



IS INDIVIDUALIZED SUSPICION NEEDED FOR STRIP SEARCHES IN SCHOOLS?



Knisley v. Pike Co. Joint Vocational School District

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©2010 Brian S. Batterton, Attorney, Legal & Liability Risk Management Institute (llrmi.com), 6th Circuit Court of Appeals *Knisley v. Pike County Joint Vocational School District*, 557 U.S. ____ (2009)

In 2009, the United States Supreme Court decided *Safford Unified School District v. Redding*ⁱ, which set forth the standard for an objectively reasonable strip search in the school environment. In *Redding*, the United States Supreme Court indicated that to have a constitutionally reasonable strip search of a student, the school official must have specific, articulable facts that indicate that a student is presently (1) hiding evidence/contraband beneath his/her underwear and (2) that the contraband or evidence rises to a level of dangerousness that would justify the intrusive nature of a strip search.

In Sixth Circuit Court of Appeals recently decided *Knisley v. Pike County Joint Vocational School District*ⁱⁱ, which considered the impact of the United States Supreme Court's decision in *Redding*.

In *Knisley*, two students told their instructor that cash, a credit card, and two gift cards were missing from their purses. Approximately fifteen students were told to sit down with their hands visible. The students were then taken individually into the first aid room where the school director and another school official dumped out their purses, looked through their books, and checked their shoes, socks and pockets. Additionally, each student's locker was searched. Early during the searches, one student told the school officials that one of the students was hiding the items in her bra. The students were then taken into the restroom individually and told to unhook their bras and lower their pants halfway down their thighs.

The students filed suit alleging that the strip search in the restroom violated the *Fourth Amendment's* prohibition against unreasonable searches. The Sixth Circuit Court of Appeals previously held the search was unreasonable and denied qualified immunity for the school officials. That judgment was

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vacated by the United States Supreme Court in consideration of *Redding*. As such, the Sixth Circuit had to reconsider this case.

The court first noted that for a search in a school to be reasonable under the *Fourth Amendment*, two factors must be met in accordance with *New Jersey v. T.L.O.*ⁱⁱⁱ First, the search must be justified at its inception. This means that reasonable suspicion of a school rule or law violations exist. Second, the search must be reasonably related in scope to the circumstances justifying the search. This factor involves consideration of the measures taken to conduct the search in light of the nature of the items sought, the age and sex of the student and whether the search was overly intrusive.

Typically, searches based on the criteria above involved “individualized suspicion”, meaning the school official has a reason to suspect a *specific* student. However, when officials do not suspect any specific student but rather a group of students, with no factors pointing to a specific student, the court will evaluate the search based on the three criteria stated by the Sixth Circuit in *Beard v. Whitmore Lake School District*.^{iv} The three factors are **(1) the student’s legitimate expectation of privacy, (2) the intrusiveness of the search and (3) the severity of the school system’s needs that were met by the intrusiveness of the search.**^v

The court then considered its 2005 decision in *Beard*. In that case, a student at gym class reported to a teacher that her prom money had been stolen during class. The gym and the student’s backpacks were searched but the money was not found. At this point the about twenty male students were taken *individually* into the men’s locker room and told to lower their shorts and underwear and remove their shirts. The five female students were taken *together* into the girl’s locker room where, while standing in a circle they were required to pull up their shirts and pull down their pants without removing their underwear. The Sixth Circuit noted that this was a case of multiple strip searches that were not based on an individualized suspicion but rather a *generalized suspicion* of a group of students. The court, in *Beard*, stated “...**some search of the persons and effects of students may be warranted when substantial property has been reported recently stolen.**”^{vi} The court then considered the three factors stated above to determine if the searches were reasonable. The court decided that the strip searches violated the *Fourth Amendment* because (1) the searches were highly intrusive, (2) the searches were undertaken to find missing money rather than dangerous weapons or dangerous drugs, (3) the searches were conducted on a significant number of students, (4) the searches were conducted without individualized suspicion, and (5) the female students were strip searched in the presence of other students.

