ADVANCE SHEET HEADNOTE
March 25, 2024

2024 CO 16

No. 22SC549, *People in Int. of J.G.*—Searches and Seizures—Students—Reasonable Suspicion.

In this case, the supreme court considers whether the Fourth Amendment and Article II, Section 7 of the Colorado Constitution are offended when a high school student's backpack is searched for weapons in accordance with a pre-existing safety plan.

J.G.'s school instituted a safety plan that required daily searches of his person and belongings. There was a brief lapse in enforcement of the plan at the beginning of J.G.'s tenth-grade year, but on the third day of school J.G. was searched and administrators discovered a loaded handgun in his backpack. In the court proceedings that followed, J.G. argued that the warrantless search of his backpack violated his right to be free from unreasonable searches and seizures.

The court now holds that the two-part reasonableness inquiry laid out in *New Jersey v. T.L.O.* applies to a search of a student conducted on school grounds

in accordance with an individualized, weapons-related safety plan. Applying that test, the court holds that the search of J.G.'s backpack was reasonable under the Fourth Amendment.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2024 CO 16

Supreme Court Case No. 22SC549
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 20CA218

Respondent:

The People of the State of Colorado,

In the Interest of

Petitioner:

J.G.

Judgment Affirmed
en banc
March 25, 2024

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JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE HART delivered the Opinion of the Court.

Early in 2019, John F. Kennedy High School ("Kennedy") developed a safety plan to permit ninth-grader J.G. to continue attending school after he committed several firearm-related offenses. The safety plan required J.G. to submit to daily searches for weapons, and he complied with those searches through the end of that school year. When J.G. returned to Kennedy for his tenth-grade year, however, he was not searched on the first two days that he attended school. On his third day, school administrators searched J.G. and discovered a loaded handgun in his backpack. He was immediately arrested by a school resource officer and charged with weapons-related offenses.

In juvenile court, J.G. moved to suppress evidence of the handgun. He argued that the search violated his Fourth Amendment rights because it was nonconsensual and unsupported by reasonable suspicion, as the safety plan was no longer in effect at the time of the search. The court denied the motion, finding that the safety plan, with its search requirement, remained in place when the handgun was found. A division of the court of appeals affirmed the juvenile court's denial of the suppression motion, holding that because the search requirement in the safety plan "substantially diminished" J.G.'s expectation of privacy in his person and effects, the search was reasonable. *People in Int. of J.G.*, 2022 COA 64, ¶ 4, 517 P.3d 1267, 1271.

We affirm. A search of a student conducted on school grounds in accordance with an individualized, weapons-related safety plan is reasonable under the Fourth Amendment.

I. Facts and Procedural History

¶1 During the 2018–19 school year, fourteen-year-old J.G. was adjudicated delinquent for unlawful possession of a handgun and felony menacing. His school responded by conducting a threat assessment and developing an Action and Intervention Plan ("safety plan"). A few months later, J.G. was involved in a car theft in which his accomplice carried a gun. The safety plan was amended following that incident, and by April of 2019, the final version of the plan required school personnel to search J.G. every day when he arrived on campus. He was searched in accordance with the plan for the remainder of the school year.

¶2 After the 2018–19 school year, J.G.'s mother withdrew him from Kennedy and tried to enroll him in a different public school, but he was waitlisted. Because school enrollment was a requirement of J.G.'s probation, she reenrolled him at Kennedy the week before the school year started, and J.G. resumed attendance at Kennedy on August 27, 2019.

¶3 It is not clear whether the school's administration was aware that J.G. returned to Kennedy on August 27. In any event, J.G. was not searched on August 27 or 28. On J.G.'s third day at Kennedy, school officials told him he

needed to comply with a search, as he had during the prior school year, because the safety plan remained in force. When J.G. refused to cooperate, the school resource officer seized him and campus security officers searched his backpack, where they found a loaded handgun. The resource officer placed J.G. under arrest, and J.G. was suspended from school.

¶4 At the juvenile court, J.G. argued that evidence of the handgun should be suppressed because school officials violated his Fourth Amendment right against unreasonable searches. Specifically, J.G. argued that (1) Kennedy officials did not have reasonable suspicion to seize and search him; (2) the safety plan did not establish his consent to be searched; and (3) even if the safety plan did establish consent, his particular plan was no longer in place at the time of the search in question.

¶5 The juvenile court disagreed. Although an apparent lack of communication caused the safety plan to go unenforced during J.G.'s first two days of school, the court concluded that the safety plan remained effective, and it justified the search of J.G. on his third day back at Kennedy. Evidence of the handgun, therefore, was not suppressed. After a trial, J.G. was adjudicated delinquent for possessing a handgun as a second-time juvenile offender and possessing a weapon on school grounds.

