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STATE OF NORTH DAKOTA

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

State of North Dakota, Plaintiff and Appellee, vs. Christian Antonio Alaniz, Jr., Defendant and Appellant.	Supreme Court No. 20110259 District Court No. 18-2011-CR-00291

ON APPEAL FROM THE SEPTEMBER 8, 2011 ORDER DEFERRING IMPOSITION OF SENTENCE FROM THE DISTRICT COURT FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT GRAND FORKS COUNTY, NORTH DAKOTA THE HONORABLE JOEL D. MEDD, PRESIDING.

BRIEF OF APPELLEE

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STATEMENT OF THE ISSUE

I. **Whether the District Court erred as a matter of law when it determined that school officials did not need probable cause to search the defendant, because the search of a student is determined by the reasonableness, under the circumstances, of the search, rather than the existence of probable cause.**

STATEMENT OF THE CASE

[¶1] The Appellant, Christian Antonio Alaniz, Jr., appeals an Order Deferring Imposition of Sentence, entered on September 8, 2011. Appellant's App. at 32.

[¶2] On February 18, 2011, an Information was filed which charged the defendant with Possession of a Controlled Substance, a Class C Felony, and Possession of Drug Paraphernalia, a Class C Felony. Id. at 4.

[¶3] On April 19, 2011, the defendant filed a Motion to Suppress Evidence, arguing the contraband seized from the defendant was obtained pursuant to a warrantless search of his person, because there was not probable cause. Id. at 5. Additionally, the defendant also argued that he was not given his *Miranda* warning and therefore, any statements he made were involuntary. Id. at 15. Lastly, the defendant argued that due to these failures the evidence must be suppressed, because it should be considered "fruit of the poisonous tree." Id. at 16.

[¶4] On May 2, 2011, the State filed a Brief in Opposition to Motion to Suppress Evidence arguing that the standard for incidents involving the privacy interests of school children is one of reasonableness, not probable cause. Id. at 21. The State also argued that the defendant was not subject to a custodial interrogation and therefore, his *Miranda* rights were not violated. Id. at 23. Lastly, the State argued that the evidence obtained was not "fruit of the poisonous tree." Id.

[¶5] On August 25, 2011, the Court issued a Memorandum and Order Denying the Defendant's Motion to Suppress Evidence, holding that the search of the defendant was reasonable, under the circumstances. Id. at 25-31.

[¶6] On September 8, 2011, the defendant entered an Alford plea of guilty. Id. at 32-33. The Court entered an Order Deferring Imposition of Sentence. Id.

[¶7] The defendant timely filed his Notice of Appeal on September 9, 2011. Id. at 46.

STATEMENT OF THE FACTS

[¶8] On February 17, 2011, at approximately 1:30 in the afternoon, Ryan Rupert, a Safety Officer at Central High School, contacted School Resource Officer Troy Vanyo and advised him that he was following several students on foot and that he had concerns they may be possibly using drugs. Id. at 20. Officer Vanyo was in his patrol car and drove to the general area, approximately a block and a half away from Grand Forks Central High School. Appellee's App. at 16. Safety Officer Rupert then informed him that it appeared as though the students were trying to evade him. Id. at 9.

[¶9] A short time later, Officer Vanyo observed two males enter the Town Square area near the intersection of North 4th Street and DeMers Avenue in the City of Grand Forks. Id. Officer Vanyo recognized both of the males as students at Central High School. Id. Officer Vanyo turned around and drove by the Town Square area. Id. The two males noticed Officer Vanyo and quickly walked away toward the stage area. Id. Officer Vanyo passed this information on to Safety Officer Rupert. Id. Safety Officer Rupert said he would check out the situation, so Officer Vanyo returned to Central High School. Id. at 10.

