The Effective Use of School Resource Officers: The Constitutionality of School Searches and Interrogations

By Christopher Z. Campbell

During the past several years, school resource officers (SROs) have been welcomed to many public school campuses. The SRO is usually a sworn law enforcement official placed at the school through an arrangement with the local police or sheriff's department. Although the presence of an SRO can deter individuals from attempting acts of violence, many school administrators feel that the primary advantage of having one on school grounds is his or her training and expertise in conducting searches and interrogations. As a result, SROs frequently act more like school administrators—questioning students and searching personal effects to enforce the student code of conduct—than like law enforcement officers seeking evidence of a crime. Using sworn law enforcement officers to enforce school rules in this way raises constitutional issues that affect both student discipline and the criminal judicial process.

This article addresses the constitutional rights of a student as "the accused" when a school search or interrogation involves an SRO. Often the courts' view of the amount of due process a student is entitled to depends on the SRO's official status in the school and the use to which the "fruits" of his or her search or interrogation are put. The level of suspicion an SRO needs to search a student's person or property may hinge on whether or not that SRO is (1) a sworn law enforcement officer assigned by contract or agreement to work at a particular school; (2) a private, independent contractor placed at the school pursuant to a contract with a security firm; (3) a full-time employee of the school system; or (4) a full-time employee of a law enforcement agency who is called to school grounds to respond to a specific criminal act.[1]

The article concludes that, regardless of the SRO's status in the school, it is school administrators who must take the lead role in conducting any search or interrogation of students. Only when an SRO is needed to protect individuals from harm, or when the SRO determines that the situation is clearly a law enforcement matter, should the school administrator allow the SRO to take full control of a search or interrogation. Following this practice will avoid constitutional challenges and ensure that the board of education and the courts will deal on their merits with acts that violate both the student code of conduct and the law.

The "Reasonable Suspicion" Standard under the Fourth Amendment

In 1985, in *New Jersey v. T.L.O.*, the U.S. Supreme Court held that the Fourth Amendment to the Constitution applies to searches of students conducted by public school officials.[2] The Court rejected the assertion that school officials are exempt from the dictates of the Fourth Amendment because they act *in loco parentis*. However, in balancing the legitimate privacy interests of students with a school's compelling need to maintain order and discipline, the Court ruled that the "legality" of a search by school officials depends on the "reasonableness" of the search. The Court developed a twofold inquiry for assessing the reasonableness of a school search. First, the search must be "justified at its inception"; second, it must be "reasonably related in scope to the circumstances which justified the interference in the first place."[3] This means that searches by school personnel must be based on a "reasonable suspicion" and that the scope of the search must be proportional to the seriousness of the suspected act and the likely harm of not conducting the search.

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1. For an excellent review of the factors used by various courts to determine the status of the officer as "outside" law enforcement official or school employee for Fourth Amendment purposes, *see* Ann L. Majestic, Jean M. Cary, and Janine M. Murphy, "Searches of Students," Chapter B.3 in *Education Law in North Carolina*, ed. Janine M. Murphy and Robert E. Phay (CD-ROM) (Chapel Hill: Principal's Executive Program, 2002), 320.

2. 469 U.S. 325 (1985).

3. *T.L.O.*, 469 U.S. 325, 341 (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)).

The Exclusionary Rule and School Disciplinary Hearings

In 1960 the U.S. Supreme Court ruled in *Elkins v. United States* that the "fruits" of an illegal search could not be used as evidence against an accused.[4] Twenty-five years later, the Court granted review of the New Jersey Supreme Court's decision in *T.L.O.* specifically to determine whether the exclusionary rule should be applied to school disciplinary hearings. However, the Court did not reach the issue of application of the exclusionary rule—because it deemed the search in the case to be lawful.