¶6 On appeal, the division affirmed the juvenile court's refusal to suppress the handgun. The division noted that for public-school students searched at school, the usual constitutional protections requiring a warrant or probable cause for a search are replaced by a standard of reasonable suspicion. *J.G.*, ¶ 27, 517 P.3d at 1273. Accordingly, the division applied the U.S. Supreme Court's test from *New Jersey v. T.L.O.*, which holds that a school search is reasonable if, considering all the circumstances, it is (1) "justified at its inception," and (2) "reasonably related in scope to the circumstances which justified the interference in the first place." 469 U.S. 325, 341 (1985) (quoting *Terry v. Ohio*, 392 U.S. 1, 20 (1968)).

¶7 In applying the first prong of *T.L.O.*, the division noted that for searches of public-school students, "reasonable suspicion is a sufficient, but not necessary, justification of a search at its inception." *J.G.*, ¶ 31, 517 P.3d at 1274. The division concluded that J.G.'s expectation of privacy in the backpack he brought to school was diminished not by reasonable suspicion created by J.G.'s behavior on that day, but by the safety plan's daily search requirement. *Id.* at ¶¶ 32, 63, 517 P.3d at 1274, 1278. Given that lowered expectation of privacy, the search was reasonable at its inception. *Id.* at ¶¶ 62–66, 517 P.3d at 1278. Further, the division held that the search was appropriately limited in its scope to an area where a weapon might be found. *Id.* at ¶ 69, 517 P.3d at 1278.

¶8 J.G. petitioned this court for certiorari review, and we granted the petition.[1]

II. Analysis

¶9 A suppression order presents a mixed question of fact and law. *People v. Brown*, 2019 CO 63, ¶ 8, 461 P.3d 1, 2–3. We accept the trial court's findings of fact if they are supported by competent evidence, but we review its applications of law to those facts de novo. *Id.* With one exception—the continued application of the safety plan during the 2019–20 school year—the parties do not dispute the trial court's findings of fact. This case therefore turns primarily on the application of the relevant Fourth Amendment law to the underlying facts.

¶10 We therefore begin by describing how Fourth Amendment law has developed along two distinct lines in the context of searches in public schools. A search pursuant to a safety plan does not fit precisely into either line of cases, but we conclude that the test developed by the Supreme Court in *T.L.O.* is the best fit for such a search. Applying that test, we hold that the search of J.G.'s backpack was (1) reasonable at its inception because it was carried out in conformity with a formal safety plan and (2) appropriately limited in its scope because it was

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[1] We granted certiorari to review the following issue:

> [REFRAMED] Whether school officials' knowledge of a student's prior adjudications, resulting from off-campus behavior and which prompted the school to impose a safety plan, can justify seizing him at school and conducting a warrantless search of his backpack.

consistent with the goals of the safety plan. Thus, the search was constitutionally reasonable, and the juvenile court's denial of J.G.'s suppression motion was proper.

A. The Fourth Amendment at School

¶11 The U.S. and Colorado constitutions protect against unreasonable searches and seizures by government officials. U.S. Const. amend. IV; Colo. Const. art. II, § 7. "The touchstone of the Fourth Amendment is reasonableness," *Florida v. Jimeno*, 500 U.S. 248, 250 (1991), and reasonableness is a contextual assessment that requires balancing the government's need to search against the personal invasion the search entails, *T.L.O.*, 469 U.S. at 337.

¶12 It is well established that students do not "shed their constitutional rights . . . at the schoolhouse gate." *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Constitutional protections, however, apply differently in the school setting than in other contexts. "A student's privacy interest is limited in a public school environment where the State is responsible for maintaining discipline, health, and safety." *Bd. of Educ. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. 822, 830 (2002).

¶13 Among other things, the school context makes a warrant requirement impractical. *T.L.O.*, 469 U.S. at 340 (describing schools' need for "swift and informal disciplinary procedures"). And, in light of schools' responsibility for

students' safety and the need to create and maintain an environment conducive to learning, the usual "probable cause" level of suspicion is not required. *Id.* at 341. Instead, the Supreme Court has explained that "the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." *Id.*

¶14 Applying these principles to school searches, the Supreme Court has developed two distinct analytical frameworks: one for searches of individual students, prompted by specific suspicious circumstances, and one for suspicionless searches of categories of students (like student athletes) based on schools' interest in protecting those students.

