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Constitutional Law/Criminal Procedure - Search and Seizures in Schools, Commonwealth v. Villagran, 81 N.E.3D 310 (Mass. 2017)

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CONSTITUTIONAL LAW/CRIMINAL PROCEDURE – SEARCH AND SEIZURES IN SCHOOLS, *COMMONWEALTH V. VILLAGRAN*, 81 N.E.3D 310 (MASS. 2017).

The protection from unreasonable searches and seizures without probable cause is guaranteed to all persons of the United States as well as all residents of Massachusetts.¹ Both the United States Supreme Court and the Massachusetts Supreme Judicial Court (“SJC”), however, have analyzed variations in the standards of a reasonable search and seizure in a school setting.² In *Commonwealth v. Villagran*,³ the SJC grappled with the distinction between the standard applicable to a police officer’s search under the Fourth Amendment and the less stringent standard applicable to a search conducted by a school official.⁴ After articulating the various standards required in a school setting, the court held when a police officer conducts a search, the Fourth Amendment requires a warrant based on probable cause, while a search by a school official is permissible under both the Fourth Amendment and article 14 of the Massachusetts Declaration of Rights if it is

¹ See U.S. CONST. AMEND. IX (stating rights granted under Fourth Amendment); MASS. CONST. pt. 1, art. 14 (outlining right to freedom from unreasonable searches and seizures). The Massachusetts Constitution explains:

Every subject has a right to be secure from all unreasonable searches, and seizures, of his person, his houses, his papers, and all his possessions. All warrants, therefore, are contrary to this right, if the cause or foundation of them be not previously supported by oath or affirmation; and if the order in the warrant to a civil officer, to make search in suspected places, or to arrest one or more suspected persons, or to seize their property, be not accompanied with a special designation of the persons or objects of search, arrest, or seizure; and no warrant ought to be issued but in cases, and with the formalities prescribed by the laws.

MASS. CONST. pt. 1, art. 14.

² See *New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (explaining school official is held to standard of reasonableness when conducting warrantless search); *Commonwealth v. Carey*, 554 N.E.2d 1199, 1205 n. 4 (1990) (discussing distinction between standard applicable to school officials and police officer). “[I]f the search had been conducted by [the police], the warrantless search would have been lawful under the Fourth Amendment as based on probable cause and exigent circumstances.” *Carey*, 554 N.E.2d at 1205 n.4; see also *Commonwealth v. Villagran*, 81 N.E.3d 310, 313 (Mass. 2017) (“[A] police officer’s conduct in a school setting is governed by the traditional Fourth Amendment standard.”).

³ 81 N.E.3d 310 (Mass. 2017).

⁴ See *id.* at 313 (reaffirming distinction between searches done by school officials and police officers).

reasonable under all the circumstances. Thus, when the police officer searched the defendant in the school setting without reasonable suspicion and without an exception to the warrant requirement, the search was unconstitutional.⁵

In March of 2015, Milton school officials found an unknown male (the defendant) on school grounds.⁶ The defendant presented a fictitious story about why he was on school grounds to the school officials.⁷ As the principal and vice principal approached the defendant, they smelled marijuana.⁸ After moving the defendant to a secure room, the school officials called the Milton Police Department and Sergeant Murphy.⁹ Upon arriving, Sergeant Murphy was informed that the defendant tried to sneak into the school, and officials suspected the defendant had contraband on him based on his fictitious story and strange actions.¹⁰ Sergeant Murphy then conducted a pat-frisk and found marijuana and \$2,964.88 in cash on the defendant's person.¹¹ Sergeant Murphy proceeded to pat-frisked the defendant's backpack and felt a hard object.¹² Sergeant Murphy opened the bag, fearing that the object was a weapon, and discovered several objects, including a loaded handgun.¹³ Sergeant Murphy removed the gun from the defendant's bag and placed the defendant under arrest.¹⁴

The defendant was convicted, amongst other charges, of carrying a weapon on school grounds.¹⁵ The defendant filed a motion to suppress statements and physical evidence seized during the police search of his backpack, arguing that Sergeant Murphy lacked a constitutionally permissible basis for the pat-frisk and subsequent search.¹⁶ The district court denied the motion.¹⁷ The defendant then appealed the District Court's ruling,

⁵ See *id.* at 314 (vacating defendant's convictions based on unconstitutional search).

