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IN THE SUPREME COURT OF OHIO
2016

STATE OF OHIO,	Case No. 2016-0271
Plaintiff-Appellant,	On Appeal from the Franklin County Court of Appeals, Tenth Appellate District
-vs-	
JOSHUA POLK,	
Defendant-Appellee.	Court of Appeals Case No. 14AP-787

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STATEMENT OF THE FACTS

I. Polk is indicted and moves to suppress evidence.

In May 2013, defendant Joshua Polk was indicted on one count of illegal conveyance or possession of a deadly weapon in a school safety zone under R.C. 2923.122. R. 3. The defense moved to suppress evidence, and the trial court held a suppression hearing, at which Robert Lindsey testified for the State. Lindsey is the safety and security resource coordinator at Whetstone High School, a Columbus Public School. Tr., 4-5. Lindsey testified that his job was to "take care of [the kids]," and that he is involved with "anything to do with safety and security" to "ensure kids are safe." Tr., 5. Lindsey is not a police officer. Tr., 6.

On February 5, 2013, a bus driver handed Lindsey a book bag that had been left on a school bus that morning. Tr., 6. Lindsey opened the bag and saw Polk's name on some papers. Tr., 6. Lindsey then emptied the bag and found multiple bullets inside. Tr., 6-7. Lindsey initially stated that he notified the principal after discovering the bullets, but he later stated that he took the bag to the principal's office after seeing Polk's name and that he and the principal emptied the bag together. Tr., 6, 57.

Lindsey explained that he emptied the bag pursuant to the school's policy to search any unattended bag. Tr., 8, 15, 43, 45. The reasons for the policy are to identify the owner of the bag and to ensure the bag does not pose a threat to safety. Tr., 8, 15. Lindsey explained that even after discovering that the bag belonged to Polk, emptying the bag was necessary for "safety concerns." Tr., 20-21. Lindsey knew Polk to be a reputed gang member, but Lindsey was adamant that he would have "treated the bag the same way" regardless of who owned it. Tr., 9, 22-23. Lindsey stated that he would have neglected his job duties had he not emptied the bag. Tr., 13-14. After finding the bullets in the bag, the principal notified the school resource officer. Tr., 9-10, 28. Lindsey, the principal, and the school resource officer then found Polk, at which

point Lindsey searched another bag that Polk was carrying at the time—inside this bag was a gun. Tr., 10-12.

II. The trial court grants the motion to suppress.

The trial court granted the defense's motion to suppress the gun. R. 111. The trial court found that Lindsey initially opened the bag "for the purposes of identifying the student to whom it belonged and for general 'safety and security.'" *Id*., 2. The trial court further found that "it was reasonable for Officer Lindsay [sic] to conduct this initial search of the unattended book bag for not only safety and security purposes, but also to identify the book bag's owner." *Id*., 3-4. The trial court went on to find that Lindsey's "original purpose for the search was fulfilled" once he discovered that Polk owned the bag. *Id*., 4. At this point, according to the trial court, Lindsey could not empty the bag absent "'reasonable grounds' for suspecting that the search would turn up evidence that the Defendant had violated or was violating either school rules or the law." *Id*.

According to the trial court, "[i]f Officer Lindsay [sic] had dumped the entire contents of the bag in his initial search for safety purposes and/or to obtain the owners [sic] identity, then no violation would have occurred. However, the second search was conducted solely based on the identity and reputation of the owner. This does not equate to 'reasonable grounds' for suspecting the violation of school rules or the law." *Id*. at 4. Lastly, the trial court held that the good-faith exception to the exclusionary rule did not apply because the search was not supported by reasonable suspicion. *Id*., 5.

III. The Tenth District affirms in a divided opinion.

The State appealed to the Tenth District, and that court affirmed in a divided opinion. The lead opinion analyzed the search of the first book bag as two separate searches. "The first search of Polk's property occurred when Lindsey examined the bag found on the bus and made a

cursory inspection of its contents for safety purposes as an unattended bag, examined to determine if it posed a danger, such as containing a dangerous device, and for determining to whom the bag belonged." Op. at ¶ 12. Regarding this first search, the lead opinion states that "the need to determine ownership of the bag and to determine that it did not pose a hazard justified the limited intrusion of opening the bag and making a cursory examination of its contents." *Id*. at ¶ 13. According to the lead opinion, once Lindsey "successfully determined both that the bag was not a bomb and that it was owned by Polk (a student at the school) during the initial search," "all justifications for examining the bag's contents were fulfilled and no further justification existed to search the bag." *Id*. at ¶ 14.

The second search was Lindsey's subsequent emptying of the bag. The lead opinion agreed with the trial court that "emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification." *Id*. at ¶ 16. Nonetheless, the lead opinion states that the trial court was "well within its fact-finding discretion to conclude * * * that the second search was based 'solely' on rumors of Polk's gang affiliation." *Id*. The lead opinion states that the trial court properly suppressed the gun as a fruit of the discovery of the bullets. *Id*. at ¶ 19.

The lead opinion also found that the federal exclusionary rule applies to searches conducted by public-school employees, relying on (1) *Elkins v. United States*, 364 U.S. 206 (1960), which repudiated the "silver platter" doctrine, (2) decisions from other states, and (3) the perceived deficiencies of civil-rights suits under 42 U.S.C. § 1983. Op. at ¶¶ 20-26. It further states that the good-faith exception to the exclusionary rule did not apply because "Lindsey relied on his own judgment in deciding to search Polk's bag based 'solely' on rumors that Polk was a gang member." *Id*. at ¶ 29.

Judge Dorrian concurred in part and dissented in part. She agreed with the lead opinion that, "in a school setting, emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification." *Id*. at ¶ 33 (Dorrian, J., concurring in part and dissenting in part). Judge Dorrian's opinion, however, states that the trial court erred in relying on the absence of adequate suspicion to empty the bag. *Id*. at ¶ 33. Judge Dorrian would have remanded for the trial court to determine "whether the measures adopted were reasonably related to the objectives of the initial search (safety and identification) and whether the search was not excessively intrusive in light of the age and sex of the student and nature of the infraction." *Id*. at ¶ 34. Judge Dorrian also criticized the lead opinion for suggesting that *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), "already determined the issue of whether the exclusionary rule applies in a school setting to school officials." Op. at ¶ 35. In fact, *T.L.O.* expressly left open the question of whether the exclusionary rule applies to searches conducted by public-school employees. *Id*. at ¶ 36, quoting *T.L.O.*, 465 U.S. at 333, n. 3.

The State sought discretionary review, and this Court accepted jurisdiction. *05/18/2016 Case Announcements*, 2016-Ohio-3028.

ARGUMENT

First Proposition of Law: A search is constitutional if it complies with a public school's reasonable search protocol. The subjective motive of the public-school employee performing the search is irrelevant.

The Fourth Amendment prohibits "unreasonable searches and seizures." Whether a search is reasonable "is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests." *Skinner v. Railway Labor Executives' Assn.*, 489 U.S. 602, 617 (1989). In the law-enforcement context, reasonableness usually requires a warrant supported by probable cause. *Board of Ed. of Ind. Sch. Dist. No. 92 of Pottawatomie Cty. v. Earls*, 536 U.S. 822, 829-830 (2002). But a warrant and probable cause are

not required when a search is justified by "special needs" beyond law enforcement. *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 653 (1995).

The public-school setting is a "special need." *Earls*, 536 U.S. at 829, citing *Acton*, 515 U.S. at 653; *see also*, *T.L.O.*, 469 U.S. at 352 (Blackmun, J., concurring). Because public-school students have reduced privacy interests, and because public schools are responsible for maintaining order and a safe learning environment, a search in a public school need only be reasonable; no warrant or probable cause is required. *T.L.O.*, 469 U.S. at 341-342.

Lindsey's emptying of the book bag found on the school bus was reasonable because it was done pursuant to the school's established policy to search all unattended bags for safety and security purposes. The absence of individualized suspicion is immaterial; the search was reasonable because the policy is reasonable. Both the trial court and the lead opinion found that emptying the bag would have been reasonable had it occurred before Lindsey saw Polk's name on the papers inside the bag. But determining that the bag belonged to Polk did not negate the reasonableness of emptying the bag for safety purposes. And even if seeing Polk's name affected Lindsey's subjective motives for emptying the bag, this has no bearing on the reasonableness analysis. A search is reasonable—and thus constitutional—if it is conducted pursuant to a public school's reasonable search policies, regardless of what the public-school employee who performed the search was thinking at the time.

I. Given the special needs of the public-school context, a search in a public school need only be reasonable; no warrant or probable cause is required.

A. Courts must balance students' constitutional rights with the special circumstances of the school environment.

"[W]hile children assuredly do not 'shed their constitutional rights * * * at the school-house gate,' * * * the nature of those rights is what is appropriate for children in school." *Acton*,

515 U.S. at 655-656, quoting *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503, 506 (1969). Thus, "'the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.'" *Morse v. Frederick*, 551 U.S. 393, 396 (2007), quoting *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682 (1986). "[T]he rights of students must be applied in light of the special characteristics of the school environment." *Morse*, 551 U.S. at 396, quoting *Hazelwood School Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988), quoting *Tinker*, 393 U.S. at 506 (internal quotation marks omitted). The United States Supreme Court has "repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with constitutional safeguards, to prescribe and control conduct in the schools." *Tinker*, 393 U.S. at 507.

For example, a public-school student's First Amendment rights must be balanced against the school's interests in education and maintaining order in the school. A public school may prohibit speech that will "materially and substantially disrupt the work and discipline of the school." *Morse*, 551 U.S. at 403, quoting *Tinker*, 393 U.S. at 513. Even without substantial disruption, "[t]he undoubted freedom to advocate unpopular and controversial views in schools and classrooms must be balanced against the society's countervailing interest in teaching students the boundaries of socially appropriate behavior." *Fraser*, 478 U.S. at 681; *Kuhlmeier*, 484 U.S. at 271, n. 4 (noting that holding in *Fraser* was not based on any substantial disruption).

Thus, public-school students have a constitutional right to engage in non-disruptive political speech. *Tinker*, 393 U.S. at 514. But they have no constitutional right to engage in offensively lewd and indecent speech at a school assembly, *Fraser*, 478 U.S. at 685-686; to engage in speech that may reasonably be perceived as "bear[ing] the imprimatur of the school" and that is inconsistent with the school's "legitimate pedagogical concerns," *Kuhlmeier*, 448 U.S.

at 271-273; or to promote illegal drug use at a school-sanctioned event, *Morse*, 551 U.S. at 403-409. In each of these cases, the "special characteristics of the school environment," *id*. at 396, outweigh the public-school students' free-speech rights.

B. Public-school students have limited privacy interests, and schools have a compelling interest in maintaining order and a safe learning environment.

Public-school students enjoy also limited Fourth Amendment rights. "Although the underlying command of the Fourth Amendment is always that searches and seizures be reasonable, what is reasonable depends on the context within which a search takes place." *T.L.O.*, 469 U.S. at 337. "The determination of the standard of reasonableness governing any specific class of searches requires 'balancing the need to search against the invasion which the search entails.'" *Id*., quoting *Camara v. Municipal Court*, 387 U.S. 523 (1967). While public-school employees are considered government actors for purposes of the Fourth Amendment, *T.L.O.*, 469 U.S. at 336, "'Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere; the "reasonableness" inquiry cannot disregard the schools' custodial and tutelary responsibility for children,'" *Earls*, 536 U.S. at 829-830, quoting *Acton*, 515 U.S. at 656.

On one side of the balance is public-school students' limited expectation of privacy. Public-school students are not prisoners, such that they have no legitimate expectation of privacy at all in the school. *T.L.O.*, 469 U.S. at 338-339, citing *Ingraham v. Wright*, 430 U.S. 651, 669 (1977). But "[i]n any realistic sense, students within the school environment have a lesser expectation of privacy than members of the population generally." *T.L.O.*, 469 U.S. at 348 (Powell, J., concurring). "A student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety." *Earls*, 536 U.S. at 830. "Securing order in the school environment sometimes requires that students be subjected to

greater controls than those appropriate for adults." *Id*., citing *T.L.O.*, 469 U.S. at 350 (Powell, J., concurring).

On the other side of the balance is public schools' compelling interest in maintaining order and a safe learning environment. Teachers and administrators have a "substantial interest" in "maintaining discipline in the classroom and on school grounds." *T.L.O.*, 469 U.S. at 339. While by no means the only challenges that public-school officials face in maintaining order in the schools, drug use and violent crime have become "major social problems." *Id*; *see also*, *Earls*, 536 U.S. at 834 ("Indeed, the nationwide drug epidemic makes the war against drugs a pressing concern in every school."). "Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." *T.L.O.*, 469 U.S. at 339. "[G]overnment has a heightened obligation to safeguard students whom it compels to attend school." *Id*. at 353 (Blackmun, J., concurring). As this Court has stated, "[s]choolteachers, school officials, and school authorities have a special responsibility to protect those children committed to their care and control." *Yates v. Mansfield Bd. of Edn.*, 102 Ohio St.3d 205, 2004-Ohio-2491, ¶ 45.

Maintaining a safe learning environment is important not just for its own sake, but it is also necessary to fulfill the public school's obligation to educate its students:

> The primary duty of school officials and teachers, as the Court states, is the education and training of young people. A State has a compelling interest in assuring that the schools meet this responsibility. Without first establishing discipline and maintaining order, teachers cannot begin to educate their students. And apart from education, the school has the obligation to protect pupils from mistreatment by other children, and also to protect

> teachers themselves from violence by the few students whose conduct in recent years has prompted national concern.

Id. at 350 (Powell, J., concurring); *see also*, *Goss v. Lopez*, 419 U.S. 565, 580 (1975) ("Some modicum of discipline and order is essential if the educational function is to be performed."). As the events at Columbine High School, Chardon High School, Sandy Hook Elementary School, and too many others demonstrate, this "national concern" is just as strong now as when *T.L.O.* was decided. Teachers cannot teach and students cannot learn if the school is not safe.

C. Public-school searches need only satisfy a "reasonableness" standard, which does not require individualized suspicion.

To "strike the balance" between students' legitimate (albeit reduced) expectation of privacy and the school's need to maintain a safe learning environment, there must be some "easing of the restrictions to which searches by public authorities are ordinarily subject." *T.L.O.*, 469 U.S. at 340. "The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools." *Id*. Moreover, "the accommodation of the privacy interests of school children with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law." *Id*.

Rather than requiring a warrant or probable cause, "the legality of the search of a student should depend simply on the reasonableness, under all the circumstances, of the search." *Id*. at 341. Reasonableness involves a twofold inquiry: "first, one must consider 'whether the ... action was justified at its inception,'" and "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.*, quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968).