¶15 The first line of school search cases originated with *T.L.O.* In that case, a teacher reported that T.L.O. had been smoking in the school bathroom in violation of school policy. *T.L.O.*, 469 U.S. at 328. T.L.O.'s purse was searched for cigarettes based on that report. *Id.* The initial search for cigarettes revealed marijuana and associated paraphernalia, a wad of single dollar bills, and a list that seemed to indicate money owed by other students. *Id.*

¶16 Considering these facts, the Court laid out a two-step test for assessing reasonableness when a public-school student has been searched: the search must be both reasonable at its inception and appropriately limited in its scope. *Id.* at 341. The Court held that the search of T.L.O. met both prongs of the test. It was

reasonable at its inception because the teacher's report created reasonable suspicion that the student had broken a school rule. *Id.* at 345–46. And its scope was reasonable because it was limited to an area where cigarettes might be found; "the measures adopted [were] 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." *Id.* at 342.

¶17 A second line of school-search cases originated with *Vernonia School District 47J v. Acton*, 515 U.S. 646 (1995), which involved random drug testing of student athletes. In *Vernonia*, the testing policy was instituted in response to a significant increase in drug use by athletes. 515 U.S. at 648–49. The Court approved this random testing and other suspicionless "special needs" searches that apply to groups of students without a basis in the searched individual's specific behavior. *Id.* at 653, 665. These searches are justified due to schools' special "custodial and tutelary responsibility for children." *Id.* at 656.

¶18 The *Vernonia* Court articulated three factors for assessing the reasonableness of this type of search: (1) "the nature of the privacy interest upon which the search . . . intrudes"; (2) "the character of the intrusion"; and (3) "the nature and immediacy of the governmental concern at issue . . ., and the efficacy of this means for meeting it." *Id.* at 654, 658, 660. Applying these factors, the Court upheld the random drug-testing policy, concluding that (1) student athletes had a lesser

expectation of privacy against a urinalysis search than other students; (2) the intrusion was no greater than using a public restroom; and (3) the school district's drug deterrence interests were immediate and appropriately served by the policy of random drug testing. *Id.* at 664–65.

¶19 In *Earls,* a second "special needs" school search case, the Court applied the *Vernonia* test and upheld a school district's policy of random drug testing of students involved in any competitive extracurricular activity. 536 U.S. at 830. The school district in *Earls* had not observed a drug problem among that group of students, but the Court held that the policy was still a reasonable means of addressing general concerns about drug use among students. *Id.* at 838. The Court explicitly rejected an individualized suspicion requirement for this type of search. *Id.* at 829.

B. The Search of J.G.'s Backpack Did Not Violate the Fourth Amendment

¶20 With these two lines of caselaw in mind, we turn now to the Kennedy administration's search of J.G. Considering how the Fourth Amendment applies in the school setting, we conclude that the search of J.G.'s backpack pursuant to the safety plan did not violate his Fourth Amendment rights. Moreover, while J.G. argues that he did not have notice that the safety plan was in effect for the 2019–20 school year, we defer to the juvenile court's factual finding that the plan remained

in effect, and we conclude that the circumstances do not support J.G.'s claimed lack of notice.

¶21 The school administration's search of J.G. on August 29, 2019, does not fit neatly into either of the two types of school searches specifically confronted by the Supreme Court to this point. On the one hand, J.G. did not do anything on that particular day that gave rise to suspicion justifying a search. In that sense, the search was "suspicionless" like the "special needs" searches approved in *Vernonia* and *Earls*. J.G. argues that the *Vernonia* test for reasonableness applies in his case because of this lack of immediate suspicion. On the other hand, J.G. was the only person subject to this type of search, and it was triggered not by his participation in an extracurricular activity, but by conduct he had specifically engaged in that led to the development of a safety plan as a condition of his attendance at Kennedy. The State argues that because J.G. was searched pursuant to an individualized safety plan rather than as part of a group of students, it is the *T.L.O.* reasonableness test that applies.

¶22 Considering the circumstances that surrounded J.G.'s safety plan, we conclude that the appropriate test is that established in *T.L.O.* The immediate suspicion of cigarette use that prompted the *T.L.O.* search is not perfectly analogous to the safety plan that led the school to search J.G., but the *T.L.O.* test can be easily, and appropriately, modified to address the safety plan context.

¶23 J.G.'s behavior, unlike T.L.O.'s, did not create individualized reasonable suspicion that he had violated a law or rule on the day that he was searched. The school resource officer testified at the suppression hearing that the search was carried out in compliance with the safety plan, not based on J.G.'s actions on that day.

¶24 But the presence or absence of individualized suspicion is not the full extent of the inception prong of the *T.L.O.* test. On the contrary, reasonableness at inception is a more general inquiry that includes the totality of the circumstances that prompted the search, as the division of the court of appeals noted. *J.G.*, ¶ 37, 517 P.3d at 1275. "[T]he legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search." *T.L.O.*, 469 U.S. at 341. And, according to *Earls*, the Constitution "imposes no irreducible requirement of [individualized] suspicion." 536 U.S. at 829 (alteration in original) (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 561 (1976)).