The Sixth Circuit then applied the rules and rationale from *Beard* to the *Knisley* case. At the outset, the court assumed that the search was justified at its inception which is the first factor in the *T.L.O.* test for the reasonableness of a search. The issue at hand would hinge on the second factor of the *T.L.O.* test, particularly whether the scope of the search was reasonable.

To determine if the scope of the search was reasonable, the court looked to the three considerations from *Beard*. The first consideration was the student’s legitimate expectation of privacy. To this, the court stated that students have a significant privacy interest in their unclothed bodies. The defendant

school officials state that the students all “consented” to the searches based upon the student handbook search policy. However, the court stated that the student handbook did not waive the student’s privacy interests in this case, given the lack of mutual consent.

The second consideration concerned the intrusiveness of the search. The defendant school officials cite to the fact the students were not required to remove their underwear and they were not touched. However, at least one student was not wearing underwear and several were wearing underwear that exposed a significant amount of skin.

Lastly, the third considered was related to the severity of the school system’s needed in conducting the intrusive searches. The court, quoting their decision in *Beard* stated

...a search undertaken to find money serves a less weighty governmental interest than a search undertaken for items that pose a threat to the health or safety of students, such as drugs or weapons... The government may have a comparatively strong interest in searching a particular student reasonably suspected of theft because of the likelihood that the search will be successful. Such interest is diluted considerably when, instead of one, two, or three students, the school officials search over twenty students, without reason to suspect that any particular student was responsible for the alleged theft. In that case the intrusive search of each individual is that much less likely to be successful.^{vii}

Thus, the lack of individualized suspicion, in consideration of the above, weighed against the reasonableness of the search. While the defendant school officials argued that they had “individualized suspicion” of the whole group of students, the court, citing *Beard*, held that the defendants lacked individualized suspicion.

Thus, the court held that the strip searches violated the *Fourth Amendment*.

However, even though the search was held to be unconstitutional, government officials such as school officials, can still receive qualified immunity from suit if their actions did not “violate clearly established statutory or constitutional rights of which a reasonable person would have known.”^{viii} The court held that their decision in *Beard* should have given the defendants fair warning that their actions were unconstitutional. Further, since *Beard* was decided prior to the United States Supreme Court’s decision in *Redding*, and since *Beard* is consistent with the holding in *Redding*, the Sixth Circuit held that *Redding* does not demand a different result from its previous decision. Therefore, the defendants were not entitled to qualified immunity.

THE BOTTOM LINE

1. If a school is going to allow strip searches under certain circumstance, the strip search should always be based on an individualized suspicion.

2. Further, if the school is going to allow strip searches, in order to comply with the United States Supreme Court's decision in *Redding*, strip searches should be limited to situations where (1) the school official can articulate specific facts that indicate that the student is presently concealing evidence of wrongdoing beneath his/her underwear and (2) the school official can articulate specific facts that indicate that the student is concealing a dangerous object or dangerous drugs and a less intrusive search (i.e.: outer clothing and bags) has not located the dangerous object.

Note: Court holdings can vary significantly between jurisdictions. As such, it is advisable to seek the advice of a local prosecutor or legal advisor regarding questions on specific cases. This article is not intended to constitute legal advice on a specific case.

CITATIONS:

ⁱ 557 U.S. ____ (2009)

ⁱⁱ No. 08-3082, 2010 U.S. App. LEXIS 9860 (6th Cir. Decided May 14, 2010)

ⁱⁱⁱ 469 U.S. 325 (1985)

^{iv} 402 F.3d 598 (6th Cir. 2005)(citing *Vernonia School District v. Acton*, 515 U.S. 646 (1995))

^v *Id.* at 604

^{vi} *Id.*

^{vii} *Knisley*, No. 08-3082 at 9-10 (quoting *Beard*, 402 F.3d at 605)

^{viii} *Id.* at 12 (quoting *Harlow v. Fitzgerald*, 457 U.S. 800 (1982))

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