

JUVENILES AND THE FOURTH AMENDMENT

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I. PROCEDURE: MAKING THE MOTION TO SUPPRESS

A. Welfare and Institutions Code section 700.1

“Any motion to suppress as evidence any tangible or intangible thing obtained as a result of an unlawful search or seizure shall be heard prior to the attachment of jeopardy...”

B. Suppressed evidence is not excluded from dispositional hearings

Previously suppressed evidence may be used in dispositional hearing; Welfare and Institutions Code section 700.1 is not as broad as Penal Code section 1538.5. (*In re Michael V.* (1986) 178 Cal.App.3d 159).

C. Appeal of the ruling on the motion to suppress

Welfare and Institutions Code section 800, subdivision (a) provides: “A ruling on a motion to suppress pursuant to Section 700.1 shall be reviewed on appeal even if the judgment is predicated upon an admission of the allegations of the petition.” Welfare and Institutions Code section 800, subdivision (b)(1) provides: “An appeal may be taken by the people from . . . [a] ruling on a motion to suppress pursuant to Section 700.1 even if the judgment is a dismissal of the petition or any count or counts of the petition. However, no appeal by the people shall lie as to any count which, if the people are successful, will be the basis for further proceedings subjecting any persons to double jeopardy.”

If the People agreed to a suppression hearing concurrent with an adjudication hearing, double jeopardy prevents the People from appealing the granting of a suppression motion. (*In re Mitchell G.* (1990) 226 Cal.App.3d 66.)

II. SCHOOLS

A. Detentions

School officials may detain a minor student on school grounds in the absence of a

reasonable suspicion of criminal activity or violation of a school rule. The broad authority of school administrators over student behavior, school safety, and the learning environment requires that school officials have the power to stop a minor student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion. The only restriction is that such authority may not be exercised in an arbitrary, capricious, or harassing manner. (*In re Randy G.* (2001) 26 Cal.4th 556.)

1. Non-students

Unlike the rules applicable to public places in general, school officials, including police who assist in maintaining general order on campus, need not articulate a specific crime which appears to be violated in order to detain an outsider for the limited purpose of determining the fundamental factors justifying an outsider's presence on a school campus, such as who he is, why she is on campus, and whether they have registered with the principal. (*In re Joseph F.* (2000) 85 Cal.App.4th 975.)

B. Searches of students by school officials

Although the Fourth Amendment applies to searches of students by school officials, such searches do not need to strictly adhere to the requirement of probable cause. Rather, the search must be reasonable under all the circumstances. Ordinarily, a search will be justified at its inception when there are reasonable grounds to suspect it will turn up evidence that the student has violated either the law or a school rule. If the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction, the search will be permissible in its scope. *New Jersey v. T.L.O.* (1985) 469 U.S. 325, 83 L.Ed.2d 720, 105 S.Ct.733. There a teacher informed the vice-principal that she had seen the student smoking in the restroom. When the student denied smoking to the vice-principal, he demanded to see her purse, which he discovered contained a pack of cigarettes. When he also saw rolling papers in the purse, which in his experience was closely associated with marijuana smoking, he searched more thoroughly, discovering marijuana and evidence of marijuana dealing. The court concluded that it was reasonable to conclude the minor had cigarettes in her purse, and thus the search was reasonable.

The California Supreme Court acknowledged the same standard of reasonable suspicion established in *T.L.O.* for a search by a school official of a minor student due to the unique characteristics of the school setting and the important responsibilities that school officials have to all students in *In re William G.* (1985) 40 Cal.3d 550, which was decided shortly after *T.L.O.* There the assistant principal saw a student carrying a small

bag which had what he thought was an odd looking bulge; it turned out to be a calculator case. William's classes had ended for the day. While they were talking, William palmed the case to his side and then behind his back. When asked what was in his hand, he replied, "Nothing." When the assistant principal attempted to see the case, William said that he couldn't and that he needed a warrant. Apply the foregoing standard to these facts, the court held the search was unreasonable. The school official could not articulate any facts to support a reasonable suspicion that William was engaged in a prohibited activity. There was no prior knowledge of any involvement by William in drugs. The court also rejected notion that William's exercise of his right to be free from unreasonable searches could contribute to the reasonable suspicion equation.

III. TRAFFIC STOPS

A. Automobiles

Search of a vehicle for identification or registration when the driver fails to produce such documents after being detained for a Vehicle Code infraction.

In *In re Arturo D.* (2002) 27 Cal.4th 60 [see also, *People v. Hinger*, which was consolidated with *In re Arturo D.*], the court held that when a driver who has been detained for citation for a Vehicle Code infraction fails to produce vehicle registration or personal identification documentation upon request of the citing officer, the officer may conduct a warrantless search of areas within the vehicle where such documentation reasonably may be expected to be found. These are not limited to "traditional repositories" for these documents, such as a glove compartment or a sun visor. Instead, the officer may look under the driver's seat, and may do so either from the front or the back of the driver's seat. In *Hinger*, the officer had seen the driver look in the glove compartment, which was immediately above the front passenger seat. In that situation, it was permissible for the officer to look in the glove compartment, under the driver's seat and under the passenger's seat for the requested documentation. The court also said: ". . . [T]he trunk of a car is not a location where required documentation reasonably would be expected to be found, absent specific information known to the officer indicating that the trunk as a location where such documents reasonably may be expected to be found – e.g., as when a driver has told an officer that his registration or license is inside a jacket located in the trunk." (02 DJDAR at p.841, fn.25). Remember, the controlling question is whether the officer is entitled to search the location where he or she is looking, and that location must be one where registration or identification documents must reasonably be expected to be found. The court reaffirmed that an officer cannot search for such documents on pretext and may not search in containers or locations in which such documents are not reasonably expected to be found, citing a case involving a crumpled

fast food bag under the seat.

