

## **RIGHT TO PRIVACY**

**State ex rel. Juvenile Dept. of Clackamas County v. M.A.D., 348 Or. 381 (2010)**

Oregon Supreme Court

### **Issue:**

Is it a violation of Article I, section 9, of the Oregon Constitution when a school official searches through the pockets of a student after they have informed that student's mother, and gained the consent of that same student?

### **Facts:**

On January 7, 2005, Brooks, the assistant principal at Rex Putnam High School, called Adam (fake name), a student, into his office to discuss concerns about his academic performance and attendance at school. During the resulting conversation Adam revealed to Brooks that another student (M.A.D) was attempting to sell marijuana that morning near the school. Based on Adam's track record of providing accurate information regarding other students' wrongdoing, and M.A.D's prior record about attendance and a possible connection with drug and alcohol issues, Brooks, believing Adam, brought M.A.D to his office.

Brooks arranged a meeting in his office with M.A.D's counselor, along with a staff learning specialist, Pogel. Prior to arranging the meeting Brooks informed M.A.D's mother of the meeting and she voiced no concerns, in fact she went so far as to agree with Adam, saying 'that she thought M.A.D probably was holding something'.

During the meeting Brooks requested that M.A.D reveal the contents of his pockets. After calling his mother, M.A.D indicated that he was willing to turn his pockets inside out, a search of his pants pockets, and the outside pockets of his jacket revealed nothing. Brooks noticed a bulge in the inner breast pocket of M.A.D's jacket and requested M.A.D to empty that pocket; to this request M.A.D refused. M.A.D later agreed to Pogel looking inside the breast pocket, which revealed a cloth bag containing a plastic bag with marijuana, about half a dozen empty plastic bags, and a small pipe used for smoking marijuana. M.A.D admitted that the marijuana was his, and that he had attempted to sell it. Brooks then called the police to report what they had discovered.

The state filed a delinquency petition with the juvenile court, alleging that M.A.D had committed an act that, if committed by an adult, would constitute delivery of a controlled substance. M.A.D moved to suppress both the evidence found in his jacket and his confession, arguing that the school officials had violated his rights under Article I, section 9, of the Oregon Constitution.

### Handout Questions:

1. Do you think the school official acted appropriately?
  - a. Discuss: Brooks took in information from another student. He reviewed the student's file, brought in a counselor, called the student's mother, allowed the learning specialist to take the lead on searching the student's jacket pocket.
2. If you were the state in this situation what arguments would you make in order to keep the evidence, and M.A.D's confession?
3. If you were M.A.D's attorney here what would you argue to defend your client?
4. What are the various interests of the state, and M.A.D in this case? Going forward be sure to pay attention to the following elements.
  - a. Privacy interests of M.A.D
  - b. The value of the state constitution
  - c. Safety interests at the school
5. How would you have ruled in this case?
6. Do the following considerations by the various courts change how you would rule?
  - a. The juvenile court, the court that first had the motion to suppress in front of it, relied on the Supreme Court of the United States' ruling in New Jersey v. T.L.O. The Court there stated school searches do not violate the 4th Amendment if the school has reasonable suspicion that the search will reveal evidence of a crime or a violation of school rules.
    - i. Should the juvenile court have relied on federal law to analyze state law?
  - b. The Court of Appeals made it clear that Article 1, Section 9 protects juvenile's rights. The court did not see an exception to the warrant requirement in this case and also did not find that there was probable cause. They majority rejected the New Jersey v. T.L.O. argument, because they said it is inconsistent with the privacy protections of the Oregon Constitution, Article 1, Section 9.
    - i. What is the difference between the fourth amendment and Article 1, Section 9 of the Oregon Constitution?
  - c. The Supreme Court compares the student search to officer safety exception to warrant requirements under Article 1, Section 9. This exception states that if an officer has reasonable suspicion based on specific and articulable facts that a citizen may pose and immediate threat to the officer or other citizens, he may take reasonable steps to protect himself and others, including a limited search.
    - i. Do you think this comparison makes sense?
7. After reading the actual case, answer the following:
  - a. How did the Oregon Supreme Court actually rule?
  - b. What are the reasons that the court gave for it's ruling?
  - c. Did the court create a new rule or procedure?
  - d. Do you agree with the court's ruling? Why? Why not?
8. Did the Court of Appeals or the Supreme Court get the ruling right?
  - a. Which ruling do you think better protects the privacy rights of students?

- b. The Oregon Court of Appeals
  - c. Oregon Supreme Court
- 9. What do you think about the 'reasonable suspicion' standard? Is the standard clear? Is there any potential for misuse of the standard in public schools?

