

In re Rafael C.

(2016) __ Cal.App.4th __ [2016 WL 1178374]

Issue

Did school officials need a warrant to search a student's cell phone?

Facts

Inside a portable trash on the campus at Antioch High School, school supervisors found a handgun and a magazine cartridge. They also had probable cause to believe that the items had just been placed there by two identified students. Shortly afterwards, these same students were spotted in a corridor without passes, so school supervisors detained them and took them to the vice principal's office. While the students were being questioned in adjoining rooms that were visible from the corridor, officials noticed a third student, Rafael C., walking back and forth in front of the office, and he was keeping an eye on the two detained students. Because of this "odd" behavior, one of the officials attempted to detain Rafael and bring him to the office for questioning, but he "hurriedly walked away without turning around." The supervisor apprehended him and walked him back to the office.

While a vice principal was questioning him, Rafael became "physically fidgety" and "immediately reached down into his pocket." Fearing that he was reaching for a handgun, officials tried to prevent him from grabbing whatever was in his pocket. During the ensuing struggle, they realized that the object was a cell phone and that Rafael was apparently trying to "interact" with it in some way. After they had subdued him, a vice principal searched the phone and discovered photos of, among other things, Rafael holding the same gun that had been discovered earlier. Based on this and other evidence, Rafael was declared a ward of the court and was committed to a juvenile correctional facility.

Discussion

On appeal, Rafael argued that the photos should have been suppressed, claiming that school officials cannot search a student's cell phone without a warrant. The court disagreed, pointing out that the Supreme Court in *New Jersey v. T.L.O.* ruled that searches of students and their possessions at schools were permitted if officials had reasonable suspicion to believe the search was warranted. As the Court in *T.L.O.* explained, "Under ordinary circumstances the search of a student by a school official will be justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."¹ Because it was apparent that the circumstances here were more than sufficient to warrant the search, it is unnecessary to elaborate further.

Of interest, however, was Rafael's argument that a warrantless search of a student's cell phone was unlawful because the Supreme Court in *Riley v. California* ruled that, because cell phones contain massive amounts of personal information, a cell phone in an arrestee's possession may not be routinely searched as an incident to the arrest. Instead, if officers believe they have probable cause for a warrant, they may seize the phone and apply for one.² Although this was the ruling in *Riley*, the court in *Rafael* observed that the Supreme Court made clear that its ruling applied only to searches that are conducted incident to an arrest. And because of the obvious differences between searches incident to

arrest on the streets, and searches of students in schools, the court ruled that *T.L.O.*, not *Riley*, governs searches of cell phones in schools.

Although it was apparent that the school officers had reasonable suspicion to search Rafael's cell phone, the court pointed out that in determining the reasonableness of such a search, courts must also consider the magnitude of the harm that might result if officials waited to obtain a warrant. And this factor plainly weighed heavily in favor of the warrantless search of Rafael's phone. As the court previously observed in *In re J.D.*, "Recent events have demonstrated the increased concern school officials must have in the daily operations of public schools. . . . We must be cognizant of this alarming reality as we approach our role in assessing appropriate responses by school administrators to campus safety issues."³ Accordingly, the court ruled that search of Rafael's cell phone was lawful. POV

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¹ (1985) 469 U.S. 325, 326, 341-42

² *Riley v. California* (2014) __ US __ [134 S.Ct. 2473, 2495] ["Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant."].

³ (2014) 225 Cal.App.4th 709, 714. Also see *In re Randy G.* (2001) 26 C4 556, 566 ["[School officials] must be permitted to exercise their broad supervisory and disciplinary powers, without worrying that every encounter with a student will be converted into an opportunity for constitutional review."].