B. Bicycles

An officer may detain someone under 18 and not wearing a bicycle helmet who is riding a bicycle on the sidewalk. Although the statute prohibits riding without a helmet “on a street”(Vehicle Code section 21212, subdivision (a), a “street” includes the sidewalk. *In re Devon C.* (2000) 79 Cal.App.4th 929. Here, as the officers approached, the minor told them he had a gun, which he had just found, in his pocket.

Does Vehicle Code section 40302, subdivision (b) permit an officer to make a full custodial arrest of an individual who is unable to produce written evidence of identity upon being stopped for a Vehicle Code infraction that is subject to punishment only by a fine? That issue is currently pending in the California Supreme Court in *People v. McKay*, S091421, formerly appearing at 82 Cal.App.4th 1279, rev. granted Nov. 15, 2000, argued and submitted Dec. 5, 2001. Since it involved an offense involving a bicycle, it may have wide application to minors. There, at 6:00 p.m., the officer saw appellant riding a bicycle in the wrong direction on a residential street (a violation of Veh. Code, sec. 21650.1). Appellant had no written identification with him, but gave his name and date of birth to the officer. The officer arrested appellant in accord with Vehicle Code section 40301, based upon the failure “to present his driver’s license or other satisfactory evidence of his identity” Drugs were found in the defendant’s sock during a search pursuant to his arrest. The Court of Appeal (Second District, Div. 4) had held the arrest permissible.

Query: What kind of written identification is a minor who is too young to have a learner’s permit or driver’s license supposed to have? According to the DMV, there is no minimum age to obtain a California Identification Card. But Justice Brown notes this enigma in the dissenting portion of her opinion in *McKay*:

“What if Mr. McKay rides a bicycle because he does not have a driver’s license? What if, being a dedicated libertarian, he deliberately eschews all forms of government-issued identification? What if not being photographed is a tenet of his religious faith?”
Indeed, and what if the bicyclist is a minor?

IV. PROBATION SEARCHES

In re Tyrell J. (1994) 8 Cal.4th 68 held that when the police conduct an otherwise

illegal search of a minor, the fruits of the search may nevertheless be admitted if the minor was subject to a probation search by any law enforcement officer condition of which the police were unaware. The court based its decision on the conclusion that the minor lacked a reasonable expectation of privacy over a bag of marijuana in his pants due to the valid probation condition which required him to submit to searches by any law enforcement officer. The opinion noted that unlike adults, juveniles may not refuse probation, and thus the search cannot be justified on a consent theory. Until recently, we thought that the California Supreme Court was on the verge of reconsidering the holding of *Tyrell J.* The court had granted review in *People v. Moss*, S087478, where the issue presented was:

Should the California Supreme Court reconsider its holding in *In re Tyrell J.* (1994) 8 Cal.4th 68, that a peace officer who searches a probationer subject to a search condition does not violate the Fourth Amendment rights of that individual, even if the officer is ignorant of the condition? (*People v. Moss* (2000), unpublished opinion, review granted June 28, 2000 (S087478/G024202).) However, **on January 16, 2002, the Court dismissed and remanded *Moss* to the Court of Appeal. It is unclear at this point whether another case will become the lead case for this issue, or whether the Court has decided not to review the issue at this time.** Review was granted in *People v. Spence* (2000) 78 Cal.App.4th 1242, review granted July 12, 2000 (S087865/C028033); *People v. Sanders* (2000) 84 Cal.App.4th 1211, review granted February 26, 2001 (S094088/F033862); *People v. Daniel* (2001), unpublished opinion, review granted June 13, 2001 (S096485/C034461); *People v. Perry* (2001), unpublished opinion, review granted August 13, 2001 (S098277/B140450); and *People v. Hardiman* (2001), unpublished opinion, review granted October 10, 2001 (S099287/B146045). Briefing for each of these cases was deferred pending a decision in *Moss*.)

Stay tuned for further developments.

V. CURFEWS

The police may search a minor prior to his placement in a curfew center facility where minors in violation of curfew await release to their parents. *In re Ian C.* (2001) 87 Cal.App.4th 856. There the minor was instructed to raise his pant leg and an officer saw a suspicious bulge in his sock which turned out to be marijuana. Under the Welfare and Institutions Code, an officer may take a minor into temporary custody for a curfew violation. The court equated temporary custody with an arrest, and a search incident to arrest is permissible for the safety of the officers and other detainees.

Query: Can a minor be transported to the police station for a curfew violation?

No? *In re Justin B.* (1999) 69 Cal.App.4th 879. Where the minor's only offense is a curfew violation, a police officer abridges the minor's right to be free from unreasonable searches and seizures when the officer transports the minor to the police station and subjects him to questioning designed to elicit incriminating answers. However, here the minor was also arrested for auto burglaries, but there court held there was were insufficient facts to provide probable cause to believe that offense had been committed.

Yes? *In re Charles C.* (1999) 76 Cal.App.4th 420. There the minor was detained where he had been loitering in from of a supermarket after curfew. After numerous to notify the minor's parents so that they could pick him up at the scene were unsuccessful, the minor was transported to the police station. The police put him in an interview room, and performed an inventory search, which found a baggie of methamphetamine in the coin pocket of the minor's pants. Because the minor was in lawful custody, he could be searched pursuant to that arrest. The *Charles C.* court expressly reject *In re Justin B.* as wrongly decided.