**State ex rel. Juvenile Dept. of Clackamas County v. M.A.D., 348 Or. 381 (2010)**  
Oregon Supreme Court

**Facts:**

On January 7, 2005, Brooks, the assistant principal at Rex Putnam High School, called Adam (fake name), a student, into his office to discuss concerns about his academic performance and attendance at school. During the resulting conversation Adam revealed to Brooks that another student (M.A.D) was attempting to sell marijuana that morning near the school. Based on Adam's track record of providing accurate information regarding other students' wrongdoing, and M.A.D's prior record about attendance and a possible connection with drug and alcohol issues, Brooks, believing Adam, brought M.A.D to his office.

Brooks arranged a meeting in his office with M.A.D's counselor, along with a staff learning specialist, Pogel. Prior to arranging the meeting Brooks informed M.A.D's mother of the meeting and she voiced no concerns, in fact she went so far as to agree with Adam, saying 'that she thought M.A.D probably was holding something'.

During the meeting Brooks requested that M.A.D reveal the contents of his pockets. After calling his mother, M.A.D indicated that he was willing to turn his pockets inside out, a search of his pants pockets, and the outside pockets of his jacket revealed nothing. Brooks noticed a bulge in the inner breast pocket of M.A.D's jacket and requested M.A.D to empty that pocket; to this request M.A.D refused. M.A.D later agreed to Pogel looking inside the breast pocket, which revealed a cloth bag containing a plastic bag with marijuana, about half a dozen empty plastic bags, and a small pipe used for smoking marijuana. M.A.D admitted that the marijuana was his, and that he had attempted to sell it. Brooks then called the police to report what they had discovered.

The state filed a delinquency petition with the juvenile court, alleging that M.A.D had committed an act that, if committed by an adult, would constitute delivery of a controlled substance. M.A.D moved to suppress both the evidence found in his jacket and his confession, arguing that the school officials had violated his rights under Article I, section 9, of the Oregon Constitution.

**How did this case reach the Oregon Supreme Court?**

The juvenile trial court concluded that reaching into M.A.D's pocket constituted a search and that the school officials did not have probable cause to believe that M.A.D had drugs in his possession. Despite this, the court upheld the validity of the search, concluding that it was "reasonable to apply a more flexible standard than probable cause" in the context of a school search.

M.A.D appealed, and the Court of Appeals reversed the ruling of the juvenile court. The Appellate Court's reasoning was that juveniles are entitled to the protections of Article I, section 9 of the Oregon Constitution. The school was found to have conducted a warrantless search of M.A.D, the state had not proven that M.A.D had consented to the search, and that school officials had probable cause to

believe that M.A.D possessed illegal drugs. The state sought review, which the Oregon Supreme Court granted.

### **Arguments:**

#### **M.A.D's argument:**

1. The school officials had violated his rights under Article I, section 9, or the Oregon Constitution.

#### **State's argument:**

1. The search conducted by Brooks was not a violation of M.A.D's right to privacy under Article I, section 9.
2. The ordinary level of certainty necessary for a search (probable cause) should not apply in the school setting.
3. The court should recognize exception for school searches using the "reasonable suspicion" test

### **What happened at trial?**

Moving forward at trial the Court's threshold inquiry was whether the government action at issue constituted a 'search' for constitutional purposes. In recognizing that Article I, section 9 protects individual's privacy interests, and when government conduct invades those privacy interests; the court recognized that a search had taken place.

The follow-up question was whether that search was valid under Article I, section 9. Typically a warrantless search is unreasonable, and invalid, unless it falls under one of the exceptions to the warrant requirement that the court has recognized. Rather than attempt to place itself under a previously established requirement the state urged the Court to hold that searches of public school students that are conducted by school officials, on school grounds, and during school hours, are constitutionally permissible if school officials have a "reasonable suspicion" that the search will reveal evidence of a crime or a violation of school rules.

The Court came to recognize the school environment warranted the creation of an exception to the traditional warrant requirement. The Court then examined the scope, and subsequent application of the state's proposed exception which required reasonable steps" be taken on the part of the school to protect its environment. These steps could include a limited search, which would not violate Article I, section 9.

The court concluded that the reasonable suspicion standard should apply to a search, like the one in this case, for illegal drugs when conducted on school property by school officials acting in their official capacity.

### **Who won?**

The state won this case. The Court agreed with the state that an exception should exist for schools to be able to conduct a search of a student's belongings as part of their "reasonable steps" to protect its students. As a result of these "reasonable steps" a search could be conducted when a school official develops a

“reasonable suspicion” based on “specific and articulable facts” that a particular individual on school property either personally poses or is in the possession of some item that poses an “immediate threat” to the safety of the student, the official, or others at the school.