The search in *T.L.O.* was reasonable because it was based on reasonable suspicion. *T.L.O.*, 469 U.S. at 343-346. Reasonableness, however, does not always require individualized suspicion. "[A]lthough 'some quantum of individualized suspicion is usually a prerequisite to a constitutional search or seizure[,] … the Fourth Amendment imposes no irreducible requirement of such suspicion." *Id*. at 383, n. 8, quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 560-561 (1976). "[I]n certain limited circumstances, the Government's need to discover such latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion." *Earls*, 536 U.S. at 829, quoting *Treasury Employees v. Von Raab*, 489 U.S. 656, 668 (1989). The special needs of the public-school context authorize schools to conduct certain suspicionless searches. *Earls*, 536 U.S. at 828-838 (drug testing of students engaged in competitive extracurricular activities); *Acton*, 515 U.S. at 654-664 (drug testing of student athletes).

II. Emptying the bag was reasonable because it complied with the school's reasonable search policy to search all unattended bags.

Unattended bags—in a public school or, for that matter, anywhere else—pose unique security risks. *See*, www.tsa.gov/news/top-stories/2015/12/14/if-you-see-something-say-somethingTM (urging traveling public to report any unattended bags or packages at airports, train stations, bus stops, and ports) (last visited 7/13/16). Recognizing this, Whetstone High School adopted a policy to search all unattended bags. There are two reasons behind this policy: (1) to ascertain the bag's owner, and (2) to ensure the bag poses no safety threat. Lindsey—adhering to this policy—searched a book bag that was left unattended on a school bus. At the

outset of the search, Lindsey saw Polk's name on some papers inside the bag, thus determining that the bag belonged to Polk. Lindsey then emptied the bag and found multiple bullets inside.

The trial court, the Tenth District's lead opinion, and Judge Dorrian all appeared to bless Whetstone's policy by finding that safety concerns justify emptying an unattended bag. These findings should have ended the analysis, because that is exactly what Lindsey did—*i.e.*, empty an unattended bag. Safety concerns allow a police department to search property in its possession, and the same should be true for a public school, regardless of whether there is individualized suspicion. That Lindsey emptied the bag after (rather than before) seeing Polk's name on some papers inside the bag does not negate the reasonableness of the search.

A. The trial court's and lead opinion's findings confirm that emptying the bag for safety purposes was reasonable and thus constitutional.

The trial court's own findings confirm that emptying the bag was reasonable. The trial court found that the bag was unattended. R. 111, p. 1 ("unattended book bag on a bus"). *Id.*, 3 (twice referring to the bag as "the unattended bag"). The trial court further found that Lindsey had two motives for his initial search of the bag—*i.e.*, "identifying the student to whom it belonged and for general 'safety and security.'" *Id.*, 2. The trial court held that "[i]t was reasonable for Officer Lindsay [sic] to conduct his initial search of the unattended book bag for not only safety and security purposes, but also to identify the book bag's owner." *Id.*, 3-4. And the trial court found that "[i]f Officer Lindsay [sic] had dumped the entire contents of the bag in his initial search for safety purposes and/or to obtain the owners [sic] identity, then no violation would have occurred." *Id.*, 4.

The Tenth District's lead opinion adopted the trial court's analysis, stating first that Lindsey initially opened the bag for "safety purposes as an unattended bag * * * and for determining to whom the bag belonged." Op. at ¶ 12. The lead opinion states that "the need to

determine ownership of the bag and to determine that it did not pose a hazard justified the limited intrusion of opening the bag and making a cursory examination of its contents." Op. at ¶ 13. The lead opinion later states that "in a school setting, emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification." *Id*. at ¶ 16; *see also*, *id*. at ¶ 32 ("[I]n a school setting, emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification.") (Dorrian, J., concurring in part and dissenting in part).

Two facts emerge from these findings: (1) it was reasonable to search the bag for safety purposes, and (2) emptying the bag was a reasonable means of fulfilling this safety-related purpose. These findings equate to the twofold reasonableness inquiry under *T.L.O.—i.e.*, that the "action was justified at its inception," and that the search conducted "was reasonably related in scope to the circumstances which justified the interference in the first place." *T.L.O.*, 469 U.S. at 342. While the trial court and the lead opinion made additional findings regarding the timing of the search, the lack of any individualized suspicion, and Lindsey's motive for the search, none of these additional findings detracts from the basic fact that emptying the bag was a reasonable means of fulfilling a reasonable purpose—which is all the reasonableness inquiry under *T.L.O.* requires.

B. The school's policy of searching all unattended bags is consistent with the inventory-search doctrine.

If the trial court's and lead opinion's findings were not enough to establish the reasonableness of the search, Lindsey's emptying of the bag pursuant to school policy is akin to a constitutionally permissible inventory search. Police are permitted to search a lawfully impounded vehicle when the search is administered in good faith and in accordance with reasonable standardized procedures or established routine. *State v. Hathman*, 65 Ohio St.3d 403

(1992), paragraph one of the syllabus, following *South Dakota v. Opperman*, 428 U.S. 364 (1976), and *Colorado v. Bertine*, 479 U.S. 367 (1987), and *Florida v. Wells*, 495 U.S. 1 (1990). The inventory-search doctrine "derives from the principle that valid inventory searches involve administrative caretaking functions which serve vital important government interests in protecting property which is in police custody, in ensuring against frivolous claims of loss, stolen or vandalized property, and in guarding the police from danger." *Hathman*, 65 Ohio St.3d at 405-406, citing *Opperman*, 428 U.S. at 369-371.

The inventory-search doctrine also allows police to search the bag of an arrestee during booking at the police station. *Illinois v. Lafayette*, 462 U.S. 640, 643-649 (1983). The interests supporting such station-house searches are different from the interests supporting searches incident to arrest. *Id*. at 645. "A range of government interests support an inventory process." *Id*. at 646. Notably, "[d]angerous instrumentalities—such as razor blades, bombs, or weapons—can be concealed in innocent-looking articles taken from the arrestee's possession." *Id*. "It is immaterial whether the police fear any particular package or container; the need to protect against such risks arises independent of any particular officer's subjective concerns." *Id*. The reasonableness of an inventory search does not depend on the absence of "less intrusive" means to fulfill these purposes. *Id*. at 647-648; *see also*, *Martinez-Fuerte*, 428 U.S. at 556-567, n. 12.

The rationale behind the inventory-search doctrine is that anytime police come into possession of someone else's property, the police need to know what exactly it is they are possessing. Just as it is reasonable for police to search a vehicle or bag over which it has assumed possession, so it is reasonable for a public-school to search an unattended bag left on a school bus. Especially in light of the "special needs" of the public-school context, *Earls*, 536 U.S. at 829, a public school that is in possession of an unattended bag must know what is inside

the bag in order to protect property in school custody, to protect the school against claims of loss, and—most importantly—to ensure that the bag does not contain anything that threatens the safety of the school.

This is particularly so when—as was the case here—the public school comes into possession of a bag *involuntarily*. In most instances, when the police search an impounded vehicle or an arrestee's bag, the search is made necessary because the police made an affirmative choice to take possession of the property. But Whetstone did not choose to take possession over Polk's bag. Because Polk left the bag on the school bus, Whetstone was in possession of the bag whether it liked it or not. This only heightened Whetstone's interests in searching the bag.

Consistent with Whetstone's standard practice and routine to search all unattended bags, Lindsey emptied the bag. Again, public-school students have limited privacy interests, *id*. at 830, and public schools have a compelling interest in maintaining a proper educational environment, *T.L.O.*, 469 U.S. at 339. A public school's interest in maintaining safety and order is "important enough" to justify emptying an unattended bag to ensure there are no dangerous instrumentalities inside. *Acton*, 515 U.S. at 661. In other words, the search was reasonably limited to its safety-related purpose. Lindsey did not read through any of the various papers or notebooks inside the bag (other than to determine the bag belonged to Polk). Nor did Lindsey search through any cell phones or other electronic devices that may have been inside the bag. *C.f.*, *Riley v. California*, 134 S.Ct. 2473 (2014). "[B]alanc[ing] its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate government interests," emptying the bag was reasonable. *Lafayette*, 462 U.S. at 644, quoting *Delaware v. Prouse*, 440 U.S. 648, 654 (1979).

Both the trial court and the lead opinion both found that Lindsey's emptying of the bag was unreasonable because, once he determined the bag belonged to Polk, there were no further justifications for searching the bag. R. 111, pp. 3-5; Op. at ¶ 14. This analysis is flawed. While seeing Polk's name on the papers was enough to fulfill one of the purposes of searching the bag (*i.e.*, determining the bag's owner), it was not enough to determine that the bag posed no safety threat. The lead opinion states that Lindsey's initial search enabled him to determine that the "bag was not a bomb." Op. at ¶ 14. Maybe so. But it was only by conducting a more thorough search that Lindsey could determine that there were no dangerous items *inside* the bag. As the lead opinion itself recognizes, one of the purposes of the initial search of the bag was to "determine if it posed a danger, such as *containing* a dangerous device." *Id.* at ¶ 12 (emphasis added). To repeat from *Lafayette*, even if the bag itself was not a bomb, "[d]angerous instrumentalities—such as razor blades, bombs, or weapons—can be concealed in innocent-looking articles * * *." *Lafayette*, 462 U.S. at 646.

If it would have been reasonable to empty the bag before seeing Polk's name on the papers—as both the trial court and the lead opinion found—then it was reasonable to empty the bag after seeing Polk's name. "[S]earches and seizures that could be made on the spot * * * may legally be conducted later." *United States v. Edwards*, 415 U.S. 800, 803 (1974). Any "reasonable delay in effectuating [a search] does not change the fact that [Polk] was no more imposed than he could have been at the time and place of [the first search]." *Id*. at 805. Lindsey did "no more" in emptying the bag after he saw Polk's name than he was "entitled to do" before seeing Polk's name. *Id*.; *see also*, *Rawlings v. Kentucky*, 448 U.S. 98, 110 (1980) ("Where the formal arrest followed quickly on the heels of the challenged search of petitioner's person, we do not believe it particularly important that the search preceded the arrest rather than vice versa.").

Although Lindsey's testimony on this point was unclear, the trial court and lead opinion both found that Lindsey took the bag to the principal's office before emptying it. R. 111, p. 2; Op. at ¶ 15. But even accepting this finding as true, the precise location of the search is immaterial. *United States v. Johns*, 469 U.S. 478, 486-487 (1985) (an otherwise reasonable search does not become unreasonable merely because the police took the object to another location, for requiring the police to perform the search immediately upon receipt "would be of little benefit to the person whose property is searched").

Moreover, there was no evidence that Whetstone's policy required the search be conducted in any particular order or at any particular location. Indeed, emptying all unattended bags at the outset has the potential to be *more* intrusive than the incremental-type search performed by Lindsey. And taking a bag to the principal's office before emptying it can actually benefit the student, as it allows the search to be monitored to ensure that the search conforms to the school's policy.

Besides, it would be improper for the courts to impose on public schools any requirements as to when or where searches are conducted. Schools need "flexibility" and "informality" to maintain security and order. *T.L.O.*, 469 U.S. at 339-340. It is not a court's "function to write a manual on administering routine, neutral procedures of the stationhouse," *Lafayette*, 462 U.S. at 647, and courts are not in a position to "second-guess police departments as to what practical administrative method will best * * * preserve the security of the stationhouse," *id*. at 648. Given that Fourth Amendment considerations are "different in public schools than elsewhere" in light of "schools' custodial and tutelary responsibility for children." *Earls*, 536 U.S. at 829-830, courts should give *more* deference to and be *less* willing to second-

guess a public school's neutral search policies designed to preserve the security of the schoolhouse.

The trial court found that, in order to continue searching the bag after seeing Polk's name, Lindsey needed "'reasonable grounds' for suspecting that the search would turn up evidence that the Defendant had violated or was violating either school rules or the law." R. 111, p. 4. The trial court further held that Polk's reputed gang membership did not amount to "reasonable grounds." *Id*. The lead opinion likewise held that Polk's reputed gang membership did not constitute reasonable suspicion. Op. at ¶ 17. This misses the point. As stated earlier, individualized suspicion is not a prerequisite to the "reasonableness" analysis, especially considering the special needs of the public-school context. *Earls*, 536 U.S. at 829. The reasonableness of emptying the bag was never premised on individualized suspicion; it was premised on the school's policy to search all unattended bags for safety purposes. Just as an inventory search by police does not require individualized suspicion, *Lafayette*, 462 U.S. at 643, and just as public schools do not need individualized suspicion to institute reasonable drug-testing policies, *Earls*, 536 U.S. at 828-838; *Acton*, 515 U.S. at 654-664, a public-school employee does not need individualized suspicion to search an unattended bag consistent with the school's reasonable search policies.

Judge Dorrian's separate opinion states that the trial court improperly focused on the absence of reasonable suspicion and that she would have remanded the case for the trial court to determine whether emptying the bag was "reasonably related" and not "excessively intrusive" to the safety and identification purposes of the search. Op. at ¶ 34 (Dorrian, J., concurring in part and dissenting in part). Judge Dorrian is correct in that the trial court erred in focusing on reasonable suspicion, but no remand is necessary because the trial court *already* found that "no

violation would have occurred" had Lindsey emptied the bag at the outset. R. 111, p. 4. The lead opinion echoes this finding, stating that "in a school setting, emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification." Op. at ¶ 16. And Judge Dorrian's own opinion states that "emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification." *Id*. at ¶ 32 (Dorrian, J., concurring in part and dissenting in part). These findings answer the question that Judge Dorrian would pose on remand—*i.e.*, that emptying the bag was "reasonably related" and not "excessively intrusive" to the safety objective of the search.

C. Lindsey's subjective motives do not negate the reasonableness of the search.

Both the trial court the lead opinion found that Lindsey's emptying the bag after seeing Polk's name was unreasonable because Lindsey was motivated solely by Polk's reputation as a gang member. R. 111, 4; Op. at ¶¶ 15-16. But being *aware* of Polk's reputed gang membership is not the same as being *motivated* by it. Both the trial court and the lead opinion found that, even before seeing Polk's name on the papers inside the bag, Lindsey had two motives for opening the bag, as reflected by the school's policy: (1) to determine who owned the bag, and (2) ensure that the bag posed no safety threat. R. 111, p. 2, 3-4; Op. at ¶ 13. Determining that the bag belonged to Polk gave Lindsey "concerns," but only to "complete the job." Tr., 22-23. Polk's reputed gang membership made following the policy—*i.e.*, "complet[ing] the job"—all the more important, but ultimately emptying the bag was based on the policy, not on who owned the bag. *State v. Jones*, 666 N.W.2d 142, 146 (Iowa 2003) ("Although this search eventually focused on Jones's locker, the process leading to that point was random and carried out with the

purpose of protecting the health and safety of the whole student body to preserve a proper educational environment.”).

