

64699-1

64699-1

NO. 64699-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

JAMAR MANEESA,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JULIE GARRATT, COMMISSIONER  
THE HONORABLE RONALD KESSLER, JUDGE

2010 AUG 24 PM 2:58  
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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. The U.S. Supreme Court and Washington appellate courts have held that when searching students based on a reasonable, individualized suspicion, school officials need not obtain a warrant or have probable cause. Here, a school resource officer who also happened to be a police officer conducted a search on school grounds of a student's backpack. When assessing the legality of the school resource officer's search, the revision court applied the reasonable grounds standard for school officials. Did the revision court apply the correct standard?

2. A search by school officials is reasonable if (1) it is justified at its inception and (2) reasonably related in scope to the circumstances that justified the interference in the first place. Here, a school resource officer saw a student carrying marijuana while standing near his backpack. The student had a padlock on the backpack and falsely told the officer that he did not have keys to the lock. Did the revision court correctly conclude that the school resource officer had reasonable grounds to search the backpack?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The appellant, Jamar Maneese, was charged with (1) one count of Violation of the Uniform Controlled Substances Act - Possession of Less than 40 Grams of Marijuana, and (2) one count of Carrying a Dangerous Weapon at School. CP 1-2; RCW 69.50.4014; RCW 9.41.280. At a fact-finding hearing, Maneese moved to suppress the air pistol seized from inside his backpack. CP 25-29; RP 3-6. The court commissioner denied this motion. CP 25-29; RP 124-26. After the denial of his motion to suppress, Maneese agreed to an adjudication on stipulated facts. CP 5-7; RP 131-33. The court found Maneese guilty of both charged counts. CP 5-7; RP 131-33.

In a motion for revision, Maneese challenged the commissioner's suppression ruling. CP 19-20. A superior court judge denied this motion. CP 30-33. At sentencing, Maneese received a standard range disposition. CP 34-39; RP 164-75. This appeal now follows. CP 41.

## **2. SUBSTANTIVE FACTS**

On February 4, 2009, Officer Michael Fry was working as a School Resource Officer ("SRO") for Robinswood High School and Middle School in Bellevue, Washington. CP 31; RP 36. At that time, Fry had been an SRO for about 12 years. RP 36. As an SRO, Fry's salary was paid by the Bellevue Police Department, but the Department was partially reimbursed for Fry's services by the Bellevue School District. CP 31; RP 39-40; Ex. 4. In addition, the Bellevue School District Superintendent sent the Bellevue Police a letter clarifying Fry's role with the school. In the letter, the Superintendent appointed Fry as an SRO and as a Bellevue District School official. RP 39-44, 82; Ex. 4.

As an SRO, Fry assisted the Robinswood High School in discipline matters and also exercised arrest powers. CP 31. Fry's primary duties were to maintain a safe, secure, and orderly learning environment for students, teachers, and staff. RP 36-38, 43. To fulfill these duties, Fry aided in enforcing school district policies and rules as well as intervention and prevention of incidents on and off campus. RP 36-38. While working as an SRO, Fry only "very rarely" handled nonschool-related calls. RP 39.

As part of his duties, Fry sometimes assisted in searching students. Robinswood students routinely were warned of this possibility. Within the first weeks of each semester, students were given a policy that explained that they were free from searches by school officials unless there were reasonable grounds to believe that the search was necessary in the aid of maintaining school discipline and order. RP 94-95.

On February 4, 2009, during a routine check of the school's bathroom, Fry saw a student, Jamar Maneese, standing near a sink. CP 31.<sup>1</sup> Maneese was holding in one hand a medicine vial and in the other hand a bag of marijuana. CP 31; RP 44-46. He also was standing a foot away from a blue backpack. CP 31; RP 45-47. Fry seized the marijuana, picked up the backpack, and ordered Maneese to come with him to the office of the Dean of Students, Phyllis Roderick. CP 31; RP 46-47. Fry brought Maneese to the office so that Roderick could address Maneese's violation of the school district's drug policy. RP 82. At the office, Fry, Maneese, and Roderick sat down. RP 47-48, 71. All of them

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<sup>1</sup> This was not Fry's first encounter with Maneese. When Maneese enrolled at Robinswood, Fry had spoken with Maneese about how he worked on grounds in his capacity as an SRO. RP 85.

were within arm's reach of Maneese's backpack. RP 84. Fry told Maneese that he was under arrest and then called for a backup police officer. CP 31; RP 49-50, 72.