In 1980 a Texas federal district court applied the exclusionary rule to school disciplinary proceedings. In *Jones v. Latexo Independent School District*, the court held that the rule applied to school disciplinary proceedings because educators are public actors and "role models" who should be held to the same constitutional standard as police officers when conducting searches.[5]

More recently, the issue was reached by the U.S. Court of Appeals for the Eighth Circuit, which held in *Cleoria Thompson v. Carthage School District* that the "Fourth Amendment exclusionary rule does not apply to school disciplinary hearings."[6] In support of its ruling, the court stated that "[a]pplication of the exclusionary rule would require suppression hearing-like inquiries [that would be] inconsistent with the demands of school discipline, demands that led the [U.S. Supreme] Court to impose very limited due process requirements in *Goss v. Lopez.* The *Thompson* court also stated that applying the rule could result in unacceptable "societal costs." "For example, the exclusionary rule might bar a high school from expelling a student who confessed to killing a classmate on campus if his confession was not preceded by *Miranda* warnings."[7]

Thompson provides school attorneys with a precedent for rejecting student challenges to suspension based on claims of unreasonable searches by school administrators. *Thompson* did not, however, involve an SRO. The search at issue in that case was conducted by a school principal and a science teacher. In fact, the court made a distinction between "school officials" and "law enforcement officers" in supporting its holding: "School officials, on the other hand, are not law enforcement officers. They do not have an adversarial relationship with students. Instead, there 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."[8] Following the practices recommended at the end of this article should preclude a student defense based on an unreasonable search by an SRO who is also a sworn law enforcement officer.

Cases Applying the Reasonable Suspicion Standard to SRO Involvement in Searches

Several jurisdictions, including Florida and Illinois, have ruled that the involvement of an SRO does *not* mean that school officials need more than reasonable suspicion in order to conduct a search. However, these decisions draw a distinction between the involvement of an SRO accompanying school officials for reasons of school discipline and the involvement of an SRO for reasons related primarily to law enforcement. Short summaries of the more relevant cases are provided below.

- *State of Florida v. N.G.B.*[9] The court cites *In re D.D.* (discussed below) as authority for the proposition that the reasonable suspicion standard is applicable to searches by SROs when the search is "initiated by" school officials who request the "assistance" of the SRO.
- *R.L. v. State of Florida*[10] In a case in which an allegation first made to an SRO was passed on to a school official, the court ruled that the school official's subsequent search was not conducted "at the behest of law enforcement."
- *State of Florida v. Whorley*[11] In upholding the principal's use of the school resource officer and the SRO's office to conduct a search of a student, the court stated that "[t]he cases uniformly hold that school board police officers who participate in searches by school board employees need only reasonable suspicion to justify the search."
- *The People v. Kenneth Dilworth*[12] This case contains an extensive review of *T.L.O.* and its application to school resource officers. In its ruling in favor of an officer-initiated search, the Supreme Court of Illinois distinguished between law enforcement actions and actions intended to further school discipline. After two teachers requested that a certain student be searched for drugs, the SRO conducted the search and found nothing. However, after that student and another student acted suspiciously, the SRO searched a flashlight in the possession of the second student. The flashlight con-

4. 364 U.S. 206 (1960).
5. 499 F. Supp. 223 (E.D. Tex. 1980).
6. 87 F.3d 979, 980 (8th Cir. 1996).
7. *Id.* at 981.
8. *Id.* [quoting *T.L.O.*, 469 U.S. at 350 (Justice Powell, concurring)].
9. 806 So.2d 567 (Fla. Dist. Ct. App. 2d Dist. 2002).
10. 738 So.2d 507 (Fla. Dist. Ct. App. 5th Dist. 1999).
11. 720 So.2d 282, 283 (Fla. Dist. Ct. App. 2d Dist. 1998).
12. 661 N.E.2d 310, 317 (Ill. 1996).

tained cocaine. In concluding that the reasonable suspicion standard applied, the court held that under the circumstances "this case is best characterized as involving a liaison police officer conducting a search on his own initiative and authority, in furtherance of the school's attempt to maintain a proper educational environment." In addition, the court explicitly rejected the dissenting judge's argument that only officers employed by and ultimately responsible to school officials should be permitted to search with reasonable suspicion.

School Searches Resulting in Criminal Proceedings

A number of courts have excluded evidence in criminal proceedings when the evidence was illegally obtained by school officials.[13] The basic rationale is that all school officials are public employees analogous to police officers and will be deterred from conducting illegal searches if they know that the evidence cannot be used to convict the student criminally.