Even accepting the trial court’s and lead opinion’s “sole motivation” findings, this would not negate the reasonableness of the search. Reasonableness is an objective inquiry, and subjective motives play no role in the reasonableness analysis. “An action is ‘reasonable’ under the Fourth Amendment, regardless of the individual officer’s state of mind, ‘as long as the circumstances, viewed *objectively,* justify [the] action.’” *Brigham City v. Stuart*, 547 U.S. 398, 404 (2006), quoting *Scott v. United States,* 436 U.S. 128, 138 (1978) (emphasis in *Stuart*). “The officer’s subjective motivation is irrelevant.” *Stuart*, 547 U.S. at 404, citing *Bond v. United States*, 529 U.S. 334, 338 (2000), n. 2. “We have been unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers.” *Whren v. United States*, 517 U.S. 806, 813 (1996). “The Fourth Amendment regulates conduct rather than thoughts.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 736 (2011), citing *Bond*, 529 U.S. at 338, n. 2.

There is a limited exception to this rule. “[P]rogrammatic purposes may be relevant to the validity of Fourth Amendment intrusions undertaken pursuant to a general scheme without individualized suspicion.” *Indianapolis v. Edmond*, 531 U.S. 32, 45-46 (2000). “But this inquiry is directed at ensuring that the purpose behind the *program* is not ‘ultimately indistinguishable from the general interest in crime control.’” *Stuart*, 547 U.S. at 405, quoting *Edmond*, 531 U.S. at 44 (emphasis in *Stuart*). “It has nothing to do with discerning what is in the mind of the individual officer conducting the search.” *Stuart*, 547 U.S. at 405, citing *Edmond*, 531 U.S. at 48 (“[T]he purpose inquiry in this context is to be conducted only at the programmatic level and is not an invitation to probe the minds of individual officers acting at the scene.”).

Whetstone's policy to search all unattended bags does not depend on reasonable suspicion, but rather on the school's special need to maintain safety in the school. Thus, a search pursuant to the school's policy qualifies as a "programmatic search." *C.f.*, *Edmond*, 531 U.S. at 45 (citing *Wells* and *Bertine* as examples of where programmatic purposes may be relevant); *Stuart*, 547 U.S. at 405 (citing *Wells*). What Lindsey was thinking when he emptied the bag is therefore irrelevant; what matters is whether Whetstone adopted the policy with an improper motive. And on this point, the defense never argued—let alone proved with evidence—that the purpose behind Whetstone's policy was "general interest in crime control." *Edmond*, 531 U.S. at 44; *see also*, *Opperman*, 428 U.S. at 376 ("there is no suggestion whatever that this standard procedure, essentially like that followed throughout the country, was a pretext concealing an investigatory police motive.").

Indeed, a contrary rule would set a dangerous precedent. Given their "custodial and tutelary responsibility for children," *Earls*, 536 U.S. at 830, public schools need to be able to adopt reasonable search policies to maintain safety and order in the school. Equally important, public-school employees need to be able to rely on these policies, without fearing *post hoc* judicial inquiries into their subjective thoughts and motives. Public-school employees will often know of students' activities and reputations. A teacher, administrator, or staff member should not refrain from conducting a search pursuant to school policy simply because he or she happens to know that the student at issue has a less-than-favorable reputation.

After all, the public-school employees who administered the drug tests in *Earls* and *Acton* were likely aware that some of the students taking the tests had reputations for being drug users. *See*, *Earls*, 536 U.S. at 834-835 (school district presented specific evidence of drug use, including students speaking openly about using drugs and drugs being found in a car driven by a

Future Farmers of America member); *Acton*, 515 U.S. at 648-649 (noting that student athletes "were the leaders of the drug culture" at the school; football and wrestling coach described incidents "attributable in his belief to the effects of drug use"). But it would have been an odd rule to say that requiring *these* students to undergo drug testing might be unreasonable depending on the public-school employees' knowledge or motives, but that requiring *other* students to undergo drug testing is reasonable because they had no reputation for drug use.

To be clear, this is not to say that public-school employees may indiscriminately search students or their possessions based on the student's reputation and nothing more. Reputation alone does not constitute reasonable suspicion, and this is perhaps no more true than at a school. But when a public school has adopted reasonable search policies designed to maintain safety in the school, then the employees at the school need to be able to rely on these policies, regardless of what reputation (good or bad) the student has. So long as the policy itself is reasonable and not adopted with any improper motive, any search in compliance with the policy "is not pretextual and thus is reasonable under the Fourth Amendment." *State v. Peagler*, 76 Ohio St.3d 496, 502-503 (1996). Compliance with an established policy "tend[s] to ensure that the intrusion would be limited in scope to the extent necessary to carry out the caretaking function," *Opperman*, 428 U.S. at 375, and prevents the search from being "a ruse for a general rummaging in order to discover incriminating evidence," *Wells*, 495 U.S. at 4; *compare*, *Hathman*, 65 Ohio St.3d at 408 (inventory search unreasonable if conducted in the absence of any established policy); *State v. Leak*, 145 Ohio St.3d 165, 2016-Ohio-154, ¶¶ 20-32 (inventory search was unreasonable because no police policy justified the impoundment of the vehicle, and the officer testified that the "sole reason" he towed the car was to look for evidence of a crime) (plurality).

In the end, the analysis starts and ends with the finding—made by the trial court, the lead opinion, and Judge Dorrian—that emptying the bag was a reasonable means of fulfilling the school's reasonable search policy. Emptying the bag was no less reasonable that it occurred after Lindsey saw Polk's name as it would have been before seeing Polk's name. And emptying the bag was no less reasonable that it occurred after Lindsey saw Polk's name as it would have been had he seen some other name. The search was reasonable. For this reason alone, the Tenth District's judgment should be reversed.

> **Second Proposition of Law:** The sole purpose of the federal exclusionary rule is to deter police misconduct. As a result, the exclusionary rule does not apply to searches by public-school employees.

The Court in *T.L.O.* expressly left open the question of whether the exclusionary rule applies to public-school searches. *T.L.O.*, 469 U.S. at 333, n. 3. If this Court finds—as it should—that Lindsey's emptying of the unattended bag found on the school bus was reasonable under the Fourth Amendment, then this court need not address whether or to what extent the exclusionary rule applies. But even if this Court finds that the discovery of the bullets in the bag was unconstitutional and thus tainted Lindsey's later discovery of the gun, the Tenth District's judgment should still be reversed because the exclusionary rule does not apply to searches conducted by public-school employees.

The exclusionary rule is a "massive remedy." *Hudson v. Michigan*, 547 U.S. 586, 595 (2006). Accordingly, "[s]uppression of evidence * * * has always been our last resort, not our first impulse." *Id*. at 590. "The fact that a Fourth Amendment violation occurred—*i.e.*, that a search or arrest was unreasonable—does not necessarily mean that the exclusionary rule applies." *Herring v. United States*, 555 U.S. 135, 140 (2009), citing *Illinois v. Gates*, 462 U.S. 213, 223 (1983). Rather, exclusion is a "judicially created remedy designed to safeguard Fourth

Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *State v. Hoffman*, 141 Ohio St.3d 428, 2014-Ohio-4795, ¶ 24, quoting *United States v. Calandra*, 414 U.S. 338, 348 (1974).

The federal exclusionary rule is particularly ill-suited for the public-school context. To start, applying the exclusionary rule to searches by public-school employees would do nothing to achieve the sole purpose of the rule, which is to deter future *police* misconduct. Even if the exclusionary rule did exist to deter misconduct by public-school employees, the costs of applying the rule (letting criminals go free) would far outweigh whatever deterrence benefits the rule would yield. Other remedies exist for public-school students to vindicate their Fourth Amendment rights. And none of the rationales offered by the lead opinion for extending the exclusionary rule to the public-school setting withstands scrutiny.

I. The deterrence benefits of applying the exclusionary rule to public-school searches would not outweigh the rule's substantial costs.

The exclusionary rule's "sole purpose * * * is to deter future Fourth Amendment violations." *State v. Johnson*, 141 Ohio St.3d 136, 2014-Ohio-5021, ¶ 40, quoting *Davis v. United States*, 564 U.S. 229, 236-237 (2011). Thus, the exclusionary rule applies only where "it result[s] in appreciable deterrence." *Herring*, 555 U.S. at 141, quoting *United States v. Leon*, 468 U.S. 897, 908 (1984). And even then, "the benefits of deterrence must outweigh the costs." *Herring*, 555 U.S. at 141, citing *Leon*, 468 U.S. at 910. "The principal cost of applying the rule is, of course, letting guilty and possibly dangerous defendants go free—something that 'offends basic concepts of the criminal justice system.'" *Herring*, 555 U.S. at 141, quoting *Leon*, 468 U.S. 897 at 908 (1984); *see also*, *Hoffman* at ¶ 25, quoting *Davis*, 564 U.S. at 240. "[T]he rule's costly toll upon truth-seeking and law enforcement objectives presents a high obstacle for those urging [its] application." *Herring*, 555 U.S. at 141, quoting *Leon*, 468 U.S. at 908. Under this

balancing test, the exclusionary rule does not "pay its way" when applied to searches by public-school employees. *Herring*, 555 U.S. at 147-148, quoting *Leon*, 468 U.S. at 907-908.

A. Applying the exclusionary rule to public-school employees would do nothing to deter future police misconduct, which is the sole purpose of the rule.

"In evaluating the need for a deterrent sanction, one must first identify those who are to be deterred." *United States v. Janis*, 428 U.S. 433, 448 (1976). The United States Supreme Court has repeatedly stated that the purpose of the exclusionary rule is to deter future *police* misconduct. *Davis*, 564 U.S. at 246 ("[T]he *sole* purpose of the exclusionary rule is to deter misconduct by law enforcement.") (emphasis *sic*); *United States v. Sheppard*, 468 U.S. 981, 990 (1984) ("adopted to deter unlawful searches by police"); *Janis*, 428 U.S. at 446 ("'prime purpose,' if not the sole one, 'is to deter future unlawful police conduct"), quoting *Calandra*, 414 U.S. at 347.

The Court has addressed multiple scenarios where police perform a search that is found unconstitutional based on conduct by other government actors outside of law enforcement. In these cases, the Court has consistently stated that the exclusionary rule's focus remains on deterring *police* misconduct, not the misconduct of others. *See e.g.*, *Davis*, 564 U.S. at 246 (exclusionary rule does not apply when police rely on then-binding appellate-court precedent because the Court has "repeatedly rejected efforts to expand the focus of the exclusionary rule beyond deterrence of culpable police conduct."); *Arizona v. Evans*, 514 U.S. 1, 14 (1995) ("historically designed as a means of deterring police misconduct, not mistakes by court employees."); *Illinois v. Krull*, 480 U.S. 340, 350 (1987) ("Legislators, like judicial officers, are not the focus of the rule."); *Leon*, 468 U.S. at 916 ("[T]he exclusionary rule is designed to deter police misconduct rather than to punish the errors of judges or magistrates."). "These cases do

not suggest that the exclusionary rule should be modified to serve a purpose other than deterrence of culpable law-enforcement conduct." *Davis*, 564 U.S. at 246.

In these scenarios, suppression does not turn on the culpability of the government actor responsible for the Fourth Amendment violation. Rather, it turns on whether the police's conduct in performing the search was objectively reasonable. *Leon*, 468 U.S. at 918-920; *Krull*, 480 U.S. at 349-350; *Evans*, 514 U.S. at 15-16. After all, whether the exclusionary rule will deter future police misconduct depends on "culpability of the law enforcement conduct." *Herring*, 555 U.S. at 143.

But when a public-school employee is the one who performed the search, the justification for applying the exclusionary rule is even weaker because there is no police involvement *at all*, and thus no police culpability to assess. Excluding the evidence thus will do nothing to deter future police misconduct. Such is also the case when a police officer performs a search at the request of a public-school employee performing his or her school duties. *In re Sumpter*, 5th Dist. No. 2004-CA-00161, 2004-Ohio-6513, ¶ 30 (search by police officer was considered a school search because the officer "did not initiate the investigation" but rather was merely acting as the "agent, or designee" of the school employee).

Moreover, the lead opinion improperly speculated that, without the exclusionary rule, public-school employees would have "little incentive to respect students' rights." Op. at ¶ 21. "[T]here exists no evidence suggesting that [public-school employees] are inclined to ignore or subvert the Fourth Amendment or that lawlessness among these actors requires application of the extreme sanction of exclusion." *Leon*, 468 U.S. at 916; *see also*, *Krull*, 480 U.S. at 351; *Evans*, 514 U.S. at 14-15. Absent such evidence, courts should not assume that public-school employees are systematically violating students' Fourth Amendment rights. *Leon*, 468 U.S. at

916, n. 14 (not willing to assume that magistrates act as "rubber stamps for the police"); *Krull*, 480 U.S. at 352, n. 8 (not willing to assume "that there exists a significant problem of legislators who perform their legislative duties with indifference to the constitutionality of the statutes they enact.").

In short, public-school employees are "not state law enforcement officials, with respect to whom the exclusionary rule is applied." *State v. Young*, 234 Ga. 488, 493-494, 216 S.E.2d 586 (1975); *see also*, *United States v. Coles*, 302 F.Supp. 99, 103 (D.Me.1969) (exclusionary rule did not apply because employee at job-training school "possessed neither the status nor any of the powers a law enforcement officer," and excluding evidence would not "improve standards of federal law enforcement."). Applying the exclusionary rule to searches conducted by public-school employees would do nothing to "efficaciously serve[]" the rule's sole purpose of deterring future police misconduct. *Leon*, 468 U.S. at 908, citing *Calandra*, 414 U.S. at 438.

B. Even if deterring public-school employees was a valid purpose of the exclusionary rule, its deterrence value would not outweigh the costs.

Even if the exclusionary rule could "operate as a 'systemic' deterrent on a wider audience" beyond just law enforcement, *Leon*, 468 U.S. at 917, applying the rule to searches by public-school employees would achieve minimal—if any—deterrence. Importantly, public-school employees are not professional crime fighers. They are not "adjuncts to the law enforcement team engaged in the often competitive enterprise of ferreting out crime." *Evans*, 514 U.S. at 15, citing *Johnson v. United States*, 333 U.S. 10, 14 (1948); *see also*, *Leon*, 468 U.S. at 917; *Krull*, 480 U.S. at 350-351. Rather, public-school employees' relationship with students "is more supervisory than adversarial." *Pennsylvania Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 368 (1998), citing *Griffin v. Wisconsin*, 483 U.S. 868, 879 (1987). "[T]here is a commonality of interests between teachers and their pupils. The attitude of the typical teacher is

one of personal responsibility for the student's welfare as well as for his education." *T.L.O.*, 469 U.S. at 350 (Powell, J., concurring). As explained above, "[t]he primary duty of school officials and teachers * * * is the education and training of young people," and "without first establishing discipline and maintaining order, teachers cannot begin to educate their students." *Id*. Accordingly, it is "'unfair to assume that the [public-school employee] bears hostility against the [student] that destroys his neutrality; realistically, the failure of the [student] is in a sense a failure for [the public school].'" *Scott*, 524 U.S. at 368, quoting *Morrissey v. Brewer*, 408 U.S. 471, 485-486 (1972).