In the office, Fry sought to search Maneese's backpack, which had a padlock in both metal handles of the zippers. CP 31; RP 49-51. Despite the lock, however, Fry was able to partially unzip the backpack; he then moved items around and even took a few items out of the pack, including a tennis shoe. CP 31; RP 50-51, 95-96. At the fact-finding hearing, Fry demonstrated for the court that, even with the padlock secured, he could put his arms and two hands into the pack and reach all the way to the bottom. RP 52-53.

When Fry asked Maneese for the keys to the padlock, Maneese claimed that he forgot them at home. CP 31; RP 53. Fry found it suspicious that Maneese would bring a locked backpack to school and not have a key. RP 51-54, 74-75. Fry handcuffed Maneese for safety reasons, searched him, and found the keys to the lock in Maneese's jacket pocket. CP 31; RP 53-54. Using the keys, Fry opened the lock and then opened the pack wider. CP 31; RP 54, 77. When he did so, he found at the bottom of the pack a Beretta replica air pistol. CP 31; RP 54-55. Shortly after the

discovery of the air pistol, Bellevue Police Officer Finney arrived at the school and then transported Maneese to the police precinct.

RP 56-57.

**C. ARGUMENT**

**SCHOOL RESOURCE OFFICER FRY LAWFULLY SEARCHED MANEESSE'S BACKPACK BECAUSE (1) FRY WAS ACTING IN HIS CAPACITY AS A SCHOOL OFFICIAL, AND (2) FRY HAD REASONABLE GROUNDS TO CONDUCT THE SEARCH.**

Maneese claims that the trial and revision courts erred by finding the search of his backpack valid. He argues that Fry's warrantless search of the backpack was impermissible because Fry acted in his capacity as a law enforcement officer rather than as a school official and thus needed a warrant to conduct the search. This argument fails. When Fry searched Maneese's backpack, he acted as a school official. Fry needed only reasonable grounds to search the backpack. Fry had reasonable grounds to conduct the search because (1) he found Maneese carrying marijuana while standing only a foot away from his backpack, (2) the backpack had a padlock on it, and (3) Maneese falsely said that he did not have keys to the backpack. In upholding Fry's search and the denial of Maneese's motion to suppress, the revision court did not err. Thus,

this Court should affirm Maneese's conviction for Carrying a Dangerous Weapon at School.

**a. Standard Of Review For Orders On Motions For Revision**

Once the superior court makes a decision on revision, the appeal is from the superior court's decision, not the commissioner's. State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004); State v. Hoffman, 115 Wn. App. 91, 101, 60 P.3d 1261, reversed on other grounds, 150 Wn.2d 536 (2003). On revision, the superior court reviews both the commissioner's factual findings and legal conclusions de novo based on the evidence and issues presented to the commissioner. Ramer, 151 Wn.2d at 113 (citing In re Marriage of Moody, 137 Wn.2d 979, 993, 976 P.2d 1240 (1999); State v. Wicker, 105 Wn. App. 428, 433, 20 P.3d 1007 (2001)). An appellate court's review of a superior court's ruling is more deferential than the superior court's review of a commissioner's decision on revision. Hoffman, 115 Wn. App. at 101.

**b. The Reasonable Grounds Standard  
Applicable To School Officials Applied To  
Officer Fry As A School Resource Officer  
When Fry Searched Maneese's Backpack.**

The U.S. Constitution's Fourth Amendment and the Washington Constitution's Article I, Section 7 protect people from unreasonable searches and seizures and invasions of privacy. Because the school environment differs from other public places and has special needs, however, students within a school environment have a lesser expectation of privacy than members of the general population. See New Jersey v. T.L.O., 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985); York v. Wahkiakum School Dist. No. 200, 163 Wn.2d 297, 308, 178 P.3d 995 (2008).