⁶ See *id.* (explaining school officials observing unknown individual).

⁷ See *id.* (describing how defendant told officials he was waiting for student to meet him). After twice changing his story, the defendant told the principal and vice principal that he was waiting for a girl to meet him at school. *Id.*

⁸ See *Villagran*, 81 N.E.3d at 314 (noticing strong smell of marijuana). The school officials became worried about the surrounding students and brought the defendant into a conference room. *Id.*

⁹ See *id.* (outlining steps taken by school officials).

¹⁰ See *id.* (explaining how defendant lied about his identity and reason for being on school grounds).

¹¹ See *id.* at 314 (discussing objects found).

¹² See *id.* at 314 (describing Sergeant Murphy's actions).

¹³ See *Villagran*, 81 N.E.3d at 314 (recounting Sergeant Murphy's findings).

¹⁴ See *id.* at 314 (outlining how Sergeant Murphy spoke to defendant).

¹⁵ See *id.* at 312 (referencing defendant's convictions).

¹⁶ See *id.* at 312 (explaining defendant's motions).

¹⁷ See *id.* at 312 (relating district court's holding).

which was transferred to the SJC.¹⁸ The SJC motioned, *sua sponte*, to transfer the case to their court.¹⁹

The SJC has explained that although a warrant is generally required when conducting a search, a warrantless search may be constitutional if it is justified by probable cause and meets an exception to the warrant requirement.²⁰ When a search is conducted without a warrant, it must be shown that the search can be included in a narrow class of exceptions to the warrant requirement.²¹ Police officers must have a reasonably articulable suspicion that the defendant is engaged in criminal activity and is armed and dangerous in order to conduct a pat-frisk.²² The SJC has clarified that a pat-frisk must be justified by reasonable and articulable suspicion that a defendant is engaged in criminal activity and that the defendant was armed and dangerous.²³ Additionally, subsequent search stemming from a pat-frisk must be justified by probable cause and an exception to the warrant requirement.²⁴

Further, when a police officer conducts a search in a school setting, they are required to act in accordance with the Fourth Amendment.²⁵

¹⁸ See *Villagran*, 81 N.E.3d at 313 (detailing out defendant's arguments). The defendant argued there was a violation of his rights under both the Fourth Amendment of United States Constitution and Article 14 of the Massachusetts Declaration of Rights. *Id.*

¹⁹ See *id.* at 313 (describing SJC's decision).

²⁰ See *Commonwealth v. Tyree*, 919 N.E.2d 660, 670-71 (Mass. 2010) (outlining warrantless search standard).

Given the high value that our Federal and Massachusetts Constitutions assign to the warrant requirement . . . we impose a heavy burden on the Commonwealth to justify every warrantless search: in the absence of consent, the Commonwealth must prove both probable cause . . . and the existence of exigent circumstances . . . Under the exception for exigent circumstances, "there must be a showing that it was impracticable for the police to obtain a warrant, and the standards as to exigency are strict."

Id. (quoting *Commonwealth v. Forde*, 329 N.E.2d 717, 800 (Mass. 1975)).

²¹ See *Commonwealth v. Craan*, 13 N.E.3d 569, 574 (Mass. 2014) (explaining burden is on Commonwealth to prove exception to warrant requirement). For example, the automobile exception to warrant requirement allows police to search an automobile if they have probable cause to believe evidence of a crime will be found. *Id.* at 577; see also *Commonwealth v. Narcisse*, 927 N.E.2d 439, 445 (Mass. 2010) (holding search unconstitutional for lack of reasonable suspicion although armed individual committed criminal offense).

²² See *Terry v. Ohio*, 392 U.S. 1, 27 (1968) (declaring standard of reasonable articulable suspicion). "[T]he issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger." *Id.*

²³ See *Narcisse*, 927 N.E.2d at 446 (Mass. 2010) (explaining what is necessary under Massachusetts state law for reasonable and articulable suspicion).