The United States Supreme Court recently emphasized the differences between law enforcement officials and teachers. "It is common sense that the relationship between a student and his teacher is very different from that between a citizen and the police." *Ohio v. Clark*, 135 S.Ct. 2173, 2182 (2015). It is "inapt" to compare a teacher with law enforcement, because a teacher's "pressing concern" is to protect the student, which differs from a "law enforcement mission aimed primarily at gathering evidence for a prosecution." *Id*. at 2183. Although *Clark* was addressing the Confrontation Clause of the Sixth Amendment, these observations are pertinent in distinguishing teachers and other public-school employees from law enforcement for purposes of the exclusionary rule.

All of this is to say that public-school employees have "no stake in the outcome of particular criminal prosecutions," and the "threat of exclusion thus cannot be expected to significantly deter them." *Leon*, 468 U.S. at 917. Although they are considered the same sovereign as state law enforcement, public-school employees are so far removed from law enforcement that any deterrence effect of excluding evidence from a criminal trial would be "highly attenuated" when applied to a search by a public-school employee. *Janis*, 428 U.S. at

457-458 (exclusionary rule does not apply to federal civil tax proceedings when evidence was obtained by state law enforcement). Applying the exclusionary rule falls outside a public-school employee's "zone of primary interest." *Id*. at 458.

Indeed, even when a public school seeks to use evidence in its *own* disciplinary proceedings—which is where the deterrence effect on public-school employees would be at its highest—the exclusionary rule does not apply. *Thompson v. Carthage Sch. Dist.*, 87 F.3d 979, 981-982 (8th Cir.1996). It is not just the "civil" nature of such proceedings that exempt them from the exclusionary rule. A key reason why the exclusionary rule does not apply to a public school's disciplinary proceedings is that the "commonality of interests" between the school and its students negates any deterrent effect. *Id*. at 981, quoting *T.L.O.*, 469 U.S. at 350 (Powell, J., concurring). If applying the exclusionary rule to a school's own disciplinary proceedings would not result in sufficient deterrence to even "begin to outweigh the high societal costs of imposing the rule," *Thompson*, 87 F.3d at 982, then it is difficult to see how excluding evidence from criminal trials ever could.

As one court has stated, "[t]he enforcement of school regulations, the safeguarding of students during school hours through confiscation of weapons and other contraband, and the maintenance of a drug-free learning environment provide substantial incentives to 'search' that would not be lessened by the suppression of evidence at a subsequent delinquency proceeding." *D.R.C. v. State*, 646 P.2d 252, 258 (Alaska App.1982), overruled on other grounds, *Lowry v. State*, 707 P.2d 280, 285-286 (Alaska App.1985) (noting that *T.L.O.* held that school teachers are state agents subject to the Fourth Amendment). In other words, public-school employees "are primarily concerned with maintaining internal discipline rather than obtaining convictions." *D.R.C.*, 646 P.2d at 258, n. 10, citing Ziff, *Seizures by Private Parties: Exclusion in Criminal*

Cases, 19 Stan.L.Rev. 608, 615 (1967). "Faced with the alternative of tolerating drug use and weapon possession or continuing to search at the risk of jeopardizing 'prosecutions,' it is likely that the administrators would continue to search." *D.R.C.*, 646 P.2d at 258, n. 10; *see also*, *Coles*, 302 F.Supp. at 103 ("And exclusion in the present case could hardly be expected to affect the conduct of those who, like [the school employee who performed the search in that case], are essentially unconcerned with the success of federal criminal prosecutions.").

Even if excluding evidence from criminal trials could have some deterrence effect on public-school employees, that would not end the analysis. "Real deterrent value is a 'necessary condition for exclusion,' but it is not a 'sufficient one.'" *Davis*, 564 U.S. at 237, quoting *Hudson*, 547 U.S. at 596. Rather, the benefits of deterrence must outweigh the heavy costs of suppression. *Davis*, 564 U.S. at 237, citing *Herring*, 555 U.S. at 141. It is always a "bitter pill" to require courts to "suppress the truth and set the criminal loose in the community without punishment." *Davis*, 564 U.S. at 237, citing *Herring*, 555 U.S. at 141. But suppression is particularly costly when it allows a criminal who compromises the safety of a public school to escape criminal punishment. Given that applying the exclusionary rule in the public-school context will result in minimal—if any—deterrence of public-school employees, and given the "substantial social costs exacted by the exclusionary rule," the end result of the weighing process is that "applying the exclusionary rule in this context is unjustified." *Krull*, 480 U.S. at 352.

C. Other remedies exist for public-school students to vindicate their Fourth Amendment rights.

The inapplicability of the exclusionary rule does not mean that students are without recourse when a public-school employee violates the Fourth Amendment. Public-school students may rely on "such other remedies as the law affords them, whether by actions based upon a

claimed violation of their civil rights by state officers, or by some tort claim seeking damages." *Young*, 234 Ga. at 494.

Vindication of Fourth Amendment rights through civil lawsuits is not a new concept. "Because officers who violated the Fourth Amendment were traditionally considered trespassers, individuals subject to unconstitutional searches or seizures historically enforced their rights through tort suits or self-help." *Utah v. Streiff*, 136 S.Ct. 2056, 2060-2061 (2016), citing Davis, *Recovering the Original Fourth Amendment*, 98 Mich.L.Rev. 547, 625 (1999). Departmental training and discipline and the threat of damages all serve as deterrents against future misconduct. *Scott*, 524 U.S. at 368-369. The expansion of civil-rights litigation under § 1983 in the years after *Mapp v. Ohio*, 367 U.S. 643 (1961), has made civil-rights litigation a particularly effective deterrent against police misconduct. *Hudson*, 547 U.S. at 597-598. Civil lawsuits and internal training and discipline are likewise effective deterrents against further Fourth Amendment violations by public-school employees.

II. The lead opinion's rationales for extending the exclusionary rule to searches by public-school employees do not withstand scrutiny.

The lead opinion offered three rationales for extending the exclusionary rule to searches by public-school students: (1) the Supreme Court's decision in *Elkins*, (2) decisions from other states, and (3) the perceived deficiencies of civil-rights suits § 1983. Op. at ¶¶ 20-26. None of these rationales withstands scrutiny.

A. *Elkins* does not justify expanding the exclusionary rule to searches by public-school employees.

To start, nothing in *Elkins* supports extending the exclusionary rule to searches by public-school employees. *Elkins* was decided after the Court adopted the federal exclusionary rule in *Weeks v. United States*, 232 U.S. 383 (1914), but before *Mapp* extended the exclusionary rule to

the states. *Elkins* held that evidence obtained in violation of the Fourth Amendment by state law enforcement was inadmissible in federal criminal proceedings. The Court noted that there is no meaningful constitutional distinction between evidence obtained by federal law enforcement (in violation of the Fourth Amendment) and evidence obtained by state law enforcement (in violation of the Fourteenth Amendment). *Elkins*, 364 U.S. at 215. In addition to this "logical symmetry," *id*. at 216, the Court relied on "considerations of federalism," *id*. at 221. Specifically, a federal court sitting in a state that had adopted the exclusionary rule would "frustrate state policy" by admitting evidence unconstitutionally obtained by state law enforcement. *Id*.

The holding in *Elkins* serves two purposes: "First, it assured that a State, which could admit the evidence in its own proceedings if it so chose, nevertheless would suffer some deterrence in that its federal counterparts would be unable to use the evidence in federal criminal proceedings. Second, the rule d[is]couraged federal authorities from using a state official to circumvent the restrictions of Weeks." *Janis*, 428 U.S. at 445-446. *Elkins* therefore is fully consistent with the Supreme Court's recent emphasis on the exclusionary rule's sole purpose being to deter future police misconduct. The state and federal officers in *Elkins* had an "assumed interest * * * in in the criminal proceedings of another sovereign." *Id*. at 458. But nothing in *Elkins* supports expanding the exclusionary rule to government actors who do not have the same interest in law enforcement. Indeed—as explained above—the Supreme Court's more recent cases distinguish law enforcement from other government actors for purposes of the exclusionary rule. More to the point, there is no "logical symmetry" between law enforcement and public-school employees. And applying the exclusionary rule to searches by public-school employees does nothing to preserve any federalism principles that featured so prominently in *Elkins*.

Of course, if a public-school employee acts as a "Fourth Amendment immune agent" of law enforcement, then the Fourth Amendment and exclusionary-rule analyses would be different. Op. at ¶ 21. But, contrary to the lead opinion's suggestion, the mere existence of school resource officers in many public schools does not evince such a "close cooperation" with law enforcement such that public-school employees should be considered by default to be law-enforcement actors for purposes of the exclusionary rule. *Id*. When a public-school employee initiates a search for a legitimate school purpose—*i.e.*, a reasonable suspicion that the student has engaged in wrongdoing or a pursuant to a reasonable school policy requiring the search—then he or she is acting purely within an educational capacity, not as a law-enforcement actor. The simple fact that law enforcement becomes aware of evidence of criminal activity discovered during a school search is not enough to justify applying the exclusionary rule.

B. The out-of-state cases cited by the lead opinion are not persuasive.

The lead opinion also cites several cases from other states that have either held or stated in dicta that the exclusionary rule applies to public-school searches. Op. at ¶ 22. These cases, however, are not persuasive. For example, the New Jersey Supreme Court in *T.L.O.* held that the exclusionary rule applies to Fourth Amendment violations by public-school employees because it is of "little comfort" to someone charged with a crime whether the person who illegally obtained the evidence was a law-enforcement official or some other government actor. *State in Interest of T.L.O.*, 94 N.J. 331, 341, 463 A.2d 934 (1983). But this fundamentally misconstrues the purpose of the exclusionary rule. The purpose of the rule has never been to provide "comfort" to the individual against whom the prosecution seeks to use the evidence. The exclusionary rule is not a "personal constitutional right, nor is it designed to redress the injury

occasioned by an unconstitutional search." *Johnson* at ¶ 40. Any reliance on this "comfort" rationale to expand the scope of the exclusionary rule would be improper.

Equally without merit is the California Supreme Court's holding that applying the exclusionary rule in the public-school context is necessary to "preserve the integrity of the judicial system." *In re William G.*, 40 Cal.3d 550, 567, 709 P.2d 1287 (1985), n. 17. While "judicial integrity" was early on mentioned as one of the bases of the exclusionary rule, *Mapp*, 367 U.S. at 659, this rationale no longer justifies applying the exclusionary rule. The "imperative of judicial integrity" plays a "limited role * * * in the determination of whether to apply the rule in a particular context." *Stone v. Powell*, 428 U.S. 465, 485 (1976). "While courts, of course, must ever be concerned with preserving the integrity of the judicial process, this concern has limited force as a justification for the exclusion of highly probative evidence." *Id*. "Judicial integrity clearly does not mean that the courts must never admit evidence obtained in violation of the Fourth Amendment." *Janis*, 428 U.S. at 458, n. 35. The question of whether the use of illegally-obtained evidence offends judicial integrity "is essentially the same as the inquiry into whether exclusion would serve a deterrent purpose." *Leon*, 468 U.S. at 921, n. 22.

Indeed, this Court has held that the non-applicability of judicial integrity as a valid purpose of the exclusionary rule was reason to *scale back* the application of the exclusionary rule. *State ex rel. Wright v. Ohio Adult Parole Auth.*, 75 Ohio St.3d 82, 92 (1996) (overruling prior case due to its "erroneous * * * reliance on the imperative of judicial integrity as a rationale to support its extension of the exclusionary rule to revocation proceedings."). There is "no need to consider judicial integrity as an independently significant factor." *Id*., quoting *Payne v. Robinson*, 207 Conn. 565, 573, 541 A.2d 504 (1988). "[R]hetorical generalizations" such as "judicial integrity" "have not withstood analysis as more and more critical appraisals of the

rule's operation have appeared." *Stone*, 428 U.S. at 499 (Burger, C.J, concurring). "[S]ettled rules demonstrate that 'judicial integrity' rationalization is fatally flawed." *Id*.

The point of a trial is to ascertain the truth, and withholding from the factfinder highly relevant and reliable evidence of a defendant's criminal conduct threatens—not preserves—judicial integrity. *Illinois v. Rakas*, 439 U.S. 128, 137 (1978) ("Relevant and reliable evidence is kept from the trier of fact and the search for truth at trial is deflected."). Tellingly, the more recent exclusionary-rule cases from the United States Supreme Court and this Court contain nary a mention of "judicial integrity." Instead, the emphasis has been on deterrence being the "sole purpose" of the exclusionary rule. *Johnson* at ¶ 40, quoting *Davis*, 564 U.S. at 236-237.

The lead opinion also relied on the Wisconsin Court of Appeal's statement (in dicta) that the exclusionary rule applies to public-school searches in order to "deter prosecutions based on unlawful evidence." *Interest of L.L*, 90 Wis.2d 585, 592, 280 N.W.2d 343 (Ct.App.Wis.1979), n. 1. But the exclusionary rule does not exist to deter "prosecutions." In fact, if "deter[ring] prosecutions based on unlawful evidence" were the purpose of the exclusionary rule, then courts would be required to suppress evidence *anytime* it was obtained in violation of the Fourth Amendment, which is plainly not the case. Not only is the exclusionary rule inapplicable when its deterrence benefits do not outweigh its substantial societal costs, *Herring*, 555 U.S. at 141, but the United States Supreme Court has developed rules regarding standing and causation that further limit the applicability of the exclusionary rule, *Rakas*, 439 U.S. at 134-138 (describing standing doctrine); *Strieff*, 136 S.Ct. at 2061 (describing independent-source, inevitable-discovery, and attenuation doctrines).

The other cases cited in the lead opinion either held or suggested in dicta that the exclusionary rule applies in the public-school context, but did so by treating the exclusion of

evidence as an automatic consequence of a Fourth Amendment violation. *G.M. v. State*, 142 So.3d 823, 829 (Ala.2013); *Jones*, 666 N.W.2d at 146 (dicta); *D.I.R. v. State*, 683 N.E.2d 251, 253 (Ind.App.1997); *State v. Mora*, 307 So.2d 317, 320 (La.1975); *People v. Scott D.*,34 N.Y.2d 483, 491, 315 N.E.2d 466 (1974). While early cases contained "expansive dicta" suggesting that exclusion was an automatic consequence of a Fourth Amendment violation, the Court has "abandoned the old 'reflexive' application of the doctrine, and imposed a more rigorous weighing of its costs and deterrent benefits." *Davis*, 564 U.S. at 237-238. These cases are inconsistent with the Court's modern exclusionary-rule framework and thus offer no persuasive value.