In New Jersey v. T.L.O., the U.S. Supreme Court addressed the constitutionality of searches of students by teachers and school officials. Although the Court recognized that students had legitimate expectations of privacy in the belongings they bring to school, the Court also stressed that the State has a substantial interest in maintaining a proper educational environment for the schoolchildren entrusted to its care. T.L.O., 469 U.S. at 339. The Court noted how difficult it had become to maintain a proper school environment, emphasizing that drug use and violent crimes in

schools had become major social problems. T.L.O., 469 U.S. at 339. The Court remarked that “[e]ven 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. Thus, balancing the competing interests of a school’s need to maintain a proper educational environment and a student’s legitimate privacy expectations, the Court held that when searching a student, school officials need not obtain a warrant or have probable cause. T.L.O., 469 U.S. at 340.

In reasoning why the requirements of a warrant or probable cause were unsuited to the school environment, the Court explained that maintaining security and order in schools requires a “certain degree of flexibility” in school disciplinary procedures. T.L.O., 469 U.S. at 339-40. Requiring a school official to obtain a warrant before searching a student suspected of a school infraction or a crime “would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools.” T.L.O., 469 U.S. at 340. Further, requiring searches to be based

on probable cause would impinge on the “substantial need of teachers and administrators for freedom to maintain order in their schools.” T.L.O., 469 U.S. at 341. Thus, instead of adhering to a requirement of a warrant or probable cause, courts determine the legality of a search of a student by assessing the reasonableness, under all the circumstances, of the search. Id.

In general, provided there is individualized, reasonable suspicion of wrongdoing, the Washington Constitution does not provide students with greater protections from searches by school officials than the Fourth Amendment. State v. Brooks, 43 Wn. App. 560, 568, 718 P.2d 837 (1986).<sup>2</sup> Thus, under Washington law, if a search is reasonable under all the circumstances, school officials may conduct a search without a warrant and without probable cause. State v. B.A.S., 103 Wn. App. 549, 553, 13 P.3d 244 (2000).

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<sup>2</sup> In York v. Wahkiakum School Dist. No. 200, the Washington Supreme Court held that a school district's blanket policy allowing for *random* and *suspicionless* drug-testing of student athletes violated the State Constitution even though such policies did not violate the U.S. Constitution. 163 Wn.2d 297, 178 P.3d 995 (2008). The Court stressed, however, that the question they addressed was narrow. Id., 163 Wn.2d at 303. Further, the Court noted that its analysis should “in no way contradict” what it previously had said about students' lowered expectations of privacy, particularly when a school search is supported by reasonable and individualized suspicion. Id., 163 Wn.2d at 308-09 (citing, e.g., T.L.O., 469 U.S. at 341, 105 S. Ct. 733; State v. McKinnon, 88 Wn.2d 75, 558 P.2d 781 (1977)).

In determining the legality of Fry's search of Maneese's backpack, this Court first must determine whether the proper constitutional standard is (1) the general standard of probable cause, thus requiring a warrant, or (2) the less stringent reasonable grounds or reasonable suspicion standard for searches of students by school officials. No Washington cases directly address whether the warrant requirement applies to police officers working as SROs. But as the revision court recognized, other jurisdictions have squarely addressed this issue. CP 33. Several jurisdictions have concluded that the warrant requirement does not apply to police officers working in schools. See, e.g., In re S.F., 414 Pa. Super. 529, 531, 607 A.2d 793 (1992) (applying reasonable suspicion standard to search by plainclothes police officer for Philadelphia School District); Wilcher v. State, 876 S.W.2d 466, 467 (Tex.Ct.App. 1994) (applying reasonable suspicion standard to search by police officer for Houston school district); S.A. v. State, 654 N.E.2d 791, 795 (Ind. Ct. App. 1995) (applying reasonable suspicion standard to police officer employed by Indianapolis Public Schools Police Department).

For example, in People v. Dilworth, the Illinois Supreme Court held that a police officer assigned to a school as a resource

officer was to be considered a "school official" for the purpose of assessing the legality of a search on school grounds. 169 Ill.2d 195, 661 N.E.2d 310 (1996). Like Fry, the police officer in Dilworth was assigned to the school by the city's police department, and as an SRO, had an office on school grounds. His primary purpose on the school campus was to prevent criminal activity, and if he discovered a crime, he had authority either to arrest the student or assign the student to detention. Dilworth, 661 N.E.2d at 312-14. Although the SRO was a police officer, the Illinois Supreme Court held that the legality of a search should be reviewed under the same standards applicable to school officials. In its reasoning, the Court cited the unique nature of a public school environment and the State's strong interest in protecting its students. Dilworth, 661 N.E.2d at 320.

