

*Safford Unified School District #1 v. Redding*

Argued - April 21, 2009

Decided – June 25, 2009

**Facts**

Statistics show that middle-school-age children are abusing over-the-counter and prescription drugs at alarming rates, news that concerns government and school officials. While the Fourth Amendment protects individuals from unreasonable searches and seizures by the government, the Supreme Court has noted that students' protections under the Fourth Amendment are diminished in a public school setting. At Safford Middle School, authorities were still reeling from an incident in 2002 where a student was hospitalized from an adverse reaction to a prescription drug illegally obtained from another student. This case, *Safford Unified School District #1 v. Redding*, asks whether school officials were justified in searching a 13-year-old middle school honors student for possession of prescription drugs.

In October 2003, Jordan Romero, a student at Safford Middle School, brought a 400 mg prescription-strength ibuprofen pill to Assistant Principal Kerry Wilson's office. Jordan claimed that another student, Marissa Glines, had given it to him, and that more pills were to be distributed during lunch. Jordan had previously reported obtaining pills from another student and becoming ill after ingesting them. Wilson immediately called Marissa to his office and searched her belongings, discovering more pills and a planner containing knives, a lighter and a cigarette. Marissa claimed Savana Redding had given the pills to her. Wilson then called Savana to his office.

Savana identified the planner as hers, but claimed she hadn't before seen the knives, lighter and cigarette. Wilson then questioned Savana about ibuprofen pills that Wilson had confiscated from Marissa. Savana denied possessing and distributing pills, and agreed to let Wilson and his female assistant search her belongings.

When the initial search of Savana's backpack produced nothing, Wilson's assistant and the female school nurse conducted a more thorough search in the privacy of the nurse's office. The two women asked Savana to remove her clothing for inspection for ibuprofen, as Savana sat in her bra and underpants. Finding nothing, the nurse asked Savana to pull her bra to the side and shake it, exposing her breasts in the process. The nurse then asked Savana to pull the crotch of her underpants to the side and shake it, exposing her pelvic area in the process. Neither woman touched Savana as she disrobed.

Savana filed suit against the school for conducting an unreasonable search. The federal district court ruled for the school district. However, on appeal the federal court of appeals ruled in favor of Savana. The appeals court found that Savana's Fourth Amendment rights were violated as the search conducted in the nurse's office was not justified at its inception and was not reasonable in scope. The school district asked the Supreme Court to grant review.

**Issue**

Does the Fourth Amendment prohibit public school officials from conducting a search beneath the clothing of a student suspected of violating school policy by possessing and distributing a prescription drug?

## *Redding* Hypotheticals

For each hypothetical situation, assume the facts are the same as in Redding, with only the differences noted in the hypothetical statement. (The number in parentheses is the page number where this hypothetical appeared in the argument transcript.)

1. A female student is suspected of having prescription ibuprofen on her person that she is distributing to classmates. After searching her backpack and finding nothing, the school nurse and an assistant ask the student to remove her clothes and shake out her bra and underwear. After finding nothing, the nurse, who is specially trained, performs a cavity search of the student. (4)
2. Prior to being asked to strip down to her bra and underwear, the student is given the option to call her mother and have her mother present during the search. (22)
3. The school informant, instead of telling school officials merely that she received pills from the student, specifically tells school officials that the student has pills on her person and is going to distribute them at lunch. (31-32)
4. Instead of prescription ibuprofen the drug that the student is allegedly hiding is a much more dangerous drug such as heroin, methamphetamine or crack cocaine. (33-34 & 38)

Additional questions to consider:

5. Would it make a difference if students had been caught with hard drugs instead of ibuprofen?
6. What would have happened if Savanna had been a boy?
7. Would it make a difference if 6 students reported that a student was planning to distribute ibuprofen at lunch?
8. If an educator overreaches the Fourth Amendment constitutional protections of a student, how should liability be established?