C. The exclusionary rule does not exist to compensate for perceived deficiencies in civil-rights litigation.

Lastly, the lead opinion states that the exclusionary rule is necessary because "civil liability (in light of wide-ranging immunity and lack of practical damages) has not proven effective." Op. at ¶ 26. But the exclusionary rule does not serve to compensate for the perceived deficiencies of other remedies. Besides, qualified-immunity rules exist for good reasons. *Pearson v. Callahan*, 555 U.S. 223, 232 (2009) ("Qualified immunity balances two important interests—the need to hold public officials accountable when they exercise power irresponsibly and the need to shield officials from harassment, distraction, and liability when they perform their duties reasonably."). Police officers enjoy the same qualified immunity as public-school employees, and the United States Supreme Court has held that § 1983 litigation adequately redresses certain Fourth Amendment violations by police officers. *Hudson*, 547 U.S. at 597.

Nor does the lack of "practical damages" justify applying the exclusionary rule. As explained in *Hudson*, Congress has addressed this issue by enacting 42 U.S.C. § 1988(b), which authorizes attorney's fees for civil-rights plaintiffs. *Hudson*, 547 U.S. at 597. Whereas in the

years after *Mapp* "'very few lawyers would even consider representation of persons who had civil rights claims against the police,'" now "'[c]itizens and lawyers are much more willing to seek relief in the courts for police misconduct.'" *Id*. at 597-598, quoting M. Avery, D. Rudovsky, & K. Blum, Police Misconduct: Law and Litigation, p. v (3d ed.2005). And "[t]he number of public-interest law firms and lawyers who specialize in civil-rights grievances has greatly expanded." *Hudson*, 547 U.S. at 598. Even if a plaintiff is not awarded a large amount in damages, a judgment requiring payment of attorney's fees can serve as a deterrent for future misconduct. *Id*. The Court has assumed that civil liability is an effective deterrent in other contexts, *id*., and there is no reason to think otherwise in the context of public-school searches.

Perhaps most illustrative of the lead opinion's flawed analysis is its statement that "[t]he Fourth Amendment exists to be enforced, which means providing a remedy." Op. at ¶ 26. The purpose of the exclusionary rule is not to make sure that every Fourth Amendment violation has *some* remedy. Rather, the exclusionary rule serves a narrow purpose—*i.e.*, to deter future Fourth Amendment violations. *Davis*, 564 U.S. at 246. And even then, the exclusionary rule does not apply unless the deterrence benefits outweigh the heavy costs of "letting dangerous defendants go free." *Herring*, 555 U.S. at 141. Applying this balancing test, the exclusionary rule does not apply to searches by public-school employees who are unconnected with law enforcement and whose chief concerns are education and safety.

It is bad enough to allow a criminal to go free "because the constable has blundered." *Herring*, 555 U.S. at 148, quoting *People v. Defore*, 150 N.E. 585, 587, 150 N.E. 585 (1926) (opinion by Cardozo, J.). It is even worse to allow a criminal to escape punishment based on the mistake of a public-school employee, whose conduct the exclusionary rule is not meant to deter. The Tenth District's judgment affirming the suppression of the gun should be reversed.

<u>Third Proposition of Law:</u> Suppression is proper only if the deterrence benefits of suppression outweigh its substantial social costs.

Even if the exclusionary rule does potentially apply to searches by public-school employees, the question still remains whether applying the exclusionary rule is proper in this particular case. Again, suppression is proper only if the benefits of deterrence outweigh the costs of "letting guilty and possibly dangerous defendants go free." *Herring*, 555 U.S. at 141. As applied to police searches, "[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic negligence." *Id*; *see also*, *Davis*, 564 U.S. at 238. "But when the police act with an objectively reasonable good-faith belief that their conduct is lawful * * *, or when their conduct involves only simple, isolated negligence * * *, the deterrence rationale loses much of its force, and exclusion cannot pay its way." *Davis*, 564 U.S. at 238 (internal citations and quotation marks omitted). This is sometimes referred to as the "good-faith exception" to the exclusionary rule. *Id*. If the exclusionary rule really does apply to searches by public-school employees, then courts should engage in the same cost-benefit analysis that is applicable to searches by law enforcement.

But neither the trial court nor the lead opinion engaged in this analysis. The trial court held that the good-faith exception to the exclusionary rule does not apply because Lindsey did not have reasonable suspicion. R. 111, p. 5. But this just restates the trial court's (flawed) Fourth Amendment analysis. Whether the exclusionary rule applies is separate from whether a search violates the Fourth Amendment. *T.L.O.*, 469 U.S. at 333; *see also*, *Herring*, 555 U.S. at 140. The trial court did exactly what the Supreme Court has cautioned against—*i.e.*, engaging in

a "'reflexive' application" of the exclusionary rule rather than applying the "more rigorous weighing of its costs and deterrence benefits." *Davis*, 564 U.S. at 237.

The lead opinion's analysis fares no better. The lead opinion states that suppression is proper because Lindsey "relied on his own judgment in deciding to search Polk's bag based 'solely' on rumors that Polk was a gang member." Op. at ¶ 29. Aside from ignoring the fact that Lindsey *also* relied on the school's search policy, the lead opinion fails to address whether Lindsey's conduct was sufficiently culpable, such that suppression would deter *any* misconduct, let alone police misconduct. And the lead opinion fails to address whether any deterrence benefits of applying the exclusionary rule would outweigh the costs of withholding from the fact-finder highly relevant and reliable evidence of Polk's felony conduct.

The lead opinion states that "subjective good faith" is not enough to avoid the exclusionary rule. *Id*. at ¶ 28. This is true, as "[t]he pertinent analysis of deterrence and culpability is objective, not an inquiry into the subjective awareness of arresting officers." *Herring*, 555 U.S. at 145 (internal quotation marks omitted). The "'good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well trained officer would have known that the search was illegal' in light of 'all of the circumstances.'" *Id*., quoting *Leon*, 468 U.S. at 922, n. 23. But simply saying that Lindsey relied on his "own judgment" (as opposed to someone else's) is insufficient to suppress evidence. In the law-enforcement context, the good-faith exception is not limited to only those situations in which a government actor outside of law enforcement is responsible for the Fourth Amendment violation. When the police are responsible for the error, suppression is inappropriate if "their conduct involves only simple, 'isolated' negligence." *Davis*, 564 U.S. at 238, quoting *Herring*, 555 U.S. at 137. Even when the Fourth Amendment violation is the result of an officer's own mistaken belief that he or she

was "acting in a reasonable manner." Op. at ¶ 28, quoting *State v. Thomas*, 10th Dist. No. 14AP-185, 2015-Ohio-1778, ¶ 46, suppression will not deter future misconduct if the mistake was simple negligence rather than flagrant misconduct, *Strieff*, 136 S.Ct. at 2063 (officer's own mistaken belief that he had reasonable suspicion to detain the defendant was "at most negligent" and not the type of "purposeful or flagrant" conduct that "is most in need of deterrence").

Applying the proper exclusionary-rule balancing test to this case, Lindsey's emptying of the bag comes nowhere near the type of "'deliberate,' 'reckless,' or 'grossly negligent' disregard for Fourth Amendment rights" would justify suppressing evidence. *Davis*, 564 U.S. at 238, quoting *Herring*, 555 U.S. at 144. In emptying the bag, Lindsey was merely following school policy, which the trial court, the lead opinion, and Judge Dorrian all found was a reasonable means of achieving a legitimate school purpose—*i.e.*, ensuring that the bag posed no safety threat. Even after he determined that the bag belonged to Polk, Lindsey had every reason to believe that emptying the bag was permissible under the school's policy. The trial court's and lead opinion's finding that Lindsey took the bag to the principal's office before emptying it confirms that Lindsey searched the bag under the auspices of the school's policy. Because Lindsey found the bullets in good faith, the later search leading to the discovery of the gun was also performed in good faith.

In short, to the extent suppressing the gun would result in any deterrence at all, such benefits would fall well short of outweighing the costs. The Tenth District's judgment suppressing the gun should be reversed.

CONCLUSION

For the foregoing reasons, the Tenth District's judgment should be reversed.[1]

Respectfully submitted,

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Prosecuting Attorney

/s/ Seth L. Gilbert
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Assistant Prosecuting Attorney
Counsel for Plaintiff-Appellant

[1] If this Court sua sponte contemplates a decision upon an issue not briefed, the State respectfully requests notice of that intention and requests an opportunity to brief the issue before this Court makes its decision. *State v. 1981 Dodge Ram Van*, 36 Ohio St.3d 168, 170 (1988).

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was served via electronic mail day, July 26, 2016, to the following:

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ORIGINAL

IN THE SUPREME COURT OF OHIO
2016

STATE OF OHIO,

Plaintiff-Appellant,

-vs-

JOSHUA POLK,

Defendant-Appellee

Case No. 16-0271

On Appeal from the Franklin County Court of Appeals, Tenth Appellate District

Court of Appeals Case No. 14AP-787

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT STATE OF OHIO

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COUNSEL FOR DEFENDANT-APPELLEE

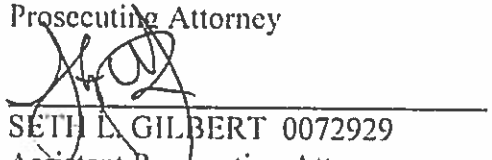
FILED
FEB 19 2016
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF PLAINTIFF-APPELLANT STATE OF OHIO

Plaintiff-appellant, the State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Franklin County Court of Appeals, Tenth Appellate District, entered in *State v. Polk*, 10th Dist. No. 14AP-787, on January 8, 2015. The State of Ohio invokes the jurisdiction of the Supreme Court on the grounds that the case presents substantial constitutional questions, presents questions of public or great general interest, and involves a felony and warrants the granting of leave to appeal.

Respectfully submitted,

RON O'BRIEN 0017245
Prosecuting Attorney



SETH L. GILBERT 0072929
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Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was hand-delivered this day, February 19, 2016, to TIMOTHY E. PIERCE, 373 South High Street, 12th Floor, Columbus, Ohio 43215; counsel for Defendant-Appellee; and was sent by regular U.S. Mail this day, February 19, 2016, to Ohio Public Defender, 250 East Broad Street, Suite 1400, Columbus, Ohio 43215.

SETH L. GILBERT 0072929
Assistant Prosecuting Attorney

Franklin County Ohio Court of Appeals Clerk of Courts- 2016 Jan 08 3:50 PM-14AP000787

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 14AP-787 (C.P.C. No. 13CR-2787)
Joshua Polk,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on January 7, 2016, appellant's sole assignment of error is overruled and it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs assessed to appellant.

BRUNNER & LUPER SCHUSTER, JJ.

By /S/ JUDGE
Judge Jennifer Brunner

Franklin County Ohio Court of Appeals Clerk of Courts- 2016 Jan 08 3:50 PM-14AP000787

Tenth District Court of Appeals

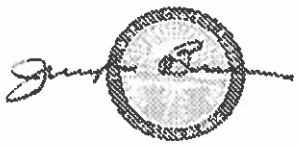
Date: 01-08-2016

Case Title: STATE OF OHIO -VS- JOSHUA D POLK

Case Number: 14AP000787

Type: JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Jennifer Brunner

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Franklin County Ohio Court of Appeals Clerk of Courts- 2016 Jan 07 12:00 PM-14AP000787

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellant,	:	
v.	:	No. 14AP-787 (C.P.C. No. 13CR-2787)
Joshua Polk,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on January 7, 2016

Ron O'Brien, Prosecuting Attorney, and *Seth L. Gilbert*, for appellant.

Yeura R. Venters, Public Defender, and *Timothy E. Pierce*, for appellee.

APPEAL from the Franklin County Court of Common Pleas

BRUNNER, J.

{¶ 1} Plaintiff-appellant, State of Ohio, appeals from a decision of the Franklin County Court of Common Pleas, rendered on September 29, 2014, which suppressed the evidence against defendant-appellee, Joshua Polk. We find that the trial court acted within its fact-finding discretion when it concluded that Polk's unattended bag was searched solely based on rumors that Polk was affiliated with a gang. Because that is a constitutionally insufficient basis for a search (even within a school where expectations of privacy are lessened) and because subsequent searches grew from the poisonous fruit of that search, we overrule the state's assignment of error and affirm the decision of the trial court.

I. FACTS AND PROCEDURAL HISTORY

{¶ 2} On May 22, 2013, an indictment issued for Polk. The indictment alleged that, on February 5, 2013, Polk had possessed a gun in a school. Polk filed a motion to

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suppress the gun on June 5, 2014. The state responded. On September 17, 2014, the trial court held an evidentiary hearing on the motion to suppress.

{¶ 3} A single witness testified at the hearing, a school security officer by the name of Robert Lindsey. Lindsey explained that he is not a police officer but that he is a safety and security officer employed by Columbus Public Schools and works at Whetstone High School. On February 5, 2013, when Lindsey was on duty, a school bus driver approached him with a book bag that had been left on a bus, seeking to have it returned to its owner. Lindsey testified that he opened the bag and was able to quickly determine that it belonged to Polk.[1] However, he began to search further and dumped out the bag, "just to, you know, be precautious, [sic] that's what we do."[2] (Tr. 6.) Lindsey said that when he saw Polk's name, he remembered rumors that Polk was in a gang and he admitted he was thinking about that when he dumped out the bag. However, he also testified that he would have dumped out the bag and searched it, regardless of to whom it belonged, because even though there was nothing outwardly suspicious about the bag, it was unattended.

{¶ 4} When Lindsey dumped out the book bag he found along with binders, books, and other school appropriate materials, several small caliber bullets. Lindsey notified the principal of what he found, and the principal in turn notified a Columbus Police Department ("CPD") officer. The record is not clear about how soon after Lindsey found the bullets the next part of the investigation occurred. Lindsey testified that he thought (though he was not absolutely certain) that it was within 15 or 20 minutes that the principal, the CPD officer, and Lindsey acted together to find Polk.

{¶ 5} The three men encountered Polk in a hallway full of other students. Because of the number of other students present, the three directed Polk to an empty classroom. The CPD officer told Polk he was going to place him in a hold, asked him not to resist, and then restrained Polk. With Polk restrained, the CPD officer directed Lindsey to search the bag Polk had been carrying when the trio encountered him. Lindsey did and found a pistol in the bag.

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[1] Lindsey also testified that the book bag had Polk's name on it, but later clarified that Polk's name was not actually imprinted on the exterior of the bag.

[2] Later in the hearing Lindsey also suggested that the principal was present and possibly helping when he dumped out the bag and searched it.

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{¶ 6} On September 29, 2014, the trial court issued a written decision in which it granted Polk's motion to suppress. The trial court found that Lindsey's initial inspection of the bag, by which he determined that Polk was the owner, was justified. However the trial court concluded that Lindsey's further search of the bag (conducted by dumping it out) was based on the rumors that "came into [Lindsey's] head" that Polk had ties to a gang, and that was an insufficient basis for the search. (Decision and Entry, 2.) Accordingly, the trial court suppressed bullets recovered in that search and the gun recovered in the subsequent search.

{¶ 7} The state now appeals pursuant to Crim.R. 12(K) and App.R. 4(B)(4).

