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King County Prosecutor  
Appellate Unit

SUPREME COURT NO. \_\_\_\_\_  
COURT OF APPEALS NO. 64699-1-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

J.M.,

Petitioner.

**FILED**  
JUN 30 2011  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON  
*[Signature]*

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY, JUVENILE  
DIVISION

The Honorable Julia Garrett, Judge

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner Jamar Meneese, appellant below, asks this Court to review the decision of the Court of Appeals referred to in section B.

B. COURT OF APPEALS DECISION

Meneese seeks review of the Court of Appeals published decision in State v. J.M., \_\_ Wn. App. \_\_, \_\_ P.3d \_\_, 2011 WL 1949571 (slip op. filed May 23, 2011), attached hereto as an appendix.

C. REASON TO ACCEPT REVIEW

This Court should accept review because the Court of Appeals decision raises significant questions of law under the Fourth Amendment and Washington Constitution article 1, § 7. RAP 13.4(b)(3).

ISSUES PRESENTED

In recognition of the need for school officials to maintain discipline and order in schools, a relaxed standard for lawful searches of students and their belongings in the school setting is recognized under both the state and federal constitutions. Unlike police officers, who generally need a valid warrant to search student's locked backpack, school officials need only reasonable grounds.

1. Is a uniformed and armed police officer assigned by the police department as a resource officer to a public school, a "school

official" for purposes of assessing the legality of the search of a student's locked backpack for which there was no probable cause?

2. Even if the "school official" standard applies to a police officer assigned to a public school, does that officer lack "reasonable grounds" to search a student's locked backpack when the student: (a) has already been arrested and handcuffed; (b) has no way to access the contents of the locked backpack; (c) the backpack is already in police custody; and (d) where an immediate search of the backpack would not promote discipline or order in the school?

D. STATEMENT OF THE CASE

1. Procedural History

Meneese was charged as a minor with unlawfully carrying a dangerous weapon at school (a .177 caliber 'Beretta' air pistol) and possessing less than 40 grams of marijuana. CP 1; RCW 9A.12.280; RCW 69.50.4014. Meneese moved to suppress the air pistol because it was seized by a police officer from his locked backpack without a warrant. A commissioner denied the motion. CP 25-29, 42-56; RP 124-26. Meneese was then found guilty on stipulated facts. CP 5-7; RP 131-33.

A subsequent motion to revise the commissioner's ruling denying the motion to suppress was denied by a superior court judge. CP 19-120,

30-33. The court imposed a standard range disposition. CP 34-39; RP 164-75. Meneese appealed. CP 41.

On appeal, Meneese assigned error to the denial of his motion to suppress. Brief of Appellant (BOA) at 1-3. Meneese argued the pistol should have been suppressed because it was discovered only after an unlawful search of his backpack by a Bellevue police officer. Meneese argued it is per se error for a police officer to search a locked container without a warrant. BOA at 8-12. In the alternative, Meneese argued that even if the officer qualified as a "school official" such that the more relaxed standard applied for purposes of assessing the legality of the search, it was still unlawful under the circumstances. BOA at 12-14.

In a published decision, the court of appeals affirmed. It held the officer was a "school official" and that his search of Meneese's backpack was lawful under the circumstances. Appendix.

## 2. Substantive Facts

Bellevue Police Officer Michael Fry was a 15-year veteran of the Bellevue Police Department. RP 58-59. For the 12 years preceding Meneese's trial, Fry's duties included assignment as a "School Resource Officer" (SRO) at Robinswood High School and Middle School

(Robinswood). RP 36.<sup>1</sup> According to Fry, the school district pays the Bellevue Police Department \$90,000 a year to have six police officers assigned to the district as SROs. RP 39.

As a Robinswood SRO, Fry parked his marked police car in front of the school, patrolled the school grounds in full uniform, and carried his service revolver. RP 60, 62, 72. Fry was available to respond to police matters elsewhere in Bellevue, but his main duties while at Robinswood were to maintain safety, be available to students with questions or concerns, and to provide a positive police presence. RP 37, 39.

One day Fry was looking inside the school bathrooms when he saw Meneese standing at a sink holding what appeared to be a bag of marijuana and a medicine vial. RP 44-45, 66. Fry seized the suspected marijuana and vial and took them, Meneese, and Meneese's backpack to the office of the Dean of Students, Phyllis Roderick. RP 45-47, 68-70.