²⁴ See *Commonwealth v. Cast*, 556 N.E.2d 69, 76 (Mass. 1990) (outlining exceptions to Fourth Amendment and Article 14 warrant requirement).

²⁵ See *Carey*, 554 N.E.2d at 1205 n.4 (Mass. 1990) (distinguishing search executed by school officials from searches executed by police officer). The defendant argued the detective needed to

However, when a school official conducts a search in a school setting, the search is constitutional if it is found to be reasonable under the given circumstances.²⁶ This relaxed probable cause standard applies only when school officials are not acting in conjunction with the police.²⁷ The SJC has elaborated if a school official is acting in conjunction with, or at the bequest of, the police, a search warrant and probable cause are required.²⁸

Courts have also taken judicial notice of actual and potential violence in public schools.²⁹ Protection against gun related violence in a school setting is particularly important.³⁰ The increased frequency of violence in schools provides the court with a strong justification for a relaxed search and seizure standard for school officials.³¹ Legislation towards restrictions on guns in schools acts as a legal foundation to address the prevalent and alarming issue of violence in a school setting.³²

have reasonable suspicion of criminal conduct in order to search his locker. *Id.* The court disagreed, finding the search to have been reasonable because the motion judge found the search was conducted by school officials with no involvement by police. *Id.*

²⁶ See *T.L.O.*, 469 U.S. at 327-28 (holding Fourth Amendment applies to searches conducted by public school officials, at lower standard). The court explained

[A]ccommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search.

Id. at 341.

²⁷ See *id.* at 334 (explaining reasonableness standard applies only when school officials not acting independently from law enforcement). Under the Fourth Amendment, for a school search to be reasonable it must be justified at its inception and limited in its scope “to the circumstances which justified the intrusion in the first place.” *Id.* at 341; see also *Commonwealth v. Lawrence*, 792 N.E.2d 109, 113 (Mass. 2003) (discussing *T.L.O.* in same context).

²⁸ See *Lawrence*, 792 N.E.2d at 113 (“Because Ridley was not acting as an agent of the police, he was exempt from obtaining a search warrant, and must only demonstrate that the search was reasonable in all of the circumstances.”).

²⁹ See *Commonwealth v. Milo M.*, 740 N.E.2d 967, 973 (Mass. 2001) (explaining highly publicized school shootings by students have increased awareness of violence in schools).

³⁰ See *Commonwealth v. Whitehead*, 6 N.E.3d 557, 561 (Mass. App. Ct. 2014) (describing how Legislature has increased burden on defendants in firearm offenses in school setting).

³¹ See *Milo M.*, 740 N.E.2d at 974 (describing “climate of apprehension” regarding schools and violence).

³² See MASS. GEN. LAWS ch. 269, §10(j) (2018) (explaining offense).

Whoever, not being a law enforcement officer and notwithstanding any license obtained by the person pursuant to chapter 140, carries on the person a firearm, loaded or unloaded, or other dangerous weapon in any building or on the grounds of any elementary or secondary school, college or university without the written authorization of the board or officer in charge of the elementary or secondary school, college or university shall be punished by a fine of not more than \$1,000....

In *Commonwealth v. Villagran*, the SJC vacated and remanded the defendant's conviction because the police officer lacked reasonable suspicion to support a pat-frisk, and lacked probable cause to support a search of the defendant's backpack.³³ In addition, the court found the warrantless search of the defendant's backpack was not warranted as a search incident to the arrest.³⁴ Moreover, the court emphasized that the ruling specifically differentiates between the conduct of a police officer and the conduct of a school official during a search on school property.³⁵

Articulating the different standard for police officers and school officials in a search on school property allowed the court to favor Villagran's constitutional protection against unreasonable search and seizures.³⁶ The court properly applied the *Terry* standard in requiring the police officer to justify the warrantless search of Villagran with probable cause and an exception to the warrant requirement.³⁷ Additionally, the court's decision corresponds with the preference of prior case law regarding expectations of privacy in public places, and the variation in search and seizure standards, which considers who executes the search if the search takes place in a school setting.³⁸

The court disregarded the dissent's reference to recent incidents of violence in schools as support for a diminished expectation of privacy in schools.³⁹ The dissent argues a person who is on school property has a reduced expectation of privacy because public access to a school is restricted, and the nature of a school calls for a less rigorous constitutional standard.⁴⁰ However, the majority points to a lack of case law supporting the

Id.