II. ASSIGNMENT OF ERROR

{¶ 8} The state advances a single assignment of error:

> The Trial Court Committed Reversible Error in Sustaining Polk's Motion to Suppress.

III. DISCUSSION

{¶ 9} "However one may characterize their privacy expectations, students properly are afforded some constitutional protections." *N.J. v. T.L.O.*, 469 U.S. 325, 348 (1985) (Powell, J., concurring). "[S]tudents do not 'shed their constitutional rights . . . at the schoolhouse gate.' " *Id.*, quoting *Tinker v. Des Moines Indep. Community School Dist.*, 393 U.S. 503, 506 (1969). The school's need to maintain discipline and ensure the safety of its students, however, results in a lesser expectation of privacy for students than a person outside of school would enjoy. *Id.* at 337-40. Yet schools are not prisons and though a prisoner has no expectation of privacy, students do. *Id.* at 338, quoting *Ingraham v. Wright*, 430 U.S. 651, 669 (1977) (" '[the] prisoner and the schoolchild stand in wholly different circumstances, separated by the harsh facts of criminal conviction and incarceration' ").

{¶ 10} In *T.L.O.* the United States Supreme Court struck a middle course between recognizing the full panoply of Fourth Amendment rights for students and affording them no privacy rights like prisoners. It found the warrant requirement to be inapplicable to schools and further said that probable cause was not necessary to justify a search in a school. *Id.* at 340-41. Then it explained what justification is needed to search students:

> [T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether

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> the * * * action was justified at its inception," *Terry v. Ohio*, 392 U.S. [1,] 20 [(1967)]; 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," *ibid.* 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 its 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.

(Footnotes omitted.) *Id.* at 341-42.

{¶ 11} We afford deference to the trial court's factual determinations and review its recitation of historical facts with deference but we review statements of law and the application of law to facts de novo. *See, e.g., Ornelas v. United States*, 517 U.S. 690, 699 (1996); *In re A.J.S.*, 120 Ohio St.3d 185, 2008-Ohio-5307, ¶ 50.

A. Whether the Searches of Polk's Bags were Constitutional

{¶ 12} The first search of Polk's property occurred when Lindsey examined the bag found on the bus and made a cursory inspection of its contents for safety purposes as an unattended bag, examined to determine if it posed a danger, such as containing a dangerous device, and for determining to whom the bag belonged. We find that this first search was reasonable and justifiable.

{¶ 13} Polk had a "legitimate expectation of privacy" in his personal effects, including his book bag. *T.L.O.* at 337-39. A legitimate expectation of privacy is composed of "two elements: (1) whether an individual's conduct has exhibited such an expectation, and (2) whether the individual's subjective expectation of privacy is one that society is prepared to accept as reasonable under the circumstances." *United States v. Dillard*, 78 F.Appx. 505, 509 (6th Cir.2003); *see also Smith v. Maryland*, 442 U.S. 735, 740 (1979); *Rakas v. Illinois*, 439 U.S. 128, 143 (1978), fn. 12; *United States v. Tolbert*, 692 F.2d 1041, 1044 (6th Cir.1982). In view of these two components, Polk's expectation of privacy in his bag was diminished both by the fact that he was on school property with differing norms and rules on search and seizure, and that he left the book bag on the bus, exposing it to search to determine ownership and ensure that it was not an intentionally planted

dangerous package. *See, e.g., United States v. Wilson*, 984 F.Supp.2d 676, 683 (E.D.Ky. 2013) (explaining that law enforcement may look through lost and found containers to determine the owner and the owner's contact information as well as to protect the temporary custodian of the lost container from danger); *but cf. Tangredi v. New York City Dept. of Environmental Protection*, S.D.N.Y. No. 09 cv 7477 (VB) (Feb. 16, 2012) (finding the search of bag left unattended in a women's locker room to be unreasonable and not justified by safety motivations). Thus the need to determine ownership of the bag and to determine that it did not pose a hazard justified the limited intrusion of opening the bag and making a cursory examination of its contents.

{¶ 14} The justification for an intrusion or search expires when it is fulfilled, making further unjustified searches unlawful. *See, e.g., Arizona v. Hicks*, 480 U.S. 321, 323-25 (1987) (holding that a search for shooting victims or weapons following a shooting in an apartment building did not extend, without additional justification, to moving stereo equipment in order to record the serial numbers to determine if it was stolen). In Polk's case no contraband was found during the initial search. Lindsey successfully determined both that the bag was not a bomb and that it was owned by Polk (a student at the school) during the initial search. After the initial search, all justifications for examining the bag's contents were fulfilled and no further justification existed to search the bag.

{¶ 15} Nonetheless a second search occurred when Lindsey took the bag to the principal, emptied it, and made a more detailed inspection of its contents. Lindsey testified he had two further justifications for the more detailed search. Lindsey testified that rumors that Polk was in a gang came into his head once he identified the bag as Polk's. He also testified that he thoroughly searches every unattended bag in the school for safety reasons and that rumors about Polk's affiliations did not affect his decision to empty the bag and thoroughly examine its contents because he would have done that no matter whose bag it was. This testimony could be interpreted either as conflicting or as different stages of an officer's "thought process," and interpreting it would be subject to the discretion of the judge hearing the testimony on a motion to suppress. The trial court found as a factual matter that the second search was motivated "solely" by rumors that Polk had ties to a gang. The trial court did not abuse its discretion in making this finding. *See, e.g., Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St.3d 352, 2008-Ohio-938, ¶ 37 (affording the factual findings of the trial court "great deference"); *Testa v. Roberts*, 44

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Ohio App.3d 161, 165 (6th Dist.1988) (affording a trial court's judgments on credibility "the utmost deference").

{¶ 16} We agree with the trial court that the second search could have been justified at the outset, "[i]f Officer Lindsay [sic] had dumped the entire contents of the bag in his initial search for safety purposes and/or to obtain the owners [sic] identity." (Decision and Entry, 4.) That is, in a school setting, emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification. But Lindsey did not empty the bag at first. He testified he took the bag to the principal's office, recalling that rumors existed that Polk was involved in gang activity, and *then* emptied the contents of the bag. It was not an abuse of discretion for the trial court to conclude that Lindsey's testimony that he always intended to empty the bag was not credible. Only after he found out that the bag belonged to Polk and remembered rumors that Polk was affiliated with a gang did he empty the bag and perform a detailed inspection of its contents. The trial court was well within its fact-finding discretion to conclude, based on the circumstances, the testimony and its ability to evaluate the officer's credibility, that the second search was based "solely" on rumors of Polk's gang affiliation.

{¶ 17} Rumors do not rise to reasonable suspicion, and mere affiliation with a criminal group does not constitute a crime or a justification for a search, even in a school. *G.M. v. State*, 142 So.3d 823 (Ala.2013) (mere association with a gang does not justify a search in a school); *see also Elfbrandt v. Russell*, 384 U.S. 11, 14-16 (1966) (holding that mere membership in a group with illegal purposes cannot be criminalized, as that would violate the First Amendment); *cf. Holder v. Humanitarian Law Project*, 561 U.S. 1, 29 (2010) (finding valid Congress' criminalization of providing "material support or resources" for terrorism on the basis that Congress specifically found that "organizations that engage in terrorist activity are so tainted by their criminal conduct that any contribution to such an organization facilitates that conduct"). (Emphasis omitted.)

{¶ 18} The second search was not "justified at its inception." *T.L.O.* at 341, quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968). The trial court did not abuse its discretion in determining that Lindsey conducted the second and more detailed search of the bag based solely on rumors that Polk was affiliated with a gang. Because that is a legally insufficient

basis for a search (even in a school), we agree that the second search of Polk's bag violated the Fourth Amendment.

{¶ 19} The bullets were discovered in the unconstitutional second search of Polk's bag, and the bullets were the basis for suspecting that Polk might have a gun and detaining Polk and conducting a third search. While we have great concerns about the fact that a gun was found with Polk when a third search was conducted on school premises, we cannot sacrifice the constitutional guarantee against unwarranted searches and seizures, just because of the circumstances, when the fruits of the third search emanated from a "poisonous tree." The gun was acquired by "exploitation" of the original search or, as the United States Supreme Court put it, the "primary illegality." *Wong Sun v. United States*, 371 U.S. 471, 487-88 (1963). The fruits of the search of Polk's person and second bag were properly suppressed in Polk's criminal case. *Id.*

B. Whether the Exclusionary Rule Applies to Searches Conducted by Public School Employees

{¶ 20} The state argues that the exclusionary rule is intended to deter police officer misconduct and thus should not apply to the school setting or school officials. However, this argument has not been accepted by the United States Supreme Court. "The State of New Jersey sought review in [the Supreme] Court, first arguing that the exclusionary rule is wholly inapplicable to searches conducted by school officials, and then contending that the Fourth Amendment itself provides no protection at all to the student's privacy. The Court has accepted neither of these frontal assaults on the Fourth Amendment." *T.L.O.* at 371 (Stevens, J., concurring in part and dissenting in part). As the court in *T.L.O.* put it:

> [T]he State of New Jersey has argued that the history of the Fourth Amendment indicates that the Amendment was intended to regulate only searches and seizures carried out by law enforcement officers; accordingly, although public school officials are concededly state agents for purposes of the Fourteenth Amendment, the Fourth Amendment creates no rights enforceable against them.
>
> It may well be true that the evil toward which the Fourth Amendment was primarily directed was the resurrection of the pre-Revolutionary practice of using general warrants or "writs of assistance" to authorize searches for contraband by officers of the Crown. *See United States v. Chadwick*, 433 U.S. 1, 7-8 (1977); *Boyd v. United States*, 116 U.S. 616, 624-629 (1886). But this Court has never limited the Amendment's prohibition on unreasonable searches and

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> seizures to operations conducted by the police. Rather, the Court has long spoken of the Fourth Amendment's strictures as restraints imposed upon "governmental action" -- that is, "upon the activities of sovereign authority." *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921). Accordingly, we have held the Fourth Amendment applicable to the activities of civil as well as criminal authorities: building inspectors, *see Camara v. Municipal Court*, 387 U.S. 523, 528 (1967), Occupational Safety and Health Act inspectors, *see Marshall v. Barlow's, Inc.*, 436 U.S. 307, 312-313 (1978), and even firemen entering privately owned premises to battle a fire, *see Michigan v. Tyler*, 436 U.S. 499, 506 (1978), are all subject to the restraints imposed by the Fourth Amendment. As we observed in *Camara v. Municipal Court, supra*, "[the] basic purpose of this Amendment, as recognized in countless decisions of this Court, is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." 387 U.S., at 528. Because the individual's interest in privacy and personal security "suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards," *Marshall v. Barlow's, Inc., supra*, at 312-313, it would be "anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior." *Camara v. Municipal Court, supra*, at 530.

Id. at 334-35. In short, public school employees are state actors for purposes of the Fourth Amendment, and evidence collected by teachers when they (or a school safety officer) investigate a student to determine whether the student has committed a criminal act may be subject to the exclusionary rule if a subsequent criminal prosecution occurs.

{¶ 21} To hold otherwise would be to revive what was known as the silver platter doctrine for use against Ohio's school children. This doctrine allowed law enforcement agents from jurisdictions outside the reach of the Fourth Amendment to develop evidence through means that would otherwise have been unconstitutional and then deliver that evidence on a "silver platter" to law enforcement officers who were subject to the Fourth Amendment's strictures in order to avoid the operation of the exclusionary rule. *Elkins v. United States*, 364 U.S. 206, 208 (1960), fn. 2 (prohibiting the practice of the silver platter doctrine). Public school employees are state actors for the purposes of the Fourth Amendment when they discover evidence and deliver it to the police or prosecutorial authorities so that their students may be prosecuted. *T.L.O.* at 334-35. If the evidence

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they collect in violation of the Fourth Amendment were able to be used when turned over to law enforcement, school employees would have little incentive to respect student's rights, and worse, law enforcement would have an incentive to use school employees as Fourth Amendment immune agents to conduct illegal student searches in schools. The United States Supreme Court explained in *Elkins* that the silver platter doctrine arose out of close cooperation between state officers (who were not then subject to the Fourth Amendment) and federal officers (who were) which led to the realization that evidence collected by the state officers in violation of the Constitution could be delivered on a "silver platter" to the federal officers for use in federal cases. *Id.* at 211-13. As more and more schools (like Whetstone) enjoy the security of on-site police officers, it is not hard to envision the potential for evidence collected by school personnel to be taken by police free of the threat of exclusion in order to convict students. We understand that contemporary educational environments have been drastically affected by the proliferation of school shootings. Yet, we cannot, even under those circumstances, revive a long defunct and thoroughly denounced practice that violates the Constitution, so as to fashion a remedy that fails Constitutional sanction. If a school employee violates the Fourth Amendment to obtain evidence against a student, that evidence may not be used in a subsequent criminal trial.[3]

{¶ 22} Recognizing the relatively low standard of reasonableness set by *T.L.O.* in school settings, the fact that not all crimes committed in schools are reported to law enforcement, and the high likelihood that criminal cases involving students involve juveniles, there are few published decisions about violations of the Fourth Amendment in a public school context, and especially, cases concerning evidence collected in schools. However, when a violation is found, most cases result in a court invoking the exclusionary rule to appropriately enforce constitutional principles. *See G.M.* at 829; *State v. Jones*, 666 N.W.2d 142, 146 (Iowa 2003); *D.I.R. v. State*, 683 N.E.2d 251, 253 (Ind.App.1997); *In re William G.*, 709 P.2d 1287, 1298 (Cal.1985), fn. 17; *In re: T.L.O.*, 463 A.2d 934, 943-44 (N.J.1983) *rev'd on grounds that search was reasonable* 469 U.S. 325 (1985); *State v. Mora*, 307 So.2d 317, 320 (La.1975); *People v. Scott D.*, 315 N.E.2d 466, 471

[3] We do not address the question of whether the evidence obtained by a teacher in violation of the Fourth Amendment could be used for purposes other than criminal prosecution (like school discipline). *See, e.g., Immigration & Naturalization Servs. v. Lopez-Mendoza*, 468 U.S. 1032, 1041-43 (1984) (the exclusionary rule is not applicable to civil proceedings).

(N.Y.App.1974); *see also In Interest of L.*, 90 Wis.2d 585, 591-93 (1979) (finding exclusionary rule applies in schools but not finding that the particular search at issue was unreasonable).