Fry explained to Roderick what he saw Meneese doing in the bathroom. RP 48-49, 71-72. Fry then told Meneese he was under arrest and called for another officer to transport him to the precinct for booking. RP 49-50.

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<sup>1</sup> A letter dated December 9, 2008, from City of Bellevue School District Superintendent to the City of Bellevue Police Chief purports to designate Fry and several other officers as "school officials." Ex. 4.

At some point Fry noticed the zipper to the main compartment of Meneese's backpack was locked. Fry could not smell marijuana in the pack, but suspected there might be some in it anyway. RP 49, 74, 78-79. Without Meneese's permission, Fry pryed open the zipper enough to get his hand inside. RP 50-53. When Fry asked Meneese for the key, Meneese said he had left it at home. RP 53. Fry then handcuffed Meneese, searched him, and found the key to the lock in Meneese's jacket. RP 53-54. Fry undid the lock, opened the backpack, and discovered an air pistol. CP 1; RP 54.

Officer Finney arrived sometime after Fry found the pistol. RP 30. Fry advised Meneese of his rights and Finney transported him to the precinct. RP 31, 56-57.

E. ARGUMENT

THE COURT OF APPEALS' DECISION RAISES A SIGNIFICANT QUESTION OF LAW REGARDING PUBLIC SCHOOL STUDENTS' RIGHTS TO BE FREE FROM UNREASONABLE SEARCHES.

The Fourth Amendment<sup>2</sup> and Const. art. I, § 7<sup>3</sup> apply to searches conducted by school officials. New Jersey v. T.L.O. 469 U.S. 325, 337, 105

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<sup>2</sup> The Fourth Amendment states, "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

S. Ct. 733, 83 L. Ed. 2d 720 (1985); State v. Brooks, 43 Wn. App. 560, 568, 718 P.2d 837 (1986). The test under each constitutional provision is the same. Brooks, 43 Wn. App. at 568-69. A school search is constitutional "if the school official has reasonable grounds to believe the search is necessary in the aid of maintaining school discipline and order." State v. McKinnon, 88 Wn.2d 75, 81, 558 P.2d 781 (1977).

A reasonable search is one justified at its inception and one reasonably related in scope to the facts that justified the interference in the first place. T.L.O., 469 U.S. at 341. A search is justified at its inception only when there are reasonable grounds for suspecting the search will reveal evidence the student has violated or is violating either the law or a school rule. State v. B.A.S., 103 Wn. App. 549, 553-54, 13 P.3d 244 (2000), citing T.L.O., 469 U.S. at 342. Washington courts consider "the child's age, history, and school record, the prevalence and seriousness of the problem in the school to which the search was directed, the exigency to make the search without delay, and the probative value and reliability of the information used as a justification for the search." Kuehn v. Renton School Dist. No. 403,

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describing the place to be searched, and the persons or things to be seized."

<sup>3</sup> Const. art. I, § 7 provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

103 Wn.2d 594, 598, 694 P.2d 1078 (1985) (citations omitted), quoting McKinnon, 88 Wn.2d at 81.

The court of appeals published decision here erodes the constitutional right of public school students to be free from unreasonable searches of their person and belongings. By holding Officer Fry was acting as a "school official" and had "reasonable grounds" to search Meneese's backpack, the decision broadens the scope of the "school search" exception far beyond that previously recognized under the Fourth Amendment in T.L.O., and under Const. art. I, § 7, in Brooks. Such broadening is counter to the well-established principle that there should be few exceptions to the warrant requirement, and the exceptions that do exist must be closely and jealously guarded against over extension. State v. Schultz, 170 Wn.2d 746, 761, 248 P.3d 484 (2011); State v. Afana, 169 Wn.2d 169, 177, 233 P.3d 879 (2010); York v. Wahkiakum School Dist., 163 Wn.2d 297, 306-310, 178 P.3d 995 (2008); State v. Ladson, 138 Wn.2d 343, 355-56, 979 P.2d 833 (1999).