[¶10] Safety Officer Rupert then proceeded to the Town Square area where he saw the two individuals behind the stage area. Id. at 20. He then watched the individuals exit that area. Id. Safety Office Rupert went to the area where they were standing and smelled a strange odor, which he associated with possible drug use. Id. at 10. Safety Officer Rupert then called Officer Vanyo and informed him of the situation. Id. Officer Vanyo then passed this information on to Central High School Associate Principal John Strandell. Id. Officer Vanyo informed Associate Principal Strandell that one of the

individuals had entered the school. Id. at 11. Associate Principal Strandell then took this individual into his office and searched him. Id.

[¶11] Several minutes later Officer Vanyo observed the second individual that he had observed at the Town Square talking to an attendance secretary, and Officer Vanyo advised school Principal Buck Kasowski that this was the other suspicious person he had observed at Town Square. Id.

[¶12] Principal Kasowski then went and got the defendant out of the attendance line and escorted him into the office area. Id. Officer Vanyo followed them into the detention room. Id. at 11-12. Principal Kasowski then asked the defendant if he had anything on him he shouldn't have and the defendant hung his head. Id. at 13-14. Officer Vanyo also informed the defendant that if he has anything on him, he may as well put it on the table. Id. at 13. Principal Kasowski then asked the defendant to empty his pockets and the defendant did so and at that time a blue glass pipe with residue and a package of Wicked Incense Pineapple synthetic marijuana were observed. Id. at 12-14. The defendant was subsequently arrested by Officer Vanyo. Id.

[¶13] Officer Vanyo has been a police officer with the Grand Forks Police Department for the past 17 years. Appellees App. at 4. However, for the past eight years, Officer Vanyo's primary position has been a School Resource Officer with Grand Forks Central High School. Id. at 5. As a School Resource Officer, he spends 40 hours a week monitoring activities within and around the school that would negatively impact the school. Id. at 7, 25.

STATEMENT OF THE STANDARD OF REVIEW

[¶14] "The standard of review for pre-trial suppression motions is well-established:

> A trial court's findings of fact in preliminary proceedings of a criminal case will not be reversed if, after the conflicts in the testimony are resolved in favor of affirmance, there is sufficient competent evidence fairly capable of supporting the trial court's findings, and the decision is not contrary to the manifest weight of the evidence. We do not conduct a de novo review. We evaluate the evidence presented to see, based on the standard of review, if it supports the findings of fact.

State v. Deviley, 2011 ND 182, ¶ 8, 803 N.W.2d 561, 564-65 (quoting City of Fargo v. Thompson, 520 N.W.2d 578, 581 (N.D. 1994)).

LAW AND ARGUMENT

[¶15] The Fourth Amendment to the United States Constitution and Article One, Section Eight of the North Dakota Constitution protect individuals from unreasonable searches and seizures. U.S. Const. amend. IV; N.D. Const. art. 1, § 8. This right generally requires law enforcement officers to have probable cause before conducting a search. Safford Unified School Dist. No. 1 v. Redding, 129 S. Ct. 2633, 2639 (2009). However, the United States Supreme Court noted in New Jersey v. T.L.O. that the school setting requires a different level of suspicion needed to justify a search because the public interest is best served by a standard of reasonableness that stops short of probable cause. Id. (quoting New Jersey v. T.L.O., 469 U.S. 325, 340 (1985)).

I. The District Court did not err as a matter of law when it determined that school officials did not need probable cause to search the defendant, because the search of a student is determined by the reasonableness, under the circumstances, of the search, rather than the existence of probable cause

[¶16] The defendant argues that the actions of Officer Vanyo constitute an unreasonable search and seizure in that there was a lack of probable cause to search the defendant. Appellant's Brief at 5. It should be noted that the standard in incidents involving a privacy interest of school children is one of reasonableness and not probable cause to search. Redding, 129 S. Ct. at 2639. The United States Supreme Court has noted that students' privacy rights must be balanced against the substantial need of teachers and administrators to have the freedom to maintain discipline in schools. T.L.O., 469 U.S. at 340. The Court has also "acknowledged that students' privacy rights are limited due to the 'difficulty of maintaining discipline in the public schools,' and that 'drug use and violent crime in the schools have become major social problems. . . .'"