{¶ 23} In support of the contrary notion that the exclusionary rule does not apply in schools, the state draws our attention to *State v. Young*, 216 S.E.2d 586 (Ga.1975). In *Young*, the Georgia Supreme Court declined to apply the exclusionary rule in a school search case because it believed the United States Supreme Court had not sanctioned the use of the exclusionary rule in any context other than law enforcement officer actions. *Id.* at 589-94. However *Young* pre-dated the United States Supreme Court's decision in *T.L.O.* and has been persuasively criticized since:

> In *State v. Young*, 234 Ga. 488, 216 S.E.2d 586 (1975), the Georgia Supreme Court classified searches into three categories for purposes of the fourth amendment: (1) wholly private searches to which the amendment does not apply, (2) state action not involving law enforcement agents protected by the amendment but not the exclusionary rule, and (3) searches by law enforcement agents to which both the amendment and the exclusionary rule apply. Searches by teachers would fall within the second category and so would not be subject to the exclusionary rule. *This classification does not adequately account, however, for evidence seized by a teacher and turned over to law enforcement agents.* Once the evidence comes into the possession of law enforcement officers and is used in court proceedings against the liberty interests of the person searched, *the exclusionary rule must be available to deter prosecutions based on unlawful searches.* Without such exclusions, school personnel and other government employees would become the same sort of bypass around the amendment's protections that the Court meant to close by extending the exclusionary rule to state court proceedings in *Mapp v. Ohio* [367 U.S. 643, 654 (1961)].

(Emphasis added.) *In Interest of L.* at 592, fn. 1.

{¶ 24} The state also argues that civil remedies under, for example, 42 U.S.C. 1983, are a sufficient means to enforce the Fourth Amendment's guarantees and that we should therefore discard the exclusionary rule because it entails the high cost of letting criminals go free when the "constable blunders." But most such potential civil rights violators already enjoy immunity. *See, e.g., Connick v. Thompson*, 563 U.S. 51 (2011) (prosecutorial immunity); *Malley v. Briggs*, 475 U.S. 335, 341 (1986) (qualified immunity

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for government agents and police); *Pierson v. Ray*, 386 U.S. 547, 553-54 (1967) (judicial immunity). Moreover, *statutory* governmental immunity insulates actors in many cases, including in Ohio schools. *See* R.C. 2744.03.

{¶ 25} There is no expectation of privacy in criminal material, and thus, a suspect is not damaged by its discovery. *Illinois v. Caballes*, 543 U.S. 405, 409 (2005); *Rakas* at 143, fn. 12. However, when *nothing* is found, nothing is seized, and no loss inures to the victim, except perhaps the temporary embarrassment associated with the search itself. In response to the state's 42 U.S.C. 1983 scenario, such resulting nominal damages for a search bearing no fruits will rarely justify the time and trouble of a federal lawsuit. Therefore, without exclusion, there remains little to deter future activity that violates the Fourth Amendment violations. As Justice Jackson observed:

> Only occasional and more flagrant abuses [of the Fourth Amendment] come to the attention of the courts, and then only those where the search and seizure yields incriminating evidence and the defendant is at least sufficiently compromised to be indicted. If the officers raid a home, an office, or stop and search an automobile but find nothing incriminating, this invasion of the personal liberty of the innocent too often finds no practical redress. There may be, and I am convinced that there are, many unlawful searches of homes and automobiles of innocent people which turn up nothing incriminating, in which no arrest is made, about which courts do nothing, and about which we never hear.
>
> Courts can protect the innocent against such invasions only indirectly and through the medium of excluding evidence obtained against those who frequently are guilty.

Brinegar v. United States, 338 U.S. 160, 181 (1949) (Jackson, J., dissenting). History has shown that civil damages are not an adequate remedy for Fourth Amendment violations, a fact recognized by the United States Supreme Court.

> The experience in California has been most illuminating. In 1955 the Supreme Court of that State resolutely turned its back on many years of precedent and adopted the exclusionary rule. *People v. Cahan*, 44 Cal.2d 434, 282 P.2d 905. "We have been compelled to reach that conclusion because other remedies have completely failed to secure compliance with the constitutional provisions on the part of police officers with the attendant result that the courts under the old rule have been constantly required to participate in, and in effect condone, the lawless activities of law enforcement officers. * * * Experience has demonstrated,

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> however, that neither administrative, criminal nor civil remedies are effective in suppressing lawless searches and seizures. The innocent suffer with the guilty, and we cannot close our eyes to the effect the rule we adopt will have on the rights of those not before the court." 44 Cal.2d 434, at 445, 447, 282 P.2d 905, at 911-912, 913.

Elkins at 220.

{¶ 26} The Fourth Amendment exists to be enforced, which means providing a remedy. As civil liability (in light of wide-ranging immunity and lack of practical damages) has not proven effective, exclusion, despite its costs, is the available remedy. Without the remedy of exclusion, no practical remedy would exist for Fourth Amendment violations, and "the protection of the Fourth Amendment declaring [one's] right to be secure against such searches and seizures [would be] of no value, and * * * might as well be stricken from the Constitution." *Weeks v. United States*, 232 U.S. 383, 393 (1914).

C. Whether a "Good-Faith" Exception to the Exclusionary Rule Applies

{¶ 27} Courts have recognized a good-faith exception to the exclusionary rule when a law enforcement officer relies on an established legal principle that later changes or upon the judgment of a judicial officer removed from the "often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14 (1948); *see, e.g., United States v. Leon*, 468 U.S. 897 (1984) (exception applied for good-faith reliance upon a warrant later determined to be invalid); *Illinois v. Krull*, 480 U.S. 340 (1987) (exception applied for good-faith reliance upon a statute later found to be unconstitutional); *Arizona v. Evans*, 514 U.S. 1 (1995) (exception applied for good-faith reliance upon a database that falsely indicated police had a warrant); *Herring v. United States*, 555 U.S. 135 (2009) (same); *Davis v. United States*, 131 S.Ct. 2419 (2011) (exception applied for good-faith reliance upon a "bright-line rule" of appellate decision that authorized the search and then later changed to prohibit it); *see also State v. Johnson*, 141 Ohio St.3d 136, 2014-Ohio-5021 (where past United States Supreme Court rulings authorized tracking an automobile in public and then a new United States Supreme Court case held that placement of a GPS device for the purpose of tracking an automobile in public was nonetheless a search for purposes of the Fourth Amendment); *State v. Brown*, 142 Ohio St.3d 92, 2015-Ohio-486, (where a probate judge improperly issued a warrant).

{¶ 28} However, "Ohio courts, including this court, have declined to apply the *Leon* good-faith exception in cases in which officers, conducting warrantless searches, relied on

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their own belief that they were acting in a reasonable manner." *State v. Thomas*, 10th Dist. No. 14AP-185, 2015-Ohio-1778, ¶ 46, citing *State v. Forrest*, 10th Dist. No. 11AP-291, 2011-Ohio-6234, ¶ 17-18; *State v. Simon*, 119 Ohio App.3d 484, 488-89 (9th Dist.1997). In short, " 'good faith on the part of the * * * officers is not enough.' If subjective good faith alone were the test, the protections of the Fourth Amendment would evaporate, and the people would be 'secure in their persons, houses, papers, and effects,' only in the discretion of the police." *See Beck v. Ohio*, 379 U.S. 89, 97 (1964), quoting *Henry v. United States*, 361 U.S. 98, 102 (1959).

{¶ 29} Here Lindsey relied on his own judgment in deciding to search Polk's bag based "solely" on rumors that Polk was a gang member. This act violated the Fourth Amendment, and the evidence obtained thereby could not be used in a subsequent criminal proceeding. No facts exist in this case to support the application of a "good-faith exception" to alter this conclusion. Appellant's assignment of error is overruled.

IV. CONCLUSION

{¶ 30} Having overruled the state's sole assignment of error, we affirm the decision of the Franklin County Court of Common Pleas.

Judgment affirmed.

LUPER SCHUSTER, J., concurs in judgment only.
DORRIAN, P.J., concurs in part and dissents in part.

DORRIAN, P.J., concurring in part and dissenting in part.

{¶ 31} For the following reasons, I respectfully concur in part and dissent in part with the majority opinion.

{¶ 32} I concur with the majority that the initial search of the bag for safety and identification purposes was reasonable and justifiable. (Lead opinion, ¶ 12.) I also concur with the majority that, in a school setting, emptying the entire bag would have been an acceptable way to meet the two initial justifications for the search: safety and identification. (Lead opinion, ¶ 16.)

{¶ 33} However, I respectfully dissent from the majority's conclusion regarding the second search. Because the trial court applied the wrong standard to the second search, I dissent from the majority and would remand this case to the trial court for application of the correct standard. The trial court quoted from the United States Supreme Court opinion in *N.J. v. T.L.O.*, 469 U.S. 325, 341-42 (1985), and correctly stated that:

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> Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider 'whether the * * * action was justified at its inception,' *Terry v. Ohio*, 392 U.S. [1,] 20 [(1967)]; 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' *Ibid.* 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 its 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.

(*See* Sept. 29, 2014 Decision and Entry, 3.) However, when considering the second search, the trial court applied the test outlined in *T.L.O.* for the initial search. The court stated:

> In order to justify the second and more intrusive search given these particular facts (i.e. dumping out the entire contents of the book bag), Officer Lindsay must have had "reasonable grounds" for suspecting that the search would turn up evidence that the Defendant had violated or was violating either school rules or the law. While the standard for school searches is lower than that of probable cause, it requires more than "vague unsubstantiated reports." *Commonwealth vs. Cass*, 446 Pa.Super.66 at 75 (1995).

(Decision and Entry, 4.) The trial court concluded that:

> [T]he second search was conducted solely based on the identity and reputation of the owner. *This does not equate to "reasonable grounds" for suspecting the violation of school rules or the law.*

(Emphasis added.) (Decision and Entry, 4.)

{¶ 34} Because the court's question regarding the second search should have been whether the measures adopted were reasonably related to the objectives of the initial search (safety and identification) and whether the search was not excessively intrusive in light of the age and sex of the student and the nature of the infraction, I would remand the

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case to the trial court to consider the same. *See State v. Adams*, 5th Dist. No. 01 CA 76, 2002-Ohio-94 ("[t]he second element that must be considered in determining the reasonableness of a search by a school official is whether '* * * the search as actually conducted "was reasonably related in scope to the circumstances which justified the interference in the first place * * *."' *T.L.O.*, 469 U.S. at 341. This requires that the '* * * measures adopted * * * [be] 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.").

{¶ 35} Remanding the case to the trial court would moot, at this time, the question of whether the exclusionary rule applies in the public school context and particularly in this case. Nevertheless, regarding the discussion of the exclusionary rule, I feel compelled to note that I disagree with the majority's suggestion that the *T.L.O.* case already determined the issue of whether the exclusionary rule applies in a school setting to school officials. In suggesting the same, the majority states that "[the argument that the exclusionary rule should not apply to the school setting or school officials] has not been accepted by the United States Supreme Court." (Lead opinion, ¶ 20.) In support of this conclusion, the majority points to Justice Stevens' concurring in part and dissenting in part opinion in *T.L.O.*[4] *Id.*

{¶ 36} Contrary to the majority's suggestion, however, in footnote 3 of the *T.L.O.* majority opinion, the United States Supreme Court expressly stated:

> In holding that the search of T.L.O.'s purse did not violate the Fourth Amendment, we do not implicitly determine that the exclusionary rule applies to the fruits of unlawful searches conducted by school authorities. The question whether evidence should be excluded from a criminal proceeding involves two discrete inquiries: whether the evidence was seized in violation of the Fourth Amendment, and whether the exclusionary rule is the appropriate remedy for the violation. Neither question is logically antecedent to the other, for a negative answer to either question is sufficient to dispose of the case. Thus, our determination that the search at issue in this case did not violate the Fourth Amendment implies no

[4] Justice Stevens stated: "The State of New Jersey sought review in this Court, first arguing that the exclusionary rule is wholly inapplicable to searches conducted by school officials, and then contending that the Fourth Amendment itself provides no protection at all to the student's privacy. The Court has accepted neither of these frontal assaults on the Fourth Amendment." *T.L.O.* at 371, Justice Stevens concurring in part and dissenting in part. (Justice Marshall and Justice Brennan joining.)

> particular resolution of the question of the applicability of the exclusionary rule.

{¶ 37} The question of whether the exclusionary rule applies in the public school setting is a question yet to be determined by the United States Supreme Court and thus far has not been considered or answered by the Supreme Court of Ohio or this court. While I agree that it is an important question which deserves careful consideration, I would not begin the discussion with the suggestion that the United States Supreme Court in *T.L.O.* has already answered the question.

{¶ 38} For these reasons, I concur in part and dissent in part.

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IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO

STATE OF OHIO,	:	
Plaintiff,	:	**CASE NO. 13 CR 2787**
vs.	:	**JUDGE TIMOTHY S. HORTON**
JOSHUA POLK,	:	
Defendant.	:	

DECISION AND ENTRY

GRANTING MOTION OF DEFENDANT TO SUPPRESS EVIDENCE AS FILED JUNE 5, 2014

This matter is before the Court upon the Defendant's Motion to Suppress Evidence as filed on June 5, 2014. The State filed its Memorandum Contra on June 20, 2014. On September 17, 2014, the Court held an oral hearing.

Upon review and consideration of the Motion, the responses, and the evidence presented at said hearing, the Court hereby **GRANTS** Defendant's Motion to Suppress Evidence.

I. BACKGROUND

The Court notes that significant facts as described in both the Defendant's Motion to Suppress and Plaintiff's Memorandum Contra, differ from the testimony provided by Security Officer Robert Lindsay at the suppression hearing. Despite Officer Lindsay's contradictory testimony, no other witnesses were called by the State or the Defense to further clarify the chain of events in question. Having noted this inconsistency, the Court will place greater weight on the testimony that was provided under oath and with the opportunity for cross-examination, and will weigh all discrepant facts in favor of the Defendant.

On February 5, 2013, a bus driver for the Whetstone High School District discovered an unattended book bag on a bus. The bus driver brought the bag to the attention of Officer Lindsay, a safety and security officer at the school. At this point in time, the book bag had not

been opened or otherwise searched by anyone. Officer Lindsay opened the book bag for the purposes of identifying the student to whom it belonged and for general "safety and security." This initial inspection yielded "seven or so books" and some papers. The papers informed Officer Lindsay that the book bag was the property of the Defendant, Joshua Polk. Upon learning of the book bag's owner, Officer Lindsay testified that rumors of (and a reputation for) gang activity on the Defendant's part "came into my head."

Officer Lindsay brought the book bag to the attention of the school principal, Mr. Barrett, and expressed his concerns about the Defendant's reputation for gang activity. Officer Lindsay then "dumped out" the book bag and discovered thirteen bullets in addition to the books and papers previously discovered. This subsequent discovery of bullets prompted Officer Lindsay to contact Special Duty Officer Sykes, a school liaison with the Columbus Police Department (CPD).

Officer Lindsay, Officer Sykes and Principal Barrett located the Defendant in a school hallway and escorted him to a secluded area of the school so as to speak with the Defendant outside the view of the rest of the student body. Officer Sykes conducted a pat down and discovered no weapons on the Defendant. He then placed Defendant in a "hold" and instructed Officer Lindsay to search a bag on the Defendant's person. Officer Lindsay unzipped the bag and observed a weapon which upon further observation turned out to be a Jiminez Arms .380 handgun.