Your questions:

## Moot Court Outline

1. Participants will review facts presented in reading. We will discuss asking what additional facts they would like to have. You can add information that you have based on any research you may have done. 15—20 min Barb will facilitate and Kathleen and Laurie will answer questions
2. Frame the issue in context of Fourth Amendment and precedents: Teachers can ask clarifying questions. 10 min--Kathleen
3. Arguments—before assigning roles, we will give one side of the argument to half the participants and half to the other. Their task will be to prioritize the arguments (for the side assigned) from most important to least important. They will caucus with those who share their role and then be paired with someone from the other side for “each one, teach one” to learn the arguments for the other side.
  - Individual—5
  - Caucus—10
  - Teach—7
4. Assign roles and prepare for moot court. Kathleen and Laurie will coach lawyers for respective sides and assist a panel of justices who will be asking questions. (We could give them the hypotheticals to use in building their questions—or we could save them for the debrief)
  - 20
5. Stage the moot court
  - Arguments 4 each side
  - Questions 10
  - Deliberation (lawyers will fish bowl to hear reasoning) 15
  - Decisions from panels of judges 10
6. Debrief the exercise—fourth amendment at school, opportunities for and quality of deliberation, comparison with decision made by the court (likely the previous day), how to take to the classroom.
  - 20

## Constitutional Amendments and Precedents

#### *Fourth Amendment*

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

#### *New Jersey v. T.L.O*

A public school student was caught smoking in the bathroom in violation of school policy. When she denied the allegation, the Assistant Principal searched her purse and found cigarettes as well as rolling papers commonly associated with marijuana use. Concerned about illegal drug possession, the Assistant Principal proceeded with a more intrusive search deeper into the purse and found marijuana, a pipe, plastic bags, a large amount of money, and documents implicating the student in marijuana dealing. The student claimed the search violated her Fourth Amendment rights.

The Supreme Court weighed the student's privacy interests against the need of educators to maintain a safe learning environment. The Court found that the Fourth Amendment's prohibition on unreasonable searches applied to searches conducted by school officials. The Court developed a two-part inquiry for what constitutes a reasonable search: first, was the search justified at its inception, and second, was the search reasonable in scope. To satisfy the first prong of the inquiry, the school official must have a reasonable suspicion – a standard easier to meet than probable cause – that the search will turn up evidence. To satisfy the second prong, the extent of the search must be related to the objectives of the search and not excessively intrusive. Here, the report that the student had been smoking warranted reasonable suspicion to justify the search at its inception. The discovery of rolling papers gave rise to a suspicion of marijuana use and justified continuing and expanding the scope of the search. Thus, the Court held that the search of the student's purse was reasonable.

- The search conducted was justified at its inception. Wilson had reasonable suspicion that a search of Savana would turn up evidence because of Marissa’s statement inculpatating Savana and Jordan’s tip that pills were going to be distributed at lunch that day.
- The search conducted was permissible in scope. Wilson minimized the invasiveness of the search by conducting it behind locked doors, with two female officials, neither of whom touched Savana during the search.
- As noted in *T.L.O.*, the Supreme Court suggested deference to the judgment of school official on what types of student conduct are impermissible in the interest of maintaining a safe educational environment. Wilson had good reason to thoroughly investigate the allegation against Savana due to preexisting problems of prescription drug distribution at Safford Middle School.
- Marissa’s implication of Savanna is credible because she was not coerced into naming Savana, nor was she offered any leniency in exchange for divulging Savana’s name.

### **Arguments for Redding**

- The lower court correctly applied the balancing test of *T.L.O.* in finding that the search beneath Savana’s clothing was not justified at its inception and was not reasonable in scope. While the search of Savana’s belongings may have been reasonable at its inception, following Supreme Court precedent in *T.L.O.*, the search was not justified as it proceeded and became more invasive.
- The search was unreasonable in its scope and violated Savana’s Fourth Amendment rights. Wilson had no reason to believe that Savana was concealing ibuprofen beneath her clothing. While school officials should have discretion in implementing school policies, the Court should not uphold clearly unreasonable actions that violate students’ constitutional rights.
- A strip search was not required to stop the dangerous distribution of ibuprofen to students; Savana could have simply stayed in the principal’s office when the lunchtime distribution allegedly took place. Ordering a strip search of Savana was an excessively intrusive measure for a school official to take.
- Marissa’s tip was unreliable and uncorroborated; she had reason to inculcate Savana to shift attention off herself. Wilson overstepped his authority as a school official in conducting such an invasive search of Savana without more information. Wilson should have followed the “reasonable suspicion” standard of *T.L.O.* and corroborated Marissa’s tip prior to strip searching Savana.