

[J-157-1996]

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

IN THE INTEREST OF F.B.

: No. 064 E.D. Appeal Docket 1995

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: Appeal from the Judgment of the

: Superior Court entered on May 31, 1995

: at No. 251PHL94, affirming the order

: entered January 11, 1994 in the Court of

: Common Pleas of Philadelphia County,

: Family Division at No. 7334-93-10.

:

: ___ Pa.Super.___,

: ___ A.2d ___ (1995)

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: ARGUED: October 15, 1996

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APPEAL OF: F.B.

CONCURRING OPINION

MR. CHIEF JUSTICE FLAHERTY

DECIDED: March 2, 1999

I join the majority opinion but write separately to emphasize some points of disagreement.

First, I cannot agree that the intrusion was minimal. When one is forced to empty his pockets and to have his coat and baggage searched, the intrusion is anything but minimal. And contrary to the majority, I do not regard the frequent usage of metal detectors in our society as so generally accepted. Slip Op. at 9. Nonetheless, I agree that

the search does not offend the constitution of Pennsylvania. As I stated in Commonwealth v. Cass, ___ A.2d ___ (1998), the school environment is unique. In schools, students are required to be present and their parents have the reasonable expectation that they will not be harmed while there; in both Cass and in this case there was prior notice of the search; the society of children justifies certain governmental oversight not justifiable in the society of adults, and the purpose of the search as articulated in the policy and procedure manual of the Philadelphia School District was reasonably related to the method utilized. Thus, while the search was intrusive, it was not unreasonably related to the purposes for which it was conducted.¹

Second, I disagree that there was a sufficient justification for the search based on judicial notice of increased violence. The record in this case contains nothing as to the reasons for conducting this particular search, and as the majority correctly notes:

Recognition of the importance of keeping weapons out of the public school environment does not satisfy the inquiry as to the immediacy of the need to search for weapons on October 14, 1993.

Slip Op. at 13. The majority then concludes that because the trial court took judicial notice of the increased violence in Philadelphia schools, the search was properly motivated. I disagree that this is an acceptable statement of justification of the search. Such reasons

¹. These concerns are consistent with the majority's four factors at Slip Op. 6:

1) a consideration of the students' privacy interest, 2) the nature of the intrusion created by the search, 3) notice, and 4) the overall purpose to be achieved by the search and the immediate reasons prompting the decision to conduct the actual search.

are always given when the government wishes to intrude. But such reasons are always insufficient. They are sufficient here only because they are not challenged.

Third, I am disturbed by the "weapon" in this case, a Swiss army knife. Again, because there was no challenge on appeal to the sufficiency of evidence that a Swiss army knife is a "weapon," we may not here reach that issue. The significance of the issue, however, is hinted at in the majority opinion, where it is suggested that if the means to conduct the search become oppressive, the importance of the purpose will not save the search from being characterized as unconstitutional. Slip. Op. at 9, n.7. I would add to this that if the items seized become oppressive, the search itself may be regarded as an instrument of oppression and unconstitutional regardless of its purpose. 18 Pa.C.S. ' 912 prohibits the possession of "any . . . tool, instrument or implement capable of inflicting serious bodily injury." If Swiss army knives are to be seen as weapons, one must inquire whether objects which may be thrown, such as staplers, or objects which may be thrust, such as pointers, or objects which may be swung as clubs, such as the light steel and wood chairs used in classrooms, are not also weapons. And if they are, then what is the justification for criminal prosecution for possession of a Swiss Army knife but not for possession of one's classroom chair.

Some school officials appear to have taken leave of their senses. Newspaper stories report incidents of grade school children being expelled when a toy gun is found in a bookbag or incidents in which young women suffering menstrual cramps have been expelled for having Tylenol or aspirin on their persons. I realize that the neither the knife in

this case nor the toy guns or aspirins of other cases are at issue here, but the legal principle is that when searches are conducted in such a way that such items as these are seized and children or young adults are penalized because they possessed such items, the searches themselves become suspect.