This Court should grant review to determine whether erosion of the constitutional protections under the Fourth Amendment and Const. art. I, § 7, is appropriate. RAP 13.4(b)(3)

- a. Officer Fry was not acting as a "school official" when he searched Meneese's backpack

Whether Officer Fry was a "school official" or instead as a law enforcement officer when he search the backpack is a critical threshold determination. If he was acting as a "school official," the issue is whether the search was reasonably necessary to aid in maintaining school discipline and order. McKinnon, 88 Wn.2d at 81. If he was not acting as a "school official," the search was a per se violation of Meneese's right to privacy because all post-arrest searches of locked containers by police officers must be authorized by a valid search warrant. State v. Stroud, 106 Wn.2d 144, 152, 720 P.2d 436 (1986), overruled on other grounds, State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (1009).<sup>4</sup>

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<sup>4</sup> The Stroud Court noted:

The rationale for this [rule] is twofold. First, by locking the container, the individual has shown that he or she reasonably expects the contents to remain private. Secondly, the danger that the individual either could destroy or hide evidence located within the container or grab a weapon is minimized. The individual would have to spend time unlocking the container, during which time the officers have an opportunity to prevent the individual's access to the contents of the container.

106 Wn.2d at 152 (citation omitted).

Whether someone is a "school official" turns not on whether such a title was bestowed upon the individual by another, but instead on the precise nature of the person's duties in relation to the school. McKinnon, 88 Wn.2d at 81. In McKinnon, the chief of police told the high school principle about a confidential informant's tip that certain students, including McKinnon, were selling drugs at school. The principle and vice principle of the school immediately contacted the suspect students, searched them, found illicit drugs, and then contacted police. The students were arrest by police and eventually found guilty of drug crimes. 88 Wn.2d at 77-78.

The issue on appeal was whether the search violated the Fourth Amendment on a theory that the principal and vice principal were acting as agents of the state and therefore had to have a warrant before searching. 88 Wn.2d at 78. In concluding a more relaxed standard is warranted for searches conducted by school officials, the Court noted the difference between the duties of a public school official, such as a principal, and those of a law enforcement officer:

The high school principal is not a law enforcement officer. His job does not concern the discovery and prevention of crime. His duty as the chief administrator of the high school includes a primary duty of maintaining order and discipline in the school. In carrying out this duty, he should not be held to the same probable cause standard as law enforcement officers. Although a student's right to be free from intrusion is not [to] be lightly disregarded, for us to hold school

officials to the standard of probable cause required of law enforcement officials would create an unreasonable burden upon these school officials. Maintaining discipline in schools oftentimes requires immediate action and cannot await the procurement of a search warrant based on probable cause. We hold that the search of a student's person is reasonable and does not violate his Fourth Amendment rights, if the school official has reasonable grounds to believe the search is necessary in the aid of maintaining school discipline and order.

88 Wn.2d at 81.

Here, Officer Fry was responsible for maintaining "a safe learning environment at Robinswood." RP 39. He was specifically prohibited, however, from administering school discipline. Ex. 4; RP 41-42. Moreover, Officer Fry's duties as an SRO were merely "in addition to [his] law enforcement duties." RP 41. As Fry admitted, he was available to assist other police officers in matters unrelated to the school, even during his shift as SRO. RP 39. This is not surprising; Officer Fry was paid by the Bellevue police department to be a police officer, not by the Bellevue school district to be a SRO. CP 31; RP 39, 58-59.

Under these circumstances, Officer Fry's job, unlike that of a school principal, vice principal, teacher or counselor, included the prevention and discovery of crime, in addition to helping maintain a safe learning environment at the school. Under the analysis in McKinnon, Fry was not a "school official." Instead, he was a police officer acting within police

authority when he arrested Meneese and therefore should have obtained a search warrant before searching the locked backpack. See RP 73 (Fry agrees that only law enforcement officers may arrest a person for a misdemeanor).

Even if Officer Fry was acting as a "school official" during his initial contact with Meneese, by the time he searched Meneese's backpack he shifted roles. By the time of the search, Fry had already arrested Meneese and made arrangements to transport him to jail. Thus, Fry had completed his duties as an SRO of maintaining Robinswold as a "safe, secure and orderly learning environment" by effectively removing Meneese from any interaction with other students or faculty. Officer Fry then transitioned to a purely law enforcement function when he searched the backpack because he was then focuses exclusively on the discovery and prevention of crime.

The court of appeals failed to appreciate this distinction in Officer Fry's interactions with Meneese. Instead, it concluded that because Officer Fry's "primary duties as an SRO were to maintain a safe, secure, and orderly learning environment," he qualified as a "school official" during his entire interaction with Meneese. Appendix at 7-8. This Court should grant review to determine whether Officer Fry was ever a "school official", and if he was, whether he retained that status when he searched of Meneese's backpack.

- b. Even if Officer Fry was a "school official" he lacked reasonable grounds to search the backpack at the time it was conducted.

