

School Strip Searches:
Sensational Scandal Supports
Surprising Supreme Solution
Legal Question of The Week
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Last week, I had the distinct honor and privilege to be a legal instructor at the North Carolina Association of School Resource Officers' annual conference. When I was invited to do this, I eagerly accepted because of the high esteem I hold for our SROs.¹ I prepared a solid block of instruction on "Civil Liabilities and SROs," and sent a copy of a 22 page handout to the Justice Academy for distribution to the attendees.² Then, the week before I was to head down to the beach, true to my usual good fortune, the U.S. Supreme Court issued their first big school law related case in years, making part of my elaborately designed packet obsolete before I even had a chance to teach it.

The case was Safford Unified School District v. Redding and it involved the strip search of a thirteen year old honors student by school officials looking for ibuprofen. At least, that's how it was reported in the news media.³ The actual facts of the case make it sound a little less sinister, although the Supreme Court ultimately ruled that the search was unreasonable and thus, unconstitutional.

In the Safford case, a student at Safford Middle School in Safford, Arizona⁴ reported to the Vice Principal that a girl named Marissa had given a white pill to him and that a group of students were planning to take the pills at lunch. He turned the white pill over to the Vice Principal who learned from the school nurse that it was a 400 mg Ibuprofen, a pill only available by prescription.

¹ The fact that it was being held at the Sea Trails resort at Sunset Beach, NC had a little something to do with my acceptance as well.

² By the way, for the High Point folks who read these updates, I have recently put all of my recent training materials in my shared folder on the "Y" drive for your review, including this SRO training and my recent Courtroom testimony class.

³ Please, please, please do not ever rely on news reports for your legal advice. Unless they have a legal degree or at least a legal background, most reporters easily misunderstand what happens in a courtroom or the ramifications of a court opinion. For that matter, so do some lawyers.

⁴ Population 9,224, Safford is home to several notable observatories, presumably because it is out in the middle of nowhere.

Based on this information, the Vice Principal went to Marissa's classroom and asked her to collect her belongings and accompany him to his office. She did so, and Vice Principal Wilson invited a female administrative assistant into the office to be an observer. Marissa was asked to turn out her pockets and open her wallet and this search uncovered one blue pill, several white pills, and a razor blade. The blue pill was later identified as a 200 mg Naprosyn.⁵ Wilson asked Marissa where she got the blue pill and she told him that it must have slipped in when Savana Redding gave her the "IBU 400s."

At this point, Wilson asked the administrative assistant (Romero) to take Marissa into the nurse's office and conduct a search of Marissa's person and clothing for pills. Romero took Marissa into the nurse's office and in the female nurse's presence asked Marissa to: (1) remove her shoes and socks, (2) lift up her shirt and pull out her bra band, and (3) take off her pants and pull out the elastic of her underwear. No additional pills were found and as soon as the search was over, Romero returned Marissa's clothes and permitted her to get dressed.⁶

While this search was going on, Wilson retrieved Redding from her classroom and asked her to accompany him to the office. Redding did so and when she was confronted with the suspicion that she had been giving out pills, she denied everything. A search of her backpack produced nothing and Wilson asked Romero to take Redding into the nurse's office for a more thorough search.

During this search, Redding was asked to remove her outer clothing, pull her bra out and to the side and shake it and pull her underwear out at the crotch and shake it, "thus exposing her breasts and pelvic area to some degree," according to the Court's opinion.⁷ No contraband of any kind was found and Redding sued the school system for violating her Fourth Amendment right to be free from unreasonable search and seizure.

Before discussing exactly what the Court said was wrong with this search, we need to set the stage a little. For those of you who have never worked in the schools,⁸ you need to be aware that school officials, including school resource officers working in conjunction with those school officials, DO NOT NEED probable cause in order to

⁵ Also known as over-the-counter Aleve. Sincerely, Dr. Feelgood.

⁶ This search was called a "strip search" by the Supreme Court and lower courts even though the school board argued that no private parts were actually exposed. In my opinion, the phrase "strip search" is harmful when trying to justify such an action because it implies something far worse than what went on here. My theory is that we need another phrase or word to describe these types of searches. 100 points to the first person to come up with a phrase or term for these searches that I like. Hopefully I can announce a winner in my next legal update.

⁷ In trying to opine that this was not a "strip search," I risk offending those who are shocked by the actions of the school officials here. I can understand that argument and several U.S. Supreme Court Justices agree with you. There apparently was some evidence presented that this event caused severe emotional distress to Ms. Redding. While I do not mean to dismiss those concerns, I still think we need a euphemistic phrase here – 100 points is on the line.