Some courts, however, have ruled that the exclusionary rule is only applicable to law enforcement officers. In *State v. Young*, the Georgia Supreme Court held that the exclusionary rule was a judicial interpretation intended to deter illegal searches by law enforcement officers and, thus, has no application when the search is conducted by a school official. This argument, however, may not be relevant or persuasive when the search in question is conducted by an SRO who is also a sworn law enforcement officer.[14] Thus, the best practice is to follow the procedure outlined in the conclusion and thereby avoid the possibility that a criminal court will exclude evidence obtained by an SRO who did not have probable cause.

Application of *Miranda* Warnings to School Resource Officers

In both Pennsylvania and Texas, state courts have held that students interrogated by SROs who are sworn law enforcement officers must be given their *Miranda* warnings in certain circumstances. These cases, summarized below, show that allowing the SRO to act without the involvement of a school official may prevent criminal prosecution of the student.

In *In re the Interest of R.H.,* the Supreme Court of Pennsylvania affirmed that "juveniles, as well as adults, are entitled to be apprised of their rights pursuant to *Miranda*" when subjected to a custodial interrogation.[15] The court then held that when school police officers (1) are vested with the same powers as municipal police officers and (2) conduct an interrogation that is custodial in nature and leads to the imposition of criminal charges rather than a school penalty, then the school police officers are acting as law enforcement officers within the purview of *Miranda*.

In *In the matter of D.A.R.*, school officials received a student report that a certain student had a weapon and requested an SRO to search the student.[16] The search turned up no evidence. Later, the SRO summoned the student to his office because of numerous additional student reports that the student had a weapon somewhere on campus. The SRO testified that his main goal in interrogating the student was to secure the weapon. The SRO's office door was closed but not locked. During their conversation, the student admitted to hiding a weapon nearby. The SRO escorted the student to the location and, after finding the weapon, read the student his *Miranda* warnings and placed him under arrest.

The Texas Court of Appeals for the Eighth District ruled that the SRO's actions violated the student's Fifth Amendment right against self-incrimination. The court reasoned that, given the circumstances, a reasonable child of the same age as the juvenile would believe that his freedom of movement was being restrained to the degree associated with a formal arrest. "At the very least, [the SRO] had probable cause to arrest appellant after appellant admitted that he had a gun and had left it close to the school grounds." The court also cited an earlier Texas decision, noting that "[t]he mere fact that an interrogation begins as non-custodial does not prevent custody from arising later; police conduct during the encounter may cause a consensual inquiry to escalate into custodial interrogation."[17]

North Carolina Case Law

On two occasions, the North Carolina Court of Appeals has reviewed juvenile court criminal decisions involving the use of an SRO in a student search. Although these cases focus on the criminal process and the exclusionary rule rather than on the school discipline process, the holdings in each case provide school administrators with an important roadmap for proper use of their SROs. The two cases are summarized below.

13. *See* list of cases cited in "Searches of Students," Majestic, Cary, and Murphy, 321.

14. 216 S.E.2d 586, *cert. denied*, 423 U.S. 1039 (1975).

15. 791 A.2d 331 (Pa. 2002).

16. 73 S.W.3d 505 (Tex. App. El Paso 2002).

17. *Id.* at 510, 511, 512 [citing Dowthitt v. State, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996)].

In re Murray

Facts: In this case, an assistant principal received a tip that a student was carrying something in his book bag that he "should not have at school."[18] When confronted by the assistant principal, the student refused to have his bag searched; he refused a second time after he was escorted to the office. The assistant principal summoned the SRO, a sworn deputy sheriff, who explained to the student that the bag needed to be searched for reasons of school safety. The assistant principal then struggled with the student for control of the bag, and the student was physically restrained by the SRO. The bag contained a pellet gun.
Issue: In juvenile court, the student's attorney argued in favor of application of the exclusionary rule.
Holding: The court rejected the argument, finding that the search had been initiated and conducted by a school principal on the basis of reasonable suspicion. However, the court stated, the "standard we use depends on whether a school official or law enforcement officer conducted the search."[19]

In re D.D.