Even if Fry was a "school official" when he searched the backpack, he lacked reasonable grounds to do so because the search was unnecessary to promote safety and discipline at the school; the backpack was already out of Meneese's control and in police custody, there was no indication it contained anything inherently dangerous such as explosives or toxic chemicals, and there was not basis to think that any evidence it might contain would be lost or degraded if not immediately discovered. At the time of the search, there was simply no need to invade Meneese's privacy in the contents of his locked backpack absent a valid warrant.

In reaching a contrary conclusion, the court of appeals conducted an assessment under the McKinnon factors, which include "(1) the student's age, history, and school record; (2) the prevalence and seriousness of the problem in the school to which the search was directed; (3) the probative value and reliability of the information justifying the search; and (4) the exigency to make the search without delay." Appendix at 10-13.

The court held Officer Fry had reasonable grounds to conduct the search because of "the probative value and reliability of the information [of seeing Meneese] holding what appeared to be marijuana while standing a

foot away from his backpack[,]” and because of “the prevalence and seriousness of the drug problem” at Robinswold. Appendix at 10-11. The court also concluded the search was “justified at its inception” based on Officer Fry’s initial encounter with Meneese in the bathroom. Appendix at 10.

The court of appeals reached an erroneous conclusion. The search was unreasonable because by the time it was conducted it was not necessary in order to maintain school discipline and order. Meneese had already been caught with marijuana in his hand, promptly taken into custody and ultimately arrested and handcuffed. At that point there was no reason to fear Meneese might grab whatever was in the pack and either destroy it or use it against someone. Officer Fry simply wanted to know what was in the pack because it was locked, which piqued his curiosity and made him suspect there might be more marijuana inside.

But the need to satisfy curiosity is not a valid basis for a warrantless search of a student’s locked backpack. As McKinnon and other cases hold, search of a student or his belongings is reasonable only if there is a reasonable concern of criminal conduct and there is an immediate need to determine whether those concerns are founded. See e.g., B.A.S., 103 Wn. App. at 554-56 (search of student unconstitutional because there was no

nexus between violating closed campus policy and no exigent circumstance warranting a search); cf. State v. Slattery, 56 Wn. App. 820, 825-26, 787 P.2d 932, (possibility that student or student's friend might remove car from campus was circumstance warranting immediate search of car for drugs by school security guards), review denied, 114 Wn.2d 1015(1990).

Because there were no circumstances justifying an immediate search of Meneese's backpack, Officer Fry should have sought a warrant to conduct the search. Because there was no need to search the back pack in order to maintain school discipline and order, Officer Fry violated Meneese's constitutional privacy rights.

In reaching a contrary conclusion, the court of appeals lost sight of the overarching justification for the "school search" exception, which is that it "is necessary in the aid of maintaining school discipline and order." McKinnon, 88 Wn.2d at 81. This Court should grant review and hold that once that justification no longer applies, neither does the exception.

F. CONCLUSION

This Court should grant review in order to answer the significant constitutional questions regarding the right to privacy arising in this case.

RAP 13.4(b)(3).

DATED this 16th day of June 2011.

Respectfully submitted,

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	No. 64699-1-I
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
J.M.,	)	PUBLISHED OPINION
DOB: 10/06/92	)	
Appellant.	)	FILED: <u>May 23, 2011</u>

SPEARMAN, J. — We are asked to decide the constitutionality of a school resource officer's warrantless post-arrest search of a high school student's locked backpack on school grounds, where the search, which revealed an air pistol, was conducted after the officer saw the student holding suspected marijuana. A trial court found J.M., a juvenile, guilty of carrying a dangerous weapon at school and possessing less than 40 grams of marijuana. He appeals his dangerous weapon conviction, arguing that the trial court erred in ruling that the school resource officer (SRO) was a "school official" conducting a school search and therefore needed only reasonable grounds to search rather than probable cause. He argues, moreover, that even if the SRO was a school official, his search was not supported by reasonable grounds. Under the facts of

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this case, we hold that the reasonable grounds standard applied to the SRO's search and that the search was supported by reasonable grounds. We affirm.