Doe ex rel. Doe v. Little Rock School Dist., 380 F.3d 349, 353 (2004) (quoting T.L.O., 469 U.S. at 338-39).

[¶17] The Court does not impose a strict adherence to a requirement that searches be based on probable cause; rather, the legality of the search of the student should depend simply on a reasonableness standard, under all circumstances presented. T.L.O., 469 U.S. at 331. Moreover, determining reasonableness of any search so conducted involves a twofold inquiry as to whether the action was justified at its inception and whether the search conducted was actually reasonably related in scope to circumstances which justified interference in the first place. Id. In T.L.O., the Court stated:

> striking the balance between school children's legitimate expectations of privacy and the schools equally legitimate need to maintain an environment in which learning can take place requires some easing of the restrictions to which searches by public authorities are ordinarily subject. Thus, school officials need not obtain a warrant before searching a student who is under their authority. Moreover, school officials need not be held subject to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances of the search.

Id. at 326.

[¶18] In short, the legality of a search of a student should depend simply on the reasonableness, under the circumstances, of the search. Although the United States Supreme Court in T.L.O. held that the reasonableness standard applies in searches of a student by a school official, it was noted "that [the Court was] not addressing the question of what standard would apply when a search is conducted by school officials *in conjuction with or at the behest of* law enforcement agencies and expressed no opinion on that subject." Cason v. Cook,

810 F.2d 188, 191 (1987) (citing T.L.O., 469 U.S. at 341). However, in Cason the United States Supreme Court extended the reasonableness standard established in T.L.O. to situations "when school officials act in conjunction with a police liaison officer." Id.

[¶19] Determining the reasonableness of any search involves a twofold inquiry. First, one must determine whether the action was justified at its inception. Terry v. Ohio, 392 U.S. 1, 20 (1967). Second, one must determine whether the search as actually conducted "was reasonably related in scope to the circumstances which justify the interference in the first place." Id. Under ordinary circumstances, a search of a student by a teacher or other school official will be justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. T.L.O., 469 U.S. at 362.

[¶20] In the instant case, Safety Officer Rupert observed the defendant and another student walking in an alley near Central High School. Appellant's App. at 26. Safety Officer Rupert informed Officer Vanyo that the two students were acting suspiciously and trying to get away from him. Id. These concerns were then confirmed when Officer Vanyo "observed the students sitting in the town square, and when the students saw his car they quickly walked towards the stage area." Id. When Safety Officer Rupert went behind the stage, where the students were previously, he smelled something strange. Id. at 10-11.

[¶21] When the students returned to the school Officer Vanyo informed Principal Buck Kasowski that the defendant was one of the suspicious individuals

that he had observed. Id. at 50. Principal Kasowski then escorted the defendant into the detention office, with Officer Vanyo following. Appellee's App. at 12. Principal Kasowski then questioned the defendant and asked whether he had anything on him he shouldn't. Id. at 12-14. Officer Vanyo told the defendant that if he had anything on him, he should put it on the table. Id. at 12. This was the only comment Officer Vanyo made to the defendant. Id. The defendant then placed a blue glass pipe with residue and a package of Wicked Incense Pineapple synthetic marijuana on the table. Id. at 13.

[¶22] Under the instant circumstances, the search was justified from its inception, because there were "reasonable grounds for suspecting that the search w[ould] uncover evidence of a rule or criminal violation." Cason, 810 F.2d at 191. The second prong of the reasonableness standard is satisfied 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.