II. LAW AND ANALYSIS

It is fundamental that "the Federal Constitution, by virtue of the Fourteenth Amendment, prohibits unreasonable searches and seizures by state officers." *Elkins v. United States, 364 U.S. 206, 213 (1960).* Any evidence obtained from an unconstitutional search and seizure is inadmissible. *Mapp v. Ohio, 367 U.S. 643.* While this right extends to searches of students by public school officials, the legal standard for determining the legality of such a search is lower than that of probable cause to accommodate "the privacy interests of

schoolchildren with the substantial need of teachers...to maintain order in the schools." *New Jersey v. T.L.O.,469 U.S. 325, 83 (1985).* The legality of a search of a student by a school official depends on the reasonableness, under all of the circumstances, of the search.

> Determining the reasonableness of any search involves a twofold inquiry: first, one must consider "whether the...action was justified at its inception," *Terry v. Ohio, 392 U.S., at 20*; 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." *Ibid.*
>
> Under ordinary circumstances, a search of a student...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 its 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.
>
> *T.L.O., 469 U.S. 339-342. (1985).*

Defendant contends that the initial search of the unattended bag was unconstitutional because "a simple description of the bag itself would have been more than sufficient to identify its owner, and that no necessity for examining the contents of the bag actually existed." Defendant further disputes the constitutionality of the second search, and argues the gun discovered on Defendant's person should be excluded as "poisonous fruit" from an illegal search. The State contends that the exclusionary rule does not apply because both searches were legal, "reasonable and conducted in good faith," and that "[o]nce it became known that Defendant had been carrying thirteen bullets, it became reasonable and related for personnel to search Defendant's bag..."

The question turns upon whether Officer Lindsay, upon learning that the book bag belonged to Defendant, was justified in conducting a more thorough search (i.e. a second search which involved dumping out the book bag) on the basis that Defendant had a reputation for gang activity and that Officer Lindsay had heard rumors of the same.

Here, it was reasonable for Officer Lindsay to conduct his initial search of the unattended book bag for not only safety and security purposes, but also to identify the book

bag's owner. Having done so, his original purpose for the search was fulfilled. If the initial search had yielded discovery of the thirteen bullets, then the search that followed would have been reasonable in light of the circumstances. However, it was not until after Officer Lindsay learned of the owner of the book bag that he brought it to Principal Barrett where the contents were then further examined. In order to justify the second and more intrusive search given these particular facts (i.e. dumping out the entire contents of the book bag), Officer Lindsay must have had "reasonable grounds" for suspecting that the search would turn up evidence that the Defendant had violated or was violating either school rules or the law. While the standard for school searches is lower than that of probable cause, it requires more than "vague, unsubstantiated reports." *Commonwealth vs. Cass, 446 Pa. Super. 66 at 75 (1995).*

If Officer Lindsay had dumped the entire contents of the bag in his initial search for safety purposes and/or to obtain the owners identity, then no violation would have occurred. However, the second search was conducted solely based on the identity and reputation of the owner. This does not equate to "reasonable grounds" for suspecting the violation of school rules or the law. Indeed, the Court found numerous cases upholding searches of students where "a school official had reliable information that a particular student had violated the law" *Ibid.* Officer Lindsay offered no testimony indicating that he or another school official had personally observed the Defendant engaging in gang-related behavior, nor did he offer any *specific set of circumstances* that would have led a reasonably prudent person to believe that the Defendant posed a danger, imminent or otherwise. A reasonable suspicion is the "sort of common sense conclusion about human behavior upon which practical people – including government officials – are entitled to rely, rather than an inchoate and unparticular zed suspicion or hunch." *T.L.O. at 346.* During his testimony, Officer Lindsay could offer no justification other than "reputation" and "rumor" for his second search. Because the Court finds that Officer Lindsay did not have reasonable grounds on which to conduct the second, more intrusive search, it need not address the second prong of the inquiry.

The good-faith exception to the exclusionary rule does not apply to this case. Under this exception, the Fourth Amendment exclusionary rule will not suppress evidence obtained by a person acting in objectively reasonable reliance on a search warrant that was issued by a detached and neutral magistrate or judge that is ultimately determined to be lacking in probable cause. *United States v. Leon* (1984), 468 U.S. 897, 922-23. Here, neither a search warrant nor probable cause was required to conduct a legal search. All that was required was a reasonable suspicion, yet Officer Lindsay failed to meet even this standard.

It is well established that the State bears the burden of proving the legality of any search and seizure conducted without a warrant. The Court finds the State has failed to meet this burden.

III. DECISION

Based on the foregoing, the Court hereby **GRANTS** Defendant's Motion to Suppress Evidence.

IT IS SO ORDERED.

JUDGE TIMOTHY S. HORTON

Copies To:

(via Electronic Delivery)

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Counsel for the State of Ohio

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Franklin County Public Defender's Office
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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Effective: October 19, 1996
Currentness

<Notes of Decisions for 42 USCA § 1983 are displayed in six separate documents. Notes of Decisions for subdivisions I to IX are contained in this document. For additional Notes of Decisions, see 42 § 1983, ante.>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

42 U.S.C.A. § 1983, 42 USCA § 1983
Current through P.L. 114-181. Also includes P.L. 114-183 to 114-186, 114-188, 114-189, and 114-191 to 114-194.

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United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

42 U.S.C.A. § 1988

§ 1988. Proceedings in vindication of civil rights

Effective: September 22, 2000
Currentness

(a) Applicability of statutory and common law

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1993 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

(c) Expert fees

In awarding an attorney's fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney's fee.

CREDIT(S)

(R.S. § 722; Pub.L. 94-559, § 2, Oct. 19, 1976, 90 Stat. 2641; Pub.L. 96-481, Title II, § 205(c), Oct. 21, 1980, 94 Stat. 2330; Pub.L. 102-166, Title I, §§ 103, 113(a), Nov. 21, 1991, 105 Stat. 1074, 1079; Pub.L. 103-141, § 4(a), Nov. 16, 1993, 107 Stat. 1489; Pub.L. 103-322, Title IV, § 40303, Sept. 13, 1994, 108 Stat. 1942; Pub.L. 104-317, Title III, § 309(b), Oct. 19, 1996, 110 Stat. 3853; Pub.L. 106-274, § 4(d), Sept. 22, 2000, 114 Stat. 804.)

42 U.S.C.A. § 1988, 42 USCA § 1988

Current through P.L. 114-181. Also includes P.L. 114-183 to 114-186, 114-188, 114-189, and 114-191 to 114-194.

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Baldwin's Ohio Revised Code Annotated
Title XXIX. Crimes--Procedure (Refs & Annos)
Chapter 2923. Conspiracy, Attempt, and Complicity; Weapons Control (Refs & Annos)
Weapons Control

R.C. § 2923.122

2923.122 Conveyance or possession of deadly weapons or dangerous ordnance in school safety zone

Effective: March 27, 2013
Currentness

(A) No person shall knowingly convey, or attempt to convey, a deadly weapon or dangerous ordnance into a school safety zone.

(B) No person shall knowingly possess a deadly weapon or dangerous ordnance in a school safety zone.

(C) No person shall knowingly possess an object in a school safety zone if both of the following apply:

(1) The object is indistinguishable from a firearm, whether or not the object is capable of being fired.

(2) The person indicates that the person possesses the object and that it is a firearm, or the person knowingly displays or brandishes the object and indicates that it is a firearm.

(D)(1) This section does not apply to any of the following:

(a) An officer, agent, or employee of this or any other state or the United States, or a law enforcement officer, who is authorized to carry deadly weapons or dangerous ordnance and is acting within the scope of the officer's, agent's, or employee's duties, a security officer employed by a board of education or governing body of a school during the time that the security officer is on duty pursuant to that contract of employment, or any other person who has written authorization from the board of education or governing body of a school to convey deadly weapons or dangerous ordnance into a school safety zone or to possess a deadly weapon or dangerous ordnance in a school safety zone and who conveys or possesses the deadly weapon or dangerous ordnance in accordance with that authorization;

(b) Any person who is employed in this state, who is authorized to carry deadly weapons or dangerous ordnance, and who is subject to and in compliance with the requirements of section 109.801 of the Revised Code, unless the appointing authority of the person has expressly specified that the exemption provided in division (D)(1)(b) of this section does not apply to the person.

(2) Division (C) of this section does not apply to premises upon which home schooling is conducted. Division (C) of this section also does not apply to a school administrator, teacher, or employee who possesses an object that is indistinguishable from a firearm for legitimate school purposes during the course of employment, a student who uses an

object that is indistinguishable from a firearm under the direction of a school administrator, teacher, or employee, or any other person who with the express prior approval of a school administrator possesses an object that is indistinguishable from a firearm for a legitimate purpose, including the use of the object in a ceremonial activity, a play, reenactment, or other dramatic presentation, or a ROTC activity or another similar use of the object.

(3) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if, at the time of that conveyance, attempted conveyance, or possession of the handgun, all of the following apply:

(a) The person does not enter into a school building or onto school premises and is not at a school activity.

(b) The person is carrying a valid concealed handgun license.

(c) The person is in the school safety zone in accordance with 18 U.S.C. 922(q)(2)(B).

(d) The person is not knowingly in a place described in division (B)(1) or (B)(3) to (10) of section 2923.126 of the Revised Code.

(4) This section does not apply to a person who conveys or attempts to convey a handgun into, or possesses a handgun in, a school safety zone if at the time of that conveyance, attempted conveyance, or possession of the handgun all of the following apply:

(a) The person is carrying a valid concealed handgun license.

(b) The person is the driver or passenger in a motor vehicle and is in the school safety zone while immediately in the process of picking up or dropping off a child.

(c) The person is not in violation of section 2923.16 of the Revised Code.

(E)(1) Whoever violates division (A) or (B) of this section is guilty of illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone. Except as otherwise provided in this division, illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fifth degree. If the offender previously has been convicted of a violation of this section, illegal conveyance or possession of a deadly weapon or dangerous ordnance in a school safety zone is a felony of the fourth degree.

(2) Whoever violates division (C) of this section is guilty of illegal possession of an object indistinguishable from a firearm in a school safety zone. Except as otherwise provided in this division, illegal possession of an object indistinguishable from a firearm in a school safety zone is a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, illegal possession of an object indistinguishable from a firearm in a school safety zone is a felony of the fifth degree.

(F)(1) In addition to any other penalty imposed upon a person who is convicted of or pleads guilty to a violation of this section and subject to division (F)(2) of this section, if the offender has not attained nineteen years of age, regardless of whether the offender is attending or is enrolled in a school operated by a board of education or for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, the court shall impose upon the offender a class four suspension of the offender's probationary driver's license, restricted license, driver's license, commercial driver's license, temporary instruction permit, or probationary commercial driver's license that then is in effect from the range specified in division (A)(4) of section 4510.02 of the Revised Code and shall deny the offender the issuance of any permit or license of that type during the period of the suspension.

If the offender is not a resident of this state, the court shall impose a class four suspension of the nonresident operating privilege of the offender from the range specified in division (A)(4) of section 4510.02 of the Revised Code.

(2) If the offender shows good cause why the court should not suspend one of the types of licenses, permits, or privileges specified in division (F)(1) of this section or deny the issuance of one of the temporary instruction permits specified in that division, the court in its discretion may choose not to impose the suspension, revocation, or denial required in that division, but the court, in its discretion, instead may require the offender to perform community service for a number of hours determined by the court.

(G) As used in this section, "object that is indistinguishable from a firearm" means an object made, constructed, or altered so that, to a reasonable person without specialized training in firearms, the object appears to be a firearm.

CREDIT(S)

(2012 H 495, eff. 3-27-13; 2012 S 337, eff. 9-28-12; 2008 S 184, eff. 9-9-08; 2006 H 347, eff. 3-14-07; 2004 H 12, § 3, eff. 4-8-04; 2004 H 12, § 1, eff. 4-8-04; 2002 S 123, eff. 1-1-04; 1999 S 1, eff. 8-6-99; 1996 H 72, eff. 3-18-97; 1996 H 124, eff. 9-30-97; 1995 S 2, eff. 7-1-96; 1992 H 154, eff. 7-31-92)

R.C. § 2923.122, OH ST § 2923.122
Current through Files 89, and 91 to 121 of the 131st General Assembly (2015-2016).

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United States Code Annotated
Constitution of the United States
Annotated
Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances (Refs & Annos)

U.S.C.A. Const. Amend. I

Amendment I. Freedom of Religion, Speech and Press; Peaceful Assemblage; Petition of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<This amendment is further displayed in three separate documents according to subject matter>

<see USCA Const Amend. I, Religion>

<see USCA Const Amend. I, Speech>

<see USCA Const Amend. I, Assemblage>

U.S.C.A. Const. Amend. I, USCA CONST Amend. I
Current through P.L. 114-181. Also includes P.L. 114-183 to 114-186, 114-188, 114-189, and 114-191 to 114-194.

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United States Code Annotated
Constitution of the United States
Annotated
Amendment IV. Searches and Seizures (Refs & Annos)

U.S.C.A. Const. Amend. IV-Search and Seizure

Amendment IV. Search and Seizure

Currentness

<Notes of Decisions for this amendment are displayed in four separate documents. Notes of Decisions for subdivisions I to XI are contained in this document. For Notes of Decisions for subdivisions XII to XXIV, see the second document for Amend. IV-Search and Seizure. For Notes of Decisions for subdivisions XXV to XXXIV see the third document for Amend. IV-Search and Seizure. For Notes of Decisions for subdivisions XXXV to end, see the fourth document for Amend IV-Search and Seizure.>

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S.C.A. Const. Amend. IV-Search and Seizure, USCA CONST Amend. IV-Search and Seizure
Current through P.L. 114-181. Also includes P.L. 114-183 to 114-186, 114-188, 114-189, and 114-191 to 114-194.

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United States Code Annotated
Constitution of the United States
Annotated
Amendment VI. Jury Trial for Crimes, and Procedural Rights (Refs & Annos)

U.S.C.A. Const. Amend. VI-Jury trials

Amendment VI. Jury trials for crimes, and procedural rights

Currentness

<Notes of Decisions for this amendment are displayed in three separate documents. Notes of Decisions for subdivisions I through XX are contained in this document. For Notes of Decisions for subdivisions XXI through XXIX, see the second document for Amend. VI. For Notes of Decisions for subdivisions XXX through XXXIII, see the third document for Amend. VI.>

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S.C.A. Const. Amend. VI-Jury trials, USCA CONST Amend. VI-Jury trials
Current through P.L. 114-181. Also includes P.L. 114-183 to 114-186, 114-188, 114-189, and 114-191 to 114-194.

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United States Code Annotated
Constitution of the United States
Annotated
Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement

U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 114-181. Also includes P.L. 114-183 to 114-186, 114-188, 114-189, and 114-191 to 114-194.

End of Document

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