#### FACTS

On February 4, 2009, Bellevue police officer Michael Fry was on duty as an SRO at Robinswood High School in Bellevue, Washington.<sup>1</sup> He had worked as an SRO for approximately 12 years, assisting with discipline matters and exercising arrest powers. His primary duties were to maintain a safe, secure, and orderly learning environment, and he rarely handled nonschool-related calls while on duty as an SRO. That day, while checking one of the school's restrooms, Fry saw J.M., a student, standing at a sink, holding what appeared to be a baggie of marijuana and a medicine vial. Next to J.M. was a blue backpack. As Fry approached J.M., he smelled a strong odor that he recognized as that of marijuana. Fry seized the suspected marijuana, vial, and backpack and took J.M. to the dean of students, Phyllis Roderick. Roderick sat at her desk while Fry and J.M. sat facing her with J.M.'s backpack between them. Fry explained to Roderick what he had observed. He then informed J.M. that he was under arrest and called for another officer to come to the school to assist him. Fry sought to search J.M.'s backpack, which had a padlock running through the pull tabs on the zipper to the main compartment. Despite the lock, Fry was able to unzip the compartment wide enough to get his hand inside and withdraw a few items. He asked J.M. for the key to the lock, but J.M. said he had left it at home. Fry was

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<sup>1</sup> Fry's salary was paid by the Bellevue Police Department, which was partially reimbursed for Fry's services by the Bellevue School District.

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suspicious as to why J.M. would bring a locked backpack to school and not have a key. Fry handcuffed and searched J.M., finding keys in his jacket. He used one key to open the backpack and discovered an air pistol inside. Officer David Finney arrived shortly thereafter. Fry read J.M. his Miranda<sup>2</sup> rights, and J.M. indicated he did not wish to answer any questions. Finney took J.M. to the precinct for booking.

J.M. was charged with one count of carrying a dangerous weapon at school and one count of possession of less than 40 grams of marijuana. J.M. filed a motion to suppress the air pistol, arguing that the search of his backpack violated his constitutional privacy rights. The court commissioner denied the motion, entering findings of fact and conclusions of law. J.M. agreed to an adjudication on stipulated facts, and the trial court found him guilty as charged. J.M. challenged the commissioner's suppression ruling in a motion for revision. The superior court judge denied the motion and imposed a standard range disposition.<sup>3</sup> J.M. appeals his dangerous weapon conviction, claiming that the trial court's denial of his suppression motion was reversible error.

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<sup>2</sup> Miranda v. Arizona, 384 U.S. 436, 444-45, 86 S. Ct. 1602, 16 L.E.2d 694 (1966).

<sup>3</sup> In its order denying the motion for revision, the trial court noted that Fry lacked probable cause to search the backpack, but that the presence of marijuana, the fact that the backpack belonged to J.M. (who said he left the key at home), and the padlock created reasonable grounds for Fry to search the backpack. The court explained:

This court sees no reason to distinguish between school officials searching, school security guards searching and a police officer on assignment to a school, acting as security. From the perspective of the student-citizen being searched, the invasion of privacy is identical. Any distinction focuses on the insignificant factor of who pays the officer's salary, rather than on the officer's function at the school and the special nature of a public school.

DISCUSSION

J.M. argues that Fry was not a "school official" conducting a school search and therefore his search had to be supported by probable cause rather than reasonable grounds. He also argues that the search was not permissible under the reasonable grounds standard. We disagree with both arguments and affirm.

J.M. does not challenge any findings of fact, but instead bases his appeal on issues of law and the superior court's application of the law to the facts in his case. We review issues of law, as well as a trial court's application of the law to the facts, de novo. State v. Dow, 168 Wn.2d 243, 248-249, 227 P.3d 1278 (2010) (citing State v. Law, 110 Wn. App. 36, 39, 38 P.3d 374 (2002)).

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution protect individuals from unreasonable searches and seizures. Government agents must therefore have a search warrant issued upon probable cause unless some other condition justifies a warrantless search. Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). See also State v. McKinnon, 88 Wn.2d 75, 79, 558 P.2d 781 (1977). One exception to the warrant requirement, under both the federal and state constitutions, is a search conducted in a school setting by school authorities. New Jersey v. T.L.O., 469 U.S. 325, 341-42, 105 S.Ct. 733, 83 L.Ed.2d 720 (1985); State v. Brooks, 43 Wn. App. 560, 563-64, 718 P.2d 837 (1986).

Under the "school search" exception, school officials may search a student's belongings without a warrant if, under all the circumstances, the search

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is reasonable. State v. Slattery, 56 Wn. App. 820, 823–24, 787 P.2d 932 (1990).

