

CLIENT NEWS BRIEF

School Resource Officers Try to Teach Students a Lesson – and It Backfires

In *Scott v. County of San Bernardino* (9th Cir.) 903 F.3d 943, the Ninth Circuit Court of Appeals affirmed a district court's summary judgment in favor of three students in an action alleging that two Sheriff's deputies arrested a group of middle school students in violation of their Fourth Amendment rights and state law. The group of female students were handcuffed, arrested, and transported to the Sheriff's station after a series of bullying and assault incidents between the students. The court found the arrest was unreasonable under the Fourth Amendment and lacked probable cause under state law, therefore violating state law against false arrest.

Background

The students had been involved in a series of incidents involving bullying and assault. The assistant principal asked a school resource officer, a Sheriff's deputy, to counsel the students regarding the ongoing feud. The counseling session between the deputy and the students was recorded by the deputy. The audio tape of the incident reveals some whispering and quiet giggling, but mostly silence. After the deputy concluded the students were being unresponsive and disrespectful, he threatened to take them to jail to "prove a point that he wasn't playing around" and to "make them mature faster." All of the students were arrested, regardless of whether they were the alleged aggressors or the purported victims. The deputy then called for backup and together the two deputies handcuffed, arrested, and transported the students to the San Bernardino County Sheriff's Department. The school did not take any disciplinary action against the students and no criminal charges were filed. Under the Fourth Amendment, the school setting requires some easing of the restrictions to which searches/seizure by public authorities are ordinarily subject, and thus school officials may, under certain circumstances, conduct warrantless searches of students "under their authority." In order to determine whether a search/seizure is permissible, two factors must be reviewed:

- (1) Whether the action was justified at its inception; and
- (2) Whether the seizure actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place.

Here, the arrest was unjustified because the deputies were only given generalized information about the students fighting. The Fourth Amendment requires particularized suspicion, and in this instance, there were no exigent circumstances that allowed for any exceptions. Here, the deputy clearly stated the motivation was to "prove a point" and to make students "mature a lot faster." Furthermore, the seizure was not reasonably related in scope to the circumstances which justified the interference in the first place. The audio recording revealed some whispering and giggling, but mostly silence, which is not enough to justify the handcuffing, arrest, and transportation of the middle school girls.

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Additionally, the deputies making the arrest were not entitled to qualified immunity, because they violated a constitutional right that was clearly established at the time of the violation. The seizure must not be excessively intrusive in light of the age and sex of the student, and the nature of the infraction. The court held that no officer could have reasonably believed that the law authorizes the arrest of middle school students in order to prove a point. The arrests were unreasonable and the deputies were denied qualified immunity.

Finally, Defendants tried to argue that they had probable cause to arrest the students under Penal Code section 415(1), which does not apply to school grounds. (Section 415.5 applies to unlawful fighting within any building or upon school grounds of any school, but expressly exempts registered students from its scope.) Defendants claimed the students' behavior justified the arrest, because there was reason to believe the students were about to fight, however, the deputies did not have any evidence that the plaintiffs would be the aggressors. In fact, the deputy had minimally inquired about the facts and solely wanted to teach the girls a lesson. Thus, there was no sufficient probable cause for the deputies' actions.

Takeaways

School administrators should be careful when involving law enforcement personnel in routine school discipline matters. The power to arrest a student or to charge him or her with a crime comes with great responsibility and should be used sparingly.

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