

**Juvenile Case Decided by the
North Carolina Court of Appeals**

July 19, 2011

Delinquency

- Requiring all female students to do a “bra-lift” as part of a school-wide search for drugs was constitutionally unreasonable where there was no individualized suspicion and no indication of imminent danger.

In re T.A.S., __ N.C. App. __, __ S.E.2d __ (July 19, 2011).

<http://appellate.nccourts.org/opinions/?c=2&pdf=MjAxMS8xMC0yNzUtMS5wZGY=>

Facts: The juvenile was a student at an alternative school to which students were assigned for a variety of disciplinary violations. Some students told the principal that pills that “would cause kids to be unsafe” were being brought into the school by other, unidentified, students and that when entering the school through metal detectors students were hiding the pills in places like shoe tongues, socks, bras, and underwear. There was no indication of the nature of the pills and no clue as to which students might be bringing them to school. The principal required all students to gather in one room, and one at a time they were taken to a classroom where they were searched by a staff member. Also present were other administrators, a school resource officer, and another (male) law enforcement officer. The students were required to empty their book bags, empty their pockets, and take off their shoes. Their jackets were searched and their socks were patted down. Each female student was required to do a “bra lift” – to untuck her shirt and shake it, and to reach under her shirt, hook a finger under the middle of her bra, and pull it away from her body. A white powder (Percocet) and drug paraphernalia were found on the juvenile. The trial court denied the juvenile’s motion to suppress and the juvenile admitted the offenses, preserving her right to appeal the denial of her suppression motion.

Held: Reversed.

1. The court of appeals held that the search of the juvenile’s bra was constitutionally unreasonable, where
 - a. the search was part of a blanket search of the whole student body, and there was no individualized suspicion as to who might be bringing pills into the school, and
 - b. there was no indication of any “particularized reason to believe” that any pills being brought into the school created an imminent danger.
2. The court also noted that there was no indication that the school assessed the reliability of the students who made the report or conducted any investigation before resorting to the blanket search.
3. Although “strip search” has not been defined, the search in this case could be characterized as such even though the juvenile was not required to undress and none of her private parts were visible during the search, because “the bra-lift ... was degrading, demeaning, and highly intrusive.”
4. The search was unreasonably excessive in scope – “some level of individualized suspicion is required to venture beneath the outer clothing” during a search.
5. In its analysis, the court reviewed the U.S. Supreme Court’s holdings in *New Jersey v. T.L.O.*, 469 U.S. 646 (1995) (articulating the standard for reasonableness of school searches) and *Safford v. Redding*, 129 S. Ct. 2633, 174 L.Ed.2d 354 (2009) (holding that a strip search of a student was

constitutionally unreasonable even though the principal had a reasonable suspicion that the student was distributing drugs) and several other federal court decisions.

Dissent: Judge Steelman dissented on the bases that

- attendance at an alternative school led to a diminished privacy interest;
- the search involved minimal intrusion;
- the governmental interest was important and immediate; and
- the search was an effective means of addressing the government's concern.

*Appellate court opinions can be found at <http://www.aoc.state.nc.us/www/public/html/opinions.htm>
Earlier case summaries can be found at <http://www.sog.unc.edu/node/513>*



UNC
SCHOOL OF
GOVERNMENT

Janet Mason

School of Government
The University of North Carolina at Chapel Hill
Campus Box 3330, Knapp-Sanders Building
Chapel Hill, NC 27599-3330
T: 919.966.4246 F: 919.962.2706