A search is reasonable if it is justified at its inception and the scope of the search is reasonably related to the reasons justifying it. Id. The constitutionality of Officer Fry's search of J.M.'s backpack depends in part on whether the school search exception to the warrant requirement applies.<sup>4</sup>

J.M. argues that the school search exception does not apply because Fry was not a "school official" at the time of the search. He cites State v. McKinnon, 88 Wn.2d 75, 558 P.2d 781 (1977), arguing that under that case, Fry's duties showed that he was not a school official but rather a "police officer acting within police authority."<sup>5</sup> He contends that Fry was mainly responsible for maintaining a "safe learning environment," and preventing and discovering crime at Robinswood. He points out that Fry's duties as an SRO did not preempt his law enforcement duties and that Fry was available to assist other police officers with matters unrelated to the school even during his shift as an SRO. Moreover, he

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<sup>4</sup> J.M. argues that if the school search standard does not apply, the search was per se unreasonable because post-arrest searches of locked containers must be authorized by a valid search warrant, citing State v. Stroud, 106 Wn.2d 144, 152, 720 P.2d 436 (1986), overruled on other grounds, State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009). The State does not dispute this.

<sup>5</sup> In McKinnon, the Snoqualmie chief of police received a call from a confidential informant that two high school students were selling speed. McKinnon, 88 Wn.2d at 77. The police chief contacted the high school principal, who said he would talk to the students. The principal made contact with both students and reached into their pockets, finding amphetamines where the informant said they would be. Id. He then called the police chief to arrest the students. The students argued that the searches violated their right to be free from unreasonable searches and seizures because the principal was a state official. Id. at 78. The court held that the principal's searches did not violate the Fourth Amendment. It first noted that the principal was not a law enforcement officer, then went on to hold that "the search of a student's person is reasonable and does not violate his Fourth Amendment rights, if the school official has reasonable grounds to believe the search is necessary in the aid of maintaining school discipline and order." Id. at 81. The court's holding did not address which individuals are considered school officials.

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contends that Fry was paid by the Bellevue Police Department, not by the Bellevue School District.

The State urges us to reject any distinction between a non-law enforcement security officer and a police officer on assignment to a school as an SRO, arguing that “the fulfillment of the school’s duty to protect students from danger should not depend on whether the school district or the city employs the SRO.” The State further argues that requiring probable cause would unduly interfere with a school’s ability to maintain swift and informal disciplinary procedures.

We hold that under the facts of this case, Fry was acting as a school official and the reasonable grounds standard applied. As the parties acknowledge, Washington courts have not decided whether SROs are school officials for purposes of conducting student searches, but we find guidance in decisions from other jurisdictions.

The Illinois Supreme Court, in People v. Dilworth, 169 Ill.2d 195, 661 N.E.2d 310 (1996), held that the search of a student by a “liaison officer,” a police officer employed by the police department and assigned full-time to an alternate high school, was governed by the reasonable suspicion standard rather than probable cause. Id. at 207–08. The court noted that post-T.L.O. decisions from various jurisdictions that involved police officers in school settings could generally be separated into three categories: “(1) those where school officials initiate a search where police involvement is minimal, (2) those involving school police or liaison officers acting on their own authority, and (3) those where outside police

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officers initiate a search.” Id. at 206. It noted that in cases involving the first or second category, most courts have applied the reasonable suspicion standard, while in cases involving the third category, most courts have required probable cause. Id. at 206–07. The court held that the reasonable suspicion standard applied where the case was “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.” Id. at 208.

Similarly, the Indiana Court of Appeals, in S.A. v. State, 654 N.E.2d 791, 795 (Ind. Ct. App. 1995) (overruled on other grounds, Alvey v. State, 911 N.E.2d 1248 (Ind. 2009)), rejected the argument that the school search standard did not apply to the search of a high school student’s book bag because the police officer who conducted it was not a school official:

While Officer Grooms is a trained police officer, he was acting in his capacity as security officer for the [Indianapolis Public School] schools. Grooms is employed by the [Indianapolis Public School Police Department] and as such, his conduct regarding student searches on school premises is governed by the test announced in [T.L.O.].

Id. at 795.

We hold that, like the officers in Dilworth and S.A., Officer Fry was acting as a school official when he searched J.M.’s backpack. He was on duty as an SRO and acting under his authority as an SRO when he personally observed the activity that formed the basis for his search of J.M. Furthermore, though the McKinnon court did not address the issue of who can be considered a school official, its decision did suggest that the difference between a school official and law enforcement is that the latter is chiefly concerned with discovering and

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preventing crime.<sup>6</sup> Because it is undisputed that Fry's primary duties as an SRO were to maintain a safe, secure, and orderly learning environment, it is reasonable to infer that his chief duty was not the discovery and prevention of crime. Under these facts, the reasonable grounds standard applies.

