qualified immunity.

Finally, because the arrests were unjustified, the Ninth Circuit also affirmed the District Court's grant of summary judgment in the girls' favor on the state false arrest claim. Under California law, a law enforcement officer cannot be civilly liable for false arrest when the arrest was lawful, or the peace officer, at the time of the arrest, had reasonable cause to believe the arrest was lawful. The Ninth Circuit concurred with the District Court that the arresting officers lacked both justification and probable cause for their arrests. Therefore, the arresting officers could not avoid liability for false arrest under California law. Accordingly, the Ninth Circuit affirmed the District Court's judgment against the arresting officers and in the girls' favor.