### **How the Court explained its decision**

After determining that a search had taken place, the Court sought to see if the search was permissible under one of the available exceptions to Article I, section 9. In their argument the state actually did not attempt to place itself under any of the currently available exceptions, but rather urged the Court to craft a new exception for public schools.

This new exception would result in ‘searches of public school students that are conducted by school officials, on school grounds, and during school hours [being] constitutionally permissible if school officials have a “reasonable suspicion” that the search will reveal evidence of a crime or a violation of school rules.’ The basis for the new exception as proposed by the school was the “unique mission and circumstances of public schools” in that Oregon statutes require children to attend school, unless they come within a specific exemption, and that various statutes emphasize the responsibility of school districts to provide a safe school environment for students, teaching faculty, and classified workers. ORS 339.010, ORS 339.315.

Accepting that the school was in a scenario that was different from the traditional police-citizen interaction the Court applied the “reasonable suspicion” standard to determine whether a limited search was permissible under Article I, section 9. As a result of the acceptance the Court concluded that the school officials reasonably suspected that M.A.D possessed illegal drugs at the time of the search and had sought to distribute those drugs to other students earlier.

### **Application**

The application of this ruling going forward creates one major effect; that schools will be able to conduct searches of students if they have simply a “reasonable suspicion” that the student might possess illegal drugs.

Students will recognize that their right to privacy is significantly reduced in a school environment. However this case reflects just how reduced that right to privacy is. Through discussion afterwards it might be revealed that a student might have their locker, backpack, or even person searched if someone accuses them of possession of illegal drugs, or even if they had a prior record at another school.

1. Is the effective loss of a privacy right appropriate under the circumstances in this case? What other steps do you think the school should have had to go through in order to search M.A.D’s person to avoid the resulting court proceedings?
2. Do you think that the school really had a “reasonable suspicion” that M.A.D was selling drugs? Is it appropriate for a school to rely on another student,

- who him/herself uses drugs and misses class frequently, to as a source of information to develop a “reasonable suspicion” against another student?
- a. Do you think the school had enough evidence against M.A.D? Do you think they had too much?
  - b. What evidence do you think would be necessary for a school to have a “reasonable suspicion” that one of their students is in possession of illegal drugs?
3. Consider the following scenario. Charles missed class frequently, and was seen on more than one occasion smoking off school property. One day while talking to a student in the hallway, Principal Drummonds hears another student say that ‘Charles has drugs in his locker’. Considering Charles’ prior history of smoking, and the statement by the student, does Drummonds have a “reasonable suspicion” to search Charles’ locker?

This case is a great way to discuss what students think their privacy rights are: at home, in public, at school. It will also get them thinking about the way standards can be shifted and altered in a court of law. Finally, it will hit home as high school students in a public school: it will help them to understand what their own rights are in a situation like M.A.D.’s.

### **Application**

Apply the court ruling to these scenarios. Is there reasonable suspicion?

1. Bobby is a fairly good student, who over the past couple weeks has been sent to the principle’s office for acting out in class. The principle asks Bobby if he has been doing drugs, Bobby says no, and asks to search Bobby for drugs. Reasonable suspicion?
2. June spends a lot of time reading on the school bleachers. Yesterday, she noticed two football players smoking cigarettes on school grounds. She reports them to her teacher, who in turn tells their coach. The coach searches both players for cigarettes. The football players have never been in trouble before. Reasonable suspicion?
3. Andy is walking down the hall at school, and can’t seem to maintain his balance. A teacher demands to search his locker. Reasonable suspicion?
4. Bill has been written up at school multiple times for getting into fights with other students. He has skipped school a lot this year, as much as twice a week. This morning, a fellow student tells a vice principal Bill is selling beer out of his locker to freshmen. The vice principal confronts Bill, who denies any wrongdoing with the alcohol. The vice principal searches Bill’s locker. Did he have reasonable suspicion?

5. Bud is a known cheater. He is also an underage smoker. He gets caught smoking on school grounds and tells the principal there is a gang of kids doing much worse – selling drugs during the lunch hour. He names seven different students and says they are part of a ring. The students include persons who have had disciplinary problems at school, as well as students without problems. Does the principal have reasonable suspicion to search these seven students?
  
6. Daniel is a loner. He doesn't interact with many people, but he gets good grades and doesn't cause trouble for staff at school. Anna takes after-school chess classes with Daniel. When they were playing a game, he muttered something about checkmating the school and everyone in it. Anna tells her guidance counselor the next day, who then relays the information to the principal. Daniel is called in to speak with the principal. Daniel tells the principal he didn't say that and he just wants to be left alone. Does the principal have reasonable suspicion to search Daniel's locker?