#### Reasonable Grounds to Search

J.M. argues that even if Fry was acting as a school official, he lacked reasonable grounds to search J.M.'s backpack. J.M. points out that, at the time of the search, (1) he had already been arrested and handcuffed; (2) the officer had already seized the backpack; and (3) he had no way to access the contents of the backpack, so there was no reason to fear he might remove its contents, destroy them, or use them against anyone. Citing State v. B.A.S., 103 Wn. App. 549, 554–56, 13 P.3d 244 (2000), J.M. argues that the search violated his privacy rights because there were no exigent circumstances justifying an immediate search, and an immediate search was not necessary to further the purpose of maintaining school discipline and order.

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<sup>6</sup> Specifically, the court noted the difference between the principal and a law enforcement officer:

[The high school principal's] job does not concern the discovery and prevention of crime. His duty as the chief administrator of the high school includes a primary duty of maintaining order and discipline in the school. In carrying out this duty, he should not be held to the same probable cause standard as law enforcement officers. Although a student's right to be free from intrusion is not to be lightly disregarded, for us to hold school officials to the standard of probable cause required of law enforcement officials would create an unreasonable burden upon these school officials. Maintaining discipline in schools oftentimes requires immediate action and cannot await the procurement of a search warrant based on probable cause.

McKinnon, 88 Wn.2d at 81.

The State argues that Fry had reasonable grounds to conduct the search because (1) he saw J.M. holding marijuana while standing only a foot away from his backpack and (2) the backpack had a padlock on it, justifiably arousing Fry's suspicion of contraband, particularly when J.M. falsely claimed he did not have the key to the lock. The State also contends that there were exigent circumstances to make the search without delay because schools need the freedom to act swiftly to maintain discipline and order on school grounds. Moreover, the State argues, even if there were no exigent circumstances, there is no authority stating that all of the McKinnon factors must be met for a search to be found reasonable.

It is well settled that in the school search context, a reasonable search is one that is justified at its inception and reasonably related in scope to the facts that justified the interference in the first place. T.L.O., 469 U.S. at 341–42. Ordinarily, “a search is 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.” Id. (internal quotation marks and citation omitted). A search is “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.” Id. at 341–42.

Similarly, our Supreme Court has held that “the search of a student’s person is reasonable and does not violate his Fourth Amendment rights, if the school official has reasonable grounds to believe the search is necessary in the

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aid of maintaining school discipline and order.” McKinnon, 88 Wn.2d at 81. In determining whether a school official had reasonable grounds to search, Washington courts consider (1) the student’s age, history, and school record; (2) the prevalence and seriousness of the problem in the school to which the search was directed; (3) the probative value and reliability of the information justifying the search; and (4) the exigency to make the search without delay.<sup>7</sup> Id. While all the factors need not be found, their total absence will render the search unconstitutional. State v. Brooks, 43 Wn. App. 560, 568, 718 P.2d 837 (1986); Kuehn v. Renton Sch. Dist. No. 403, 103 Wn.2d 594, 598, 694 P.2d 1078 (1985).

We hold that Officer Fry had reasonable grounds to search J.M.’s locked backpack. Fry’s search was justified at its inception because, once Fry observed J.M. standing at a sink with a medicine vial with what appeared to be marijuana in his hand, Fry had reason to suspect that the backpack next to him also contained marijuana in violation of the law and school regulations. The search was permissible in its scope because Fry’s action in opening J.M.’s locked backpack was reasonably related to his objective to discover whether it contained additional marijuana.

In addition, at least two of the four McKinnon factors are met: (1) Fry and dean of students Roderick noted the prevalence and seriousness of the drug problem at the school (both recalled five or six incidences in the past year alone

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<sup>7</sup> The revision court in this case did not apply the McKinnon factors. Instead, it applied the three-part analysis used by the U.S. Supreme Court in Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646, 115 S. Ct. 2386, 132 L.Ed.2d 564 (1995). These factors are: “(1) the nature of the privacy interest on which the search intrudes, (2) the character of the search, and (3) the nature and immediacy of the governmental concern at issue, and the efficacy of this means for meeting it.” Id. at 654–64.