Facts: A substitute teacher at Hillside High School overheard several students saying that a fight might occur on campus and informed the school principal.[20] The fight reportedly was to take place after school and involve students from another school. The principal stationed himself and the SRO at different ends of the school. After seeing four girls standing at a public bus stop on school grounds, the principal and the SRO "gathered together" two other police officers and approached the girls. One of the officers was the SRO, one was an off-duty officer employed by the school, and the third officer was an on-duty policeman. All three officers were in uniform and carrying guns. In response to the principal's questions, one of the girls acknowledged being in an unauthorized area. The others became agitated and made profane and vulgar remarks. The girls were prevented from leaving by the officers. The principal used a cell phone to check the identities of the girls and determined that they had given false names. The principal decided to detain the girls because, he said, he knew of no school that would have allowed them to be on his campus at that time. One of the officers allegedly "grabbed" the purse of one of the students and discovered a box cutter. The girls were then taken to the principal's office and the juvenile involved in the appeal placed a knife on the principal's desk after being asked to empty her pockets.

Issue 1: The juvenile could not be searched with reasonable suspicion because she was not a Hillside student.
Holding: The court rejected the argument and held that not applying the *T.L.O.* standard on the basis of this argument could lead to "absurd results."
Issue 2: The search involved law enforcement officers; therefore the reasonable suspicion standard could not be applied.
Holding: The court held that the role, nature, and extent of the law enforcement officers' involvement were the primary consideration. It reviewed three categories of authority supporting application of the reasonable suspicion standard as follows:

1. *Searches by police officers "in conjunction with" school officials.* In these situations, the search is initiated and conducted by a school official and involvement of law enforcement is minimal.
2. *Searches initiated by an SRO or requested by a school official* in the furtherance of well-established educational and safety goals.
3. *Searches by officers employed solely by the school district* who are ultimately responsible to the district rather than to the police department.

The court distinguished these three categories from situations in which outside law enforcement officers search students as part of an independent investigation or in which school officials search students at the request or behest of outside law enforcement officers or law enforcement agencies.[21]

The Problem with Searches Initiated and Conducted by SROs

A search initiated and conducted by an SRO presents several constitutional questions. First, when conducting the search, is the SRO acting as a school official or as a law enforcement officer? The answer to this question may depend on numerous factors, including the employment characteristics of the SRO position and the type of offense being investigated. If acting as a law enforcement officer, the SRO may need probable cause to justify the search. If acting as a school official, however, the SRO merely needs to have a reasonable suspicion to conduct a search.

Second, must the SRO provide the student with *Miranda* warnings before questioning him or her? Again, the answer may depend on the characteristics of the SRO position and the offense being investigated. In addition, the SRO must determine whether or not an interrogation is custodial in nature.

18. 136 N.C. App. 648, 525 S.E.2d 496 (2000).
19. *Id.* at 651.
20. 146 N.C. App. 309, 554 S.E.2d 346 (2001), *cert. denied*, 354 N.C. 572, 558 S.E.2d 867 (2001).
21. *Id.* at 318.

Best Practice for Use of School Resource Officers

To avoid constitutional concerns, school officials should follow the same approach in the majority of situations. The decisions cited above provide an excellent guide for the use of SROs in student searches and interrogations. Use of the following procedures should limit constitutional challenges in court and in board of education proceedings:

1. School administrators should always initiate and conduct searches and interrogations that are based on reasonable suspicion.
2. Law enforcement officers, including SROs, should be alerted if evidence of a crime is obtained by the school official during a search or interrogation.
3. If the administrator believes that the search or interrogation involves an unavoidable risk of harm to the administrator, other school employees, or other students, the administrator should request that a law enforcement officer be present to witness the search or interrogation.
4. If the incident becomes violent, or if evidence of a crime is uncovered, the SRO should then take control of the situation and give appropriate *Miranda* warnings if required. SROs, and not school officials, should decide if and when *Miranda* warnings are given. ■