Here, in assessing the legality of Fry's search, this Court should reject any distinction between a non-law enforcement security officer and a police officer on assignment to a school as an SRO. Other courts correctly have reasoned 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. CP 32; In re William V., 111 Cal. App. 4th 1464, 1471, 4 Cal.Rptr.

3d 695, 699-700 (2003); see also Dilworth, 661 N.E.2d at 316-18.

As the revision court noted, this 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.” CP 33 (citing William V, 111 Cal. App. 4th at 1471).

Moreover, drawing this distinction “might force school districts to employ private security guards rather than certified police officers, who may have superior training, which would hardly enhance protection of the students’ Fourth Amendment rights.” In re William V, 111 Cal. App. 4th at 1471; In re Randy G., 26 Cal.4th 556, 568-69, 110 Cal.Rptr. 516, 28 P.3d 239 (2001); see also Dilworth, 661 N.E.2d at 316-18. Alternatively, school districts may feel compelled to have searches conducted by school officials such as teachers or principals, who also likely would not be as well-trained as police officers in searches and seizures.

Here, the Bellevue School District appointed Fry to be an SRO and a school official. CP 31; RP 36-44, 82; Ex. 4. When Fry searched Maneese, he was not called to the school as a law enforcement officer, but rather was working in his capacity as an SRO. CP 31; RP 36-44. Applying the probable cause standard to an SRO like Fry would hinder a primary purpose of having such

officers on grounds, i.e., to deter unreasonable risk-taking by school officials who are generally untrained in searches and seizures. Further, this elevated standard would unduly interfere with schools' freedom to maintain swift and informal disciplinary procedures.

For the above reasons, this Court should hold that the revision court correctly concluded that when Fry searched Maneese, Fry was serving in his capacity as an SRO and as a school official. Further, this Court should hold that the revision court properly applied the reasonable grounds standard to Fry's search.

**c. The Revision Court Correctly Concluded That School Resource Officer Fry Had Reasonable Grounds To Search Maneese's Backpack.**

Maneese claims that even if Fry was acting as a school official, Fry lacked reasonable grounds to search Maneese's backpack. This claim fails. Fry did have reasonable grounds to conduct the search. The search was justified at its inception and reasonable in scope because (1) Fry discovered Maneese carrying marijuana while standing only a foot away from the backpack,

(2) Maneese's backpack had a padlock on it, justifiably arousing Fry's reasonable suspicion of contraband, and (3) Maneese falsely said that he did not have keys to the backpack. Based on these circumstances, the revision court did not err by upholding the search.

A search by school officials is considered reasonable if (1) it is justified at its inception and (2) reasonably related in scope to the circumstances that justified the interference in the first place.

B.A.S., 103 Wn. App. at 553 (citing T.L.O., 469 U.S. at 341). Under ordinary circumstances, a school official's search 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 either school rules or the law. T.L.O., 469 U.S. at 341-42. A search will be reasonable in scope when the measures adopted are "reasonably related" to the search's objectives and not excessively intrusive in light of the student's age and gender and the nature of the infraction. T.L.O., 469 U.S. at 342. In determining whether school officials had reasonable grounds for a search, Washington courts have considered the following relevant factors (sometimes known as McKinnon factors):

- the student's age, history, and school record;
- the prevalence and seriousness of the problem in the school;
- the probative value and reliability of the information justifying the search; and
- the exigency to make the search without delay.

State v. McKinnon, 88 Wn.2d 75, 81, 558 P.2d 781 (1977); Brooks, 43 Wn. App. at 567-68; State v. Slattery, 56 Wn. App. 820, 825, 787 P.2d 932 (1990).<sup>3</sup> In addition, for a search to be found reasonable, there must be “a nexus between the item sought and the infraction under investigation.” B.A.S., 103 Wn. App. at 554. By focusing the analysis on a search's reasonableness, students' interests are invaded “no more than necessary to achieve the legitimate end of preserving order in the schools,” yet schools still are permitted to regulate students' conduct “according to the dictates of reason and common sense.” T.L.O., 469 U.S. at 343.