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where illegal substances were found), and (2) the probative value and reliability of the information justifying the search was high, because Fry personally saw J.M. holding what appeared to be marijuana while standing a foot away from his backpack. The record contains no evidence regarding J.M.'s age, history, and school record.<sup>8</sup> Nor is there evidence in the record that exigent circumstances existed to conduct the search of the backpack immediately.<sup>9</sup> But while the absence of those factors has some bearing on the reasonableness of the search, it does not, in and of itself, render the search unconstitutional. See Brooks, 43 Wn. App. at 568; Kuehn, 103 Wn.2d at 598.

J.M. cites State v. Slattery, 56 Wn. App. 820, 787 P.2d 932 (1990) and State v. B.A.S., 103 Wn. App. 549 to argue that the absence of exigent circumstances made the search of his backpack unlawful. But his reliance on these cases is misplaced. In Slattery, school officials acted on a tip from a student that Slattery was selling marijuana in the school parking lot. Id. at 821–22. They first searched Slattery, who was carrying \$230 and a paper with a pager number written on it. They then searched his car, where they found a pager and a notebook with names and dollar amounts written inside. Inside the locked trunk they found a locked briefcase. Id. at 822. Slattery first claimed that

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<sup>8</sup> J.M.'s age and school record are not in the court record. Also, in response to motions in limine, the parties agreed not to offer history of prior contacts between J.M. and Fry under ER 404(b).

<sup>9</sup> While the State argues that the need to maintain discipline and school order is an exigent circumstance justifying the search of J.M.'s backpack, it does not explain how, on the facts of this case, an immediate warrantless search furthered the school's interest in maintaining discipline and order on school grounds. This bald assertion, without more, is insufficient to establish an exigency justifying an immediate search. Cf. State v. Brown, 158 Wn. App.49, 240 P.3d 1175 (2010) (weapon on school grounds constituted threat to order and discipline of school justifying immediate search).

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he did not know who owned the briefcase, but then said it belonged to a friend and that he did not know the combination. Id. A security officer pried open the briefcase and found what appeared to be marijuana inside. Id.

Slattery argued that the search of his car and the locked briefcase was unreasonable because the school search exception was limited and applied only to "unintrusive" searches. Id. at 824. We disagreed, holding that school officials had reasonable grounds for suspecting that a search of Slattery would reveal evidence he had violated the law and that the search of his car and locked briefcase were reasonably related in scope to the circumstances justifying the initial interference. Id. at 826. We noted that the presence of three out of four McKinnon factors supported our conclusion that the search was reasonable: (1) the information leading to the search was reliable, (2) there was a serious drug problem at the school, and (3) an exigent circumstance existed because Slattery or a friend could have removed the car and the evidence from school grounds. Id. at 825.

J.M. correctly points out that here, there were no exigencies to make the search without delay, because he was already arrested and in handcuffs at the time of the search and could not access his backpack. But his argument that the search of his backpack was unlawful for that reason does not follow, and nothing we said in Slattery suggests otherwise. Indeed, the relevance of Slattery, as it pertains to this case, is that while we did not identify any exigencies with regard to the search of Slattery's locked briefcase, we nonetheless concluded that the search was justified. We found the search lawful because school officials had

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reasonable grounds to suspect that Slattery was in possession of marijuana and the search of the locked briefcase was within the scope of reasonable places to search for evidence of it. Likewise, in this case, we conclude that the search was justified because there were reasonable grounds to believe that J.M. was in possession of marijuana, and the search of J.M.'s locked backpack was a place where evidence of more contraband was likely to be found.

Finally, B.A.S. does not, as J.M. contends, stand for the proposition that the search of a student is reasonable only if there is a reasonable concern of criminal conduct and there is an immediate need to determine whether those concerns are founded. Our ruling in B.A.S. that the search of a student was not supported by reasonable grounds was based mainly on our conclusion that there was no nexus between the suspected violation of the school's closed campus policy and the likelihood that the student had brought contraband onto campus. B.A.S., 103 Wn. App. at 553. We noted that other factors "[lent] further support" to our conclusion that the search was not justified, only one of which was the lack of exigent circumstances. Id. at 555–56 (emphasis added).

In sum, we hold that Officer Fry was acting as a school official during his search of J.M.'s backpack and that the reasonable grounds standard applied to the search. We further hold that under that standard, the search was constitutional.

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Affirmed.

Sprague, J.

WE CONCUR:

Leach, A. C. J.

Jan, J.