⁸ Many of you, I'm sure, have never worked in school even when you were a student. But I digress.

conduct a search on school grounds.⁹ Instead, their standard comes from a U.S. Supreme Court case named New Jersey v. T.L.O.¹⁰

In T.L.O., a teacher at the Piscataway High School¹¹ in New Jersey discovered two girls smoking cigarettes in the bathroom. The teacher took the two girls to the principal's office. T.L.O.'s companion admitted to smoking, but T.L.O. steadfastly denied participating. The assistant vice principal, Mr. Choplick,¹² then demanded to see her purse. The search of the purse failed to turn up any cigarettes, but did uncover rolling papers, marijuana, a pipe, several empty baggies, a substantial number of one-dollar bills and an index card with students' names on it that appeared to be a customer list.¹³

T.L.O. was charged with the drug violations¹⁴ and convicted. On appeal, she argued that the principal did not have probable cause to search her purse and the evidence should have been suppressed. The Supreme Court ruled that although searches in public schools must be reasonable under the Fourth Amendment,¹⁵ warrants and probable cause are not required for a search by school officials. This is because the privacy interests of schoolchildren must be balanced against the substantial need of teachers and administrators to maintain order in the schools.

The Court instituted a two-part standard for searches in a school setting. First, there must be reasonable suspicion that the search will turn up evidence of a violation of either the law or rules of the school. Second, the scope of the search must be reasonably related to the circumstances which justified the search in the first place. The T.L.O. Court was only deciding the standard for school officials, but later cases have applied this standard to school resource officers acting in conjunction with school officials as well.¹⁶

⁹ You would think this would make their jobs easier. But if I were an officer, I would take the higher probable cause standard and merrily go about my way rather than be responsible for the behavior of a horde of middle or high school students. I have the utmost respect for our school resource officers.

¹⁰ 469 U.S. 325 (1985).

¹¹ Proud home of the "Piscataway Superchiefs." I looked it up. Not sure why they couldn't be regular chiefs. Guess they saw how that works for Kansas City's NFL team. Maybe we should start calling our chief "Superchief." You go first.

¹² I had a great joke lined up on the name "Choplick," but his lawyers got wind of it and threatened to sue me for defamation of character. You'll have to make up your own. No points for this one, I'm afraid.

¹³ If she had confessed off the bat, her purse may not have ever been searched. Reminds me of a defendant who came up to me in traffic court one day demanding a trial on a charge of failing to stop for a stop sign. Because he asked for a trial, I had his NCIC and driving record run and noticed that he was wanted under a \$50,000 bond for fraud out of Texas. If he had paid off the ticket or pled guilty up front, I never would have known about it. As it was, he got what he wanted – I dismissed the ticket. But he was led away by sheriff's deputies to await extradition. I'll confess up front that it gave me great pleasure to tell him I had both good news and bad news for him.

¹⁴ Interestingly, she confessed to selling drugs at school after the marijuana was found.

¹⁵ Remember that the Constitution and Bill of Rights limits what government employees and officials can do, not just law enforcement officers. Public school teachers and administrators are government agents when carrying out their duties.

¹⁶ Just so we're clear, if you aren't an officer assigned to a school, this lower standard is generally not going to apply to you regardless of where the search takes place. Don't start planning on conducting all of your searches on school property to take advantage of the lower standard. It doesn't work that way.

Taking this standard and applying it to the facts of the Safford case, the Supreme Court had no question as to whether reasonable suspicion existed for the search of the pockets and backpack of Ms. Savana Redding. However, the Court ruled that the increased scope of the search to include looking in undergarments was not supported by the level of reasonable suspicion present for two main reasons. First, the Court pointed out that a 400 mg ibuprofen was the equivalent of two Advil, so the drugs being searched for were not that dangerous.¹⁷

Secondly, the Court indicated that to justify this type of search, the school officials would need some sort of particularized suspicion that the contraband was being hidden in the suspect's undergarments. In this case, there was no evidence to indicate that Ms. Redding was hiding these pills under her clothing so the increased intrusion was not reasonable.¹⁸

It appears after the Safford case that school officials or school resource officers acting in conjunction with them should be very careful before conducting this type of search and shouldn't do it at all unless they can show reasonable suspicion of a dangerous threat and some specific indication that the evidence sought will be located under the suspect's clothing. This case should not affect searches of this type of adults done with probable cause outside the school setting.

In other recent news, the Seattle Times reported last week that Nicholas Champine, age 34, was sentenced to 21 months in prison for striking James Compton, age 46 in the left temple with a 6-iron after Compton's party complained to the course marshal that Champine's group was playing too slow at the Auburn Golf Course in Washington. Anti 6-iron groups are using this to support their claim that 6-irons are dangerous and if we could just get the 6-irons out of the hands of golfers, tragedies like this could be avoided.¹⁹

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¹⁷ The Court referred to the "limited threat" of these particular pills. Would the Court have ruled differently if the drug in question was cocaine? How about marijuana or oxycodone? It remains unclear although it appears that this would be a factor taken into account in determining whether the search was reasonable.

¹⁸ Although as Justice Thomas points out in his dissenting opinion, Savana Redding would certainly not have been the first person to hide drugs in her underwear. Which is gross, by the way.

¹⁹ No word on whether the defendant might get a hole-in-one while serving his prison sentence.