

## “I Am Not Playing Around”: When to Draw the Line Between Criminal Issues and Disciplinary Ones on School Grounds

### Description

Over the last two decades we have seen an exponential rise in the number of officers assigned to posts at local schools. With that comes an increase in School Resource Officers interacting with school administrators and students. It can sometimes be tempting to teach students a lesson on disrespect or even for us to become too involved in school disciplinary matters, when this is not why an officer is assigned to a school.

In a recent case out of the 9<sup>th</sup> Circuit an officer’s interaction with administrators and middle-school students led to the eventual arrests of seven twelve and thirteen year-old girls. Like we have seen in so many other cases brought against officers, an audio recording of the events that took place on school grounds became crucial in this case. In *Scott v County of San Bernardino* we can see why it is so important to consider your agency directives concerning officer interactions on school grounds and what boundaries are set in place for you as an officer prior to your post at a school.

### FACTS

At the beginning of the school year, October 2013 to be exact, school officials at the Etiwanda Intermediate Middle School in California found themselves mediating an ongoing dispute between a group of twelve and thirteen year old girls. It became apparent that L.V. was the main aggressor in the group and had assaulted several other students. At one point, the mother of one of the victims called the school and asked that the school intervene, claiming that the attacks had occurred both during school hours and after school. The principal arranged a meeting between the students and asked the School Resource Officer for the high school to attend the meeting. The entire meeting was recorded by school administration.

During the meeting, it quickly became clear to the Deputy that the kids were not paying attention and were “acting disrespectfully” to himself and to the Principal. The Deputy advised the girls that he did not care who was at fault and that he would arrest all of them “to prove a point”. He further stated that this was a good opportunity to make them “mature a lot faster” and make sure they understood he didn’t “play around” before they got to the high school.

He then arrested all seven students and handcuffed them with the assistance of other deputies. One student, L.V., (the alleged primary aggressor) was released to her parents at the school and the other six students who were the “victims” were transported to the station. The students were released at the station to their parents; following this incident the school took no disciplinary action and no criminal charges were filed.

Several parents filed a Section 1983 claim alleging multiple federal and state violations: the defendant officers filed a Summary Judgment motion claiming the parents’ claims should be dismissed based on Qualified Immunity. The trial court dismissed several of the claims, but allowed the 4<sup>th</sup> Amendment claims to go forward. On the first day of the trial the trial court granted the plaintiff’s motion for

Summary Judgment finding that there was no dispute that the defendants had violated the students' Fourth Amendment by making an arrest absent any probable cause.

## Court Findings

The 9<sup>th</sup> Circuit affirmed the trial court rulings, supporting their decision by applying the Supreme Court's school search decision in *New Jersey v T.L.O* to the arrests made on school grounds. In the *T.L.O.* case, SCOTUS fashioned a two-part test to evaluate the reasonableness of a warrantless search on school grounds. In that case the Court said that the special needs of a school setting require some easing of the restrictions to which searches by government authorities are ordinarily subject. In order to determine whether such searches are reasonable in the school setting the court first must look at (1) whether the action was justified at its inception and (2) whether the action was reasonably related in scope to the circumstances that justified the interference in the first place.

Typically, the 4<sup>th</sup> Amendment reasonableness test is an objective evaluation; however an officer's subjective motivations may be used to determine whether the "special needs" requirement under *T.L.O.* was met. As we have seen in many other cases, the 9<sup>th</sup> Circuit relied on the audio recording to evaluate the officer's motivations for the arrest. Here are two excerpts from the tape:

*And for the one lady laughing that thinks it's funny, I am not playing around. I am dead serious that we are taking you guys to jail. That might be the easiest thing to do to wanting to prove a point that I am not playing around. Here is a good opportunity for me to prove a point and make you guys mature a lot faster. Then, unfortunate for you guys, you guys will probably now be in the system. You will have a criminal record. Just because you guys can't figure something out here.*

He continued:

*[H]ere is the thing right now I don't care who is at fault, who did what. You hear that? I don't care who did what, who is saying what, and whose fault it is. To me it is the same, same ticket, same pair of handcuffs.*

Based on the Deputy's own words the Appellate Court determined that the arrest was unreasonable and lacking probable cause. The court also noted that the audio recording did not support the Deputy's claims that they were shouting. The Court stated that an arrest of a middle school aged student cannot be justified as a scare tactic, a lesson in maturity, or a chastisement for perceived disrespect. Under these circumstances the two part special needs test established under *T.L.O.* had not been met.

## Takeaways

Did the Deputy's words sound familiar? Have there been times where you have found yourself dealing with a group of disrespectful adolescents who were just not getting the message? In this day and age, we should expect that everything we say and do will be recorded and may end up as evidence in a civil or criminal trial. Here, the Deputy's own words sealed his fate.

Because officers are always being recorded it is becoming more and more important for law enforcement officials to draw the line between criminal issues and disciplinary ones, especially as a School Resource Officer. Consider your own agency directives and the guidance they provide when

dealing with issues at your local schools; whether you are an officer dispatched to a school for a specific matter or the SRO assigned to the school, it is important to remember that we are not responsible for school discipline and matters of disrespect towards school administrators. We need to leave that to the educators and the studentsâ?? parents, as frustrating as that may be.

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