

4.10: SAFFORD UNIFIED SCHOOL DISTRICT #1 et al. v. REDDING

SAFFORD UNIFIED SCHOOL DISTRICT #1 et al. v. REDDING

557 US 364 (2009)

(Cases Syllabus edited by the Author)

After escorting 13-year-old Savana Redding from her middle school classroom to his office, Assistant Principal Wilson showed her a day planner containing knives and other contraband. She admitted owning the planner, but said that she had lent it to her friend Marissa and that the contraband was not hers. He then produced four prescription-strength, and one over-the-counter, pain relief pills, all of which are banned under school rules without advance permission. She denied knowledge of them, but Wilson said that he had a report that she was giving pills to fellow students. She denied it and agreed to let him search her belongings.

He and Helen Romero, an administrative assistant, searched Savana's backpack, finding nothing. Wilson then had Romero take Savana to the school nurse's office to search her clothes for pills. After Romero and the nurse, Peggy Schwallier, had Savana remove her outer clothing, they told her to pull her bra out and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Savana's mother filed suit against petitioner school district (Safford), Wilson, Romero, and Schwallier, alleging that the strip search violated Savana's Fourth Amendment rights.

Claiming qualified immunity, the individuals (hereinafter petitioners) moved for summary judgment. The District Court granted the motion, finding that there was no Fourth Amendment violation, and the *en banc* Ninth Circuit reversed. Following the protocol for evaluating qualified immunity claims, see *Saucier v. Katz*, 533 U. S. 194, the court held that the strip search was unjustified under the Fourth Amendment test for searches of children by school officials set out in *New Jersey v. T. L. O.*, 469 U. S. 325. It then applied the test for qualified immunity. Finding that Savana's right was clearly established at the time of the search, it reversed the summary judgment as to Wilson, but affirmed as to Schwallier and Romero because they were not independent decision makers.

Held:

The search of Savana's underwear violated the Fourth Amendment.

1. For school searches, "the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause." *T.L.O.*, 469 U. S., at 341. Under the resulting reasonable suspicion standard, a school search "will be permissible ... 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." The required knowledge component of reasonable suspicion for a school administrator's evidence search is that it raises a moderate chance of finding evidence of wrongdoing.

Wilson had sufficient suspicion to justify searching Savana's backpack and outer clothing. A week earlier, a student, Jordan, had told the principal and Wilson that students were bringing drugs and weapons to school and that he had gotten sick from some pills. On the day of the search, Jordan gave Wilson a pill that he said came from Marissa. Learning that the pill was prescription strength, Wilson called Marissa out of class and was handed the day planner. Once in his office, Wilson, with Romero present, had Marissa turn out her pockets and open her wallet, producing, *inter alia*, an over-the-counter pill that Marissa claimed was Savana's. She also denied knowing about the day planner's contents. Wilson did not ask her when she received the pills from Savana or where Savana might be hiding them.

After a search of Marissa's underwear by Romero and Schwallier revealed no additional pills, Wilson called Savana into his office. He showed her the day planner and confirmed her relationship with Marissa. He knew that the girls had been identified as part of an unusually rowdy group at a school dance, during which alcohol and cigarettes were found in the girls' bathroom. He had other reasons to connect them with this contraband, for Jordan had told the principal that before the dance, he had attended a party at Savana's house where alcohol was served. Thus, Marissa's statement that the pills came from Savana was sufficiently plausible to warrant suspicion that Savana was involved in pill distribution. A student who is reasonably suspected of giving out contraband pills is reasonably suspected of carrying them on her person and in her backpack. Looking into Savana's bag, in her presence and in the relative privacy of Wilson's office, was not excessively intrusive, any more than Romero's subsequent search of her outer clothing.

Because the suspected facts pointing to Savana did not indicate that the drugs presented a danger to students or were concealed in her underwear, Wilson did not have sufficient suspicion to warrant extending the search to the point of making Savana pull out her

underwear. Romero and Schwallier said that they did not see anything when Savana pulled out her underwear, but a strip search and its Fourth Amendment consequences are not defined by who was looking and how much was seen. Savana's actions in their presence necessarily exposed her breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of school authorities for going beyond a search of outer clothing and belongings.

Savana's subjective expectation of privacy is inherent in her account of it as embarrassing, frightening, and humiliating. The reasonableness of her expectation is indicated by the common reaction of other young people similarly searched, whose adolescent vulnerability intensifies the exposure's patent intrusiveness. Its indignity does not outlaw the search, but it does implicate the rule that "the search [be] 'reasonably related in scope to the circumstances which justified the interference in the first place.'" *T. L.O.*, *supra*, at 341. Here, the content of the suspicion failed to match the degree of intrusion. Because Wilson knew that the pills were common pain relievers, he must have known of their nature and limited threat and had no reason to suspect that large amounts were being passed around, or that individual students had great quantities. Nor could he have suspected that Savana was hiding common painkillers in her underwear.

When suspected facts must support the categorically extreme intrusiveness of a search down to an adolescent's body, petitioners' general belief that students hide contraband in their clothing falls short; a reasonable search that extensive calls for suspicion that it will succeed. Non-dangerous school contraband does not conjure up the specter of stashes in intimate places, and there is no evidence of such behavior at the school; neither Jordan nor Marissa suggested that Savana was doing that, and the search of Marissa yielded nothing. Wilson also never determined when Marissa had received the pills from Savana; had it been a few days before, that would weigh heavily against any reasonable conclusion that Savana presently had the pills on her person, much less in her underwear.

2. Although the strip search violated Savana's Fourth Amendment rights, petitioners Wilson, Romero, and Schwallier are protected from liability by qualified immunity because "clearly established law [did] not show that the search violated the Fourth Amendment," *Pearson v. Callahan*, 555 U. S. 223, The intrusiveness of the strip search here cannot, under *T.L.O.*, be seen as justifiably related to the circumstances, but lower court cases viewing school strip searches differently are numerous enough, with well-reasoned majority and dissenting opinions, to counsel doubt about the clarity with which the right was previously stated.

3. The issue of petitioner Safford's liability under *Monell v. New York City Dept. of Social Servs.*, 436 U. S. 658, should be addressed on remand.

531 F. 3d 1071, affirmed in part, reversed in part, and remanded.

Souter, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Kennedy, Breyer, and Alito, JJ., joined, and in which Stevens and Ginsburg, JJ., joined as to Parts I–III. Stevens, J., filed an opinion concurring in part and dissenting in part, in which Ginsburg, J., joined. Ginsburg, J., filed an opinion concurring in part and dissenting in part. Thomas, J., filed an opinion concurring in the judgment in part and dissenting in part.

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