Here, in applying the McKinnon factors, this Court should find that the revision court correctly concluded that the search of Maneese's backpack was reasonable. CP 32. First, Maneese was

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<sup>3</sup> The revision court did not apply the McKinnon factors. Rather, the court applied a similar three-part analysis applied by the U.S. Supreme Court in Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995). These three factors include “(1) the nature of the privacy interest upon 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 the means for meeting it.” CP 32; see Acton, 515 U.S. at 654-64.

a high school student. RP 44. The record did not reflect his age or school record.<sup>4</sup> Second, both Fry and Dean of Students Roderick noted the prevalence and seriousness of the drug problem at school; both recalled five or six incidences during the last year alone where illegal substances were found. RP 37, 89-90. Third, the probative value and reliability of information justifying the search was high. The search was not prompted by information from a third party. Rather, Fry personally saw Maneese carrying marijuana while standing only a foot away from his backpack. CP 31; RP 44-47. In addition, Fry reasonably suspected Maneese's backpack had contraband because Maneese had a padlock on the backpack and then falsely claimed that he did not have keys to the lock. CP 31; RP 49-55.

Nevertheless, Maneese claims that the revision court erred in finding that the backpack search was reasonable because there was no exigency requiring immediate access to its contents. Maneese argues that Fry thus needed to have obtained a search warrant. Appellant Brief, at 14. Maneese is incorrect. No authority requires that, in order for a search to be reasonable, all of the

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<sup>4</sup> In response to motions in limine, the parties agreed not to offer any history of prior contacts between Maneese and Officer Fry under ER 404(b). RP 7.

McKinnon factors be met. Moreover, there was an exigency to make the search without delay here. This is the same exigency outlined by T.L.O. and McKinnon in justifying warrantless school searches — the need to give schools freedom to swiftly maintain discipline and order on school grounds.

Maneese’s argument that Fry should have obtained a warrant contravenes the reasoning behind the warrant exception for school searches. As T.L.O. recognized, the warrant requirement is “unsuited” to the school environment and would unduly burden school officials’ freedom to act quickly and effectively. T.L.O., 469 U.S. at 340. If the search of the backpack under these circumstances were held to be unreasonable, students effectively could prevent most searches by merely placing a padlock on any bags brought to school. Students carrying contraband would know that their bags are their safe havens, their drugs and weapons protected from search. Even if students violated the law or school policies, school officials would be powerless to investigate further unless they somehow obtained probable cause to get a warrant. Neither the Fourth Amendment, the Washington Constitution, nor Washington case law support such a restrictive result.

Because Fry's search of Maneese's backpack was justified at its inception and reasonable in scope, this Court should uphold the revision court's conclusion that Fry's search was valid.

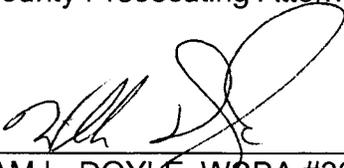
**D. CONCLUSION**

The revision court correctly found that the reasonable grounds standard applicable to searches by school officials applied to Officer Fry as a school resource officer when he searched Maneese's backpack. Further, the revision court correctly concluded that Fry had reasonable grounds to search Maneese's backpack. For the foregoing reasons, this Court should affirm Maneese's conviction of Carrying a Dangerous Weapon at School.

DATED this 24<sup>th</sup> day of August, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

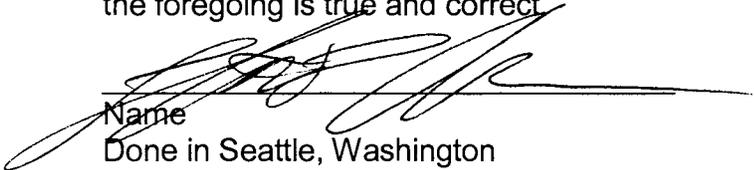
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Christopher H. Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. JAMAR MANEESSE, Cause No. 64699-1-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

  
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