³³ See *Villagran*, 81 N.E.3d at 324 (explaining holding).

³⁴ See *id.* at 323-24 (describing search of defendant's backpack).

³⁵ See *id.* at 322-23 (outlining differences in standards).

³⁶ See *id.* at 318 (discussing lack of probable cause to search backpack); see also U.S. CONST. AMEND. IV; MASS CONST. PT. 1, ART. 14 (outlining right against unreasonable search and seizures).

³⁷ See *Villagran*, 81 N.E.3d at 318 (emphasizing "bedrock constitutional principles" required for both pat frisk and warrantless search).

³⁸ See *id.* at 318 (explaining precedent); see *T.L.O.*, 469 U.S. at 340 (holding school officials do not need to obtain a warrant); *Terry*, 392 U.S. at 20 (emphasizing warrant requirement requires probable cause). The Supreme Court explains that the requirement for probable cause may be excused for exigent circumstances. *Terry*, 392 U.S. at 20; see also *CTyree*, 919 N.E.2d at 670-71 (describing high standard necessary to justify warrantless search); *Narcisse*, 927 N.E.2d at 445 (outlining that police officer must have reasonable suspicion that individual is committing crime and is dangerous).

³⁹ See *Villagran*, 81 N.E.3d at 318 (addressing dissent's focus on recent school violence episodes).

⁴⁰ See *id.* at 324-25 (Lowy, J. dissenting) (explaining individual who enters school should have reduced expectation of privacy).

unconventional interpretation of the protections required by the Fourth Amendment and article 14 of the Massachusetts Declaration of Rights.⁴¹

The court does not completely disregard the public interest in protection against violence in schools.⁴² The dissent cites precedent that references school violence while discussing that a teacher's apprehension was insufficient to establish the defendant's likelihood to carry out a threat.⁴³ However, as the majority points out, the effect of school violence on the teacher's state of mind carries no constitutional weight in the legal analysis.⁴⁴ The majority emphasizes that, relevant case law does not permit such restrictions on a person's reasonable expectation of privacy, and a balance of privacy and a school's interest in maintaining order can be accomplished without limiting the reasonableness requirement, as the court did in *New Jersey v. T.L.O.*⁴⁵ Finally, the court highlights that their ruling is only directed at searches executed by police officers in school settings, and should not be read to limit the actions of school officials, who are held to a less stringent standard.⁴⁶

In *Villagran*, the court reaffirmed the standard required for police officers and the standard required for school officials when executing a search on school grounds. In emphasizing the difference between the standards, the court favored the importance of Fourth Amendment and article 14 protections. However, the court effectively acknowledged the public interest by reiterating the less stringent standard applicable to school officials during a search on school grounds. Highlighting the difference in standards protects citizens from future unreasonable search and seizures while allowing school officials to adequately protect their students.

Brigid Bowser

⁴¹ See *id.* at 318 (addressing dissenting opinion).

⁴² See *id.* at 318-19 (acknowledging current violence in schools).

⁴³ See *id.* at 325 (referencing Newtown, Connecticut school shooting).

⁴⁴ See *Villagran*, 81 N.E.3d at 319 (referencing precedent recognizes impact of school violence); see also *Milo M.*, 740 N.E.2d at 973 (taking judicial notice of school violence).

⁴⁵ See *Villagran*, 81 N.E.3d at 318-19 (presenting balancing test of safety and privacy); see also *T.L.O.*, 469 U.S. at 330 (outlining standard of reasonableness applicable to warrantless search by school official).

⁴⁶ See *Villagran*, 81 N.E.3d at 320 (emphasizing holding does not restrict what school officials can do to secure student's safety).