[¶23] In Cason v. Cook, the United States Supreme Court held that "the reasonableness standard should apply when a school official acts in conjunction with a police liaison officer." Id. In Cason, the school officer had conducted a search of a student and the police liaison officers involvement was limited to a pat down search after the school official had made preliminary inquiries. Id. at 191-92. The Court noted that the "imposition of a probable cause warrant requirement based on the limited involvement of [the police liaison officer] would not serve

the interest of preserving swift and informal disciplinary procedures in schools." Id. at 192.

[¶24] In the instant case, Principal Kasowski removed the defendant from the attendance line and escorted him to the detention room. The defendant voluntarily emptied his pockets, after being requested to do so. Officer Vanyo's participation was limited to being in the room and collecting evidence following Principal Kaswoski's investigation. Although Officer Vanyo made a single comment to the defendant, his participation was less than that of the police liaison officer in Cason, and was in fact marginal, at best.

[¶25] Although the United States Supreme Court has previously held that the reasonableness standard applies under the instant circumstances, the defendant alleges that probable cause is the correct standard. In support of this allegation, the defendant cites to several cases including, In re F.P. v. State, 528 So.2d 1253 (Fla. Dist. Ct. App. 1988). The situation in F.P. is distinguishable to the facts in the instant case. In In re F.P., an investigator for the Tallahassee Police Department questioned a middle school student, regarding a burglary. Id. at 1254. The middle school student informed the investigator that the defendant, F.P., told him he had stolen a vehicle and showed him a set of car keys and an automotive paper. Id.

[¶26] Officers with the Tallahassee Police Department attempted to locate the defendant, but were unable to do so. Id. The investigator then contacted the School Resource Officer and indicated that they were looking for the defendant. Id. Subsequently, the School Resource Officer located the defendant and called

the investigator. Id. The School Resource Officer then took the defendant to her office. Id. The defendant produced a set of keys and a piece of paper, after being asked by the School Resource Officer if he had anything to give her. Id. The Court determined that the "school official exception to the probable cause requirement for a warrantless search does not apply when the search is carried out at the behest of the police." Id.

[¶27] The facts of In re F.P. are contrary to the facts involved in the instant case. Principal Kasowski was not acting at the behest of police, because the instant case did not involve an outside police officer. Appellee's App. at 5. During this encounter, Officer Vanyo was clearly acting as a School Resource Officer, not as an officer with the Grand Forks Police Department. Id. Currently, Officer Vanyo is assigned to work as the School Resource Officer at Grand Forks Central High School. Id. This position requires Officer Vanyo to work at Central High School 40 hours a week. Id. at 5-7.

[¶28] As a School Resource Officer, he is responsible for the school, as well as areas around the school grounds. Appellee's App. at 43. Some of his required duties and responsibilities include performing "[f]oot patrol in and around the school grounds" and "[s]elective [t]raffic [p]atrol in the area of the school grounds." Id. at 43. Another one of Officer Vanyo's essential functions is to "[b]e aware of [sic] activities in the neighborhoods that may negatively impact the peace, safety, and security of the schools its students, and staff." Id. at 43.

[¶29] Furthermore, Officer Vanyo did not request that Principal Kasowski escort the defendant to the detention room. Appellant's App. at 50. When

Officer Vanyo noticed the defendant in the attendance line he informed Principal Kasowski of the suspicious occurrences. Id. It was Principal Kasowski that removed the defendant from the attendance line and escorted him to the detention room, not Officer Vanyo. Id. It was Principal Kasowski who initiated the investigation of the defendant, which yielded a smoking device and a package of synthetic marijuana, not Officer Vanyo. Id. at 51. In this case, the "search [was] reasonably related to the circumstances which justified the interference in the first place." Cason, 810 F.2d at 191.

[¶30] The search was reasonable in all circumstances and therefore, the reasonable suspicion standard was met, which would warrant the contact with the defendant.

CONCLUSION

[¶31] Based on the foregoing law and argument, the State respectfully requests that the Order Deferring Imposition of Sentence be affirmed.

DATED this 29th day of December, 2011.

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