

In re William V.
(September 17, 2003) ___ Cal.App.4th ___

ISSUE

Is a school resource officer a “school official” for purposes of detaining and searching students?

FACTS

Hayward police officer David Johannes was the school resource officer at Hayward High.¹ As he arrived at the school one morning, he spotted a student, William V., standing alone in a hallway. The officer happened to notice a neatly folded red bandanna hanging from the back pocket of William’s pants. This caught his attention for two reasons: (1) possession of a bandana on campus is a violation of school rules because “colored bandannas commonly indicate gang affiliation”; and (2) the manner in which the bandanna was folded and hanging from the pocket indicated that “something was about to happen or that William was getting ready for a confrontation.” Johannes’ suspicions were heightened when, as he made eye contact with William, the student “became nervous and started pacing,” and began “trembling quite heavily, his entire body, especially his hands, his lips, his jaw.”

Johannes detained William and seized the bandanna. He also decided to take him to the principal’s office. Before doing so, however, he pat searched him for weapons. In the course of the search, Johannes felt something bulky around William’s waistband, but he couldn’t determine what it was because of William’s baggy clothes and a jacket covered his waist. As he lifted the jacket, he saw the handle of a knife. The officer seized the weapon and arrested William.

DISCUSSION

It is settled that officers may detain a person if they have “reasonable suspicion” to believe he was committing a crime, was about to commit a crime, or had recently done so.² It is also settled that officers may pat search a detainee if they have “reasonable suspicion” to believe the detainee was armed or dangerous.³

Based on these rules, William contended the detention and pat search were unlawful because the officer had neither reasonable suspicion to believe he was committing a crime, nor grounds to believe he was armed or dangerous. Thus, he argued, the knife should be suppressed.

It is quite possible that Officer Johannes did, in fact, have grounds to detain and pat search William based on the officer’s awareness that William was wearing the bandanna in a manner indicating a gang-related confrontation was about to occur, and William’s unusual reaction when he saw the officer.

Rather than address this issue, however, the court focused on another question—one that had not yet been decided: Is a school resource officer a “school official?” The question is important because the United States Supreme Court has ruled that teachers and other “school officials” may detain and search students based on reasonable

¹ NOTE: Regarding Officer Johannes’ duties the court explained, “As part of his assignment, Johannes maintained an office at the school and was on the school campus approximately eight hours a day. His job duties required him to work with the administration, teachers and students.”

² See *Alabama v. White* (1990) 496 US 325, 329-30; *United States v. Sokolow* (1989) 490 US 1, 7; *People v. Bell* (1996) 43 Cal.App.4th 754, 761.

³ See *Terry v. Ohio* (1968) 392 US 1, 27-8; *People v. Williams* (1992) 3 Cal.App.4th 1100, 1104; *In re Frank V.* (1991) 233 Cal.App.3d 1232, 1240; *People v. Dickey* (1994) 21 Cal.App.4th 952, 956.

suspicion that the student is violating a school rule, as well as a rule of law.⁴ Thus, if Johannes was a “school official,” the detention would have been justified solely on William’s violation of the school’s “no bandanna” rule.

Noting that the California Supreme Court has determined that civilian school security officers are “school officials” for the purpose of conducting searches,⁵ the court in *William V.* concluded there is “no reason to distinguish for this purpose between a non-law enforcement security officer and a police officer on assignment to a school as a resource officer.”

Consequently, the court ruled that a police officer who is on assignment to a school as a resource officer is a “school official.” Thus, the detention of William was lawful because of the bandanna. Said the court:

Officer Johannes testified that he saw the colored bandanna hanging from William’s pocket as he approached. William’s violation of the school rule prohibiting bandannas on school grounds justified the initial detention.

As for the pat search, it too was justified because Officer Johannes reasonably believed William was armed or dangerous. This determination was based on the following: (1) there had been recent incidents of gang violence at the school, (2) William’s red bandanna was a signal that he was a gang member, (3) William wore the bandanna in a manner that indicated “a confrontation was imminent,” and (4) he became extremely nervous when he saw the officer.⁶

⁴ *New Jersey v. T.L.O.* (1985) 469 US 325, 342.

⁵ See *In re Randy G.* (2001) 26 Cal.4th 556.

⁶ See *Illinois v. Wardlow* (2000) 528 US 119, 124 [“Our cases have recognized that nervous, evasive behavior is a pertinent factor in determining reasonable suspicion.”]; *U.S. v. Flett* (8th Cir. 1986) 806 F.2d 823 [suspect “was a known member of a national motorcycle gang which had violent propensities, including charges of using firearms, assault and resisting arrest.”]; *People v. Snyder* (1992) 11 Cal.App.4th 389, 393 [“(T)he visible bulge created by the bulk of the liquor bottle announced to [the officer] the potential of a weapon.”]; *People v. Garcia* (1981) 121 Cal.App.3d 239, 246 [“A citizen innocently loading a television into a car trunk at 7 p.m. . . is not likely to be ‘shocked’ by the nonthreatening observation of his activities by uniformed police officers.”]; *People v. Methey* (1991) 227 Cal.App.3d 349, 358 [suspect “perspiring and shaking” was a significant factor]; *U.S. v. Brown*, (7th Cir. 1999) 188 F.3d 860, 865 [“(Brown) was more nervous than one would expect in a routine traffic stop, and his failure to meet [the officer’s] gaze. . . . The totality of circumstances also included Brown’s repeatedly glancing back towards the car in question . . . ”].