¶25 Among the relevant circumstances is the extent to which J.G. had an expectation of privacy in his backpack. Generally, students do have a legitimate expectation of privacy in the personal items they bring to school. *T.L.O.*, 469 U.S. at 339. But most students aren't subject to a safety plan that requires daily searches of their person and effects. That daily search requirement necessarily diminishes legitimate privacy expectations.

¶26 J.G. had complied with searches during the prior school year, which demonstrates that, at least at that time, he was aware that he should not expect privacy in a backpack he brought to school. The juvenile court found that J.G.'s plan remained in place on August 29, 2019, when the handgun was found. The plan had no expiration date, and certain procedures were required for it to be modified. Yet, no such procedures were used to modify the plan after its last amendment in April 2019. The division therefore correctly held that J.G. had a "substantially diminished expectation of privacy" because the safety plan established that his property was subject to search. *J.G.*, ¶ 4, 517 P.3d at 1271.

¶27 A search carried out in accordance with a previously established safety plan is reasonable at its inception because the plan diminishes the student's expectation of privacy. Additional individualized suspicion stemming from the student's behavior is not required. Therefore, the search of J.G.'s backpack was justified at its inception.

¶28 The second prong of *T.L.O.*'s reasonableness test requires the search to be "reasonably related in scope to the circumstances which justified the interference in the first place." *T.L.O.*, 469 U.S. at 341 (quoting *Terry*, 392 U.S. at 20). More specifically, the measures taken must be "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." *Id.* at 342.

¶29 The scope of the search is not at issue in this case. J.G. was not subjected to an unnecessarily invasive search. Because the concern was J.G.'s possession of weapons (and handguns specifically), his backpack was a reasonable place to search. And the removal and opening of his backpack was not more intrusive than expected, considering J.G.'s age and sex and the terms of the safety plan.

¶30 While we ultimately find the *T.L.O.* test more appropriate to the circumstances presented by enforcement of a safety plan, our reasoning also aligns with *Vernonia* and other "special needs" cases. At base, these cases recognize the special responsibility that schools have for all students in their custody during the school day. This responsibility requires schools to balance the interests of each individual student against their broader obligation to keep all students safe and to provide an appropriate learning environment for them. This responsibility can sometimes justify suspicionless searches. *See Vernonia*, 515 U.S. at 656 ("[T]he 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children.").

¶31 J.G. also argues that a search cannot be justified solely by prior criminal conduct, so the safety plan, which was based on his weapons-related adjudications, could not form the basis for reasonable suspicion. We agree that past criminal conduct alone does not create reasonable suspicion, but J.G.'s juvenile adjudications were not the sole basis for the safety plan that justified the

search. According to the Colorado School Safety Resource Center,[2] the threat assessment process requires a multi-disciplinary team to gather and consider a broad swath of information including, for example, the student's family life, relationships, and mental health history. Colo. Sch. Safety Res. Ctr., *Essentials of School Threat Assessment: Preventing Targeted School Violence* 14–22 (June 2021), https://cdpsdocs.state.co.us/safeschools/Resources/CSSRC_Resource_Guides/TAResourceGuide2021.pdf [https://perma.cc/2TJG-JLJM].

¶32 J.G.'s safety plan was informed by input from school personnel, J.G. himself, his mother, and his guardian ad litem. It was not a flat application of restrictions based only on J.G.'s criminal history.

C. J.G. Had Sufficient Notice that the Plan Was in Effect

¶33 J.G. argues that even if his safety plan was in place on August 29, 2019, the search of his backpack was unreasonable and therefore unconstitutional because he had no notice that the plan continued into his tenth-grade year.

¶34 While notice is not an element that establishes or destroys the constitutionality of a search, it is a circumstance that can provide weight on the scale of reasonableness. If an individual has notice of an impending search, his

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[2] The Colorado School Safety Resource Center operates within the Department of Public Safety and provides guidance to schools in the creation of safety-related policies and plans.

privacy interest is less weighty than it would be without notice; it would not be reasonable to expect privacy in an area or object you know is subject to search.

¶35 J.G.'s mother testified that when she reenrolled him at Kennedy, the dean of students told her that it was possible J.G. would no longer need a safety plan. But the dean himself did not testify at the suppression hearing, so testimony about his out of court statement to J.G.'s mother was hearsay. *See* CRE 801(c). The juvenile court considered the dean's statement for its effect on the listener, but not to establish the status of J.G.'s safety plan. The court also noted that even if J.G.'s mother believed that J.G. would no longer be subject to the safety plan's searches, there was no testimony establishing whether that belief was ever communicated to J.G. Ultimately, the juvenile court found that the plan was still in place at the time of the search, and we defer to that factual finding.

¶36 Undoubtedly, J.G.'s safety plan was not carried out perfectly at the start of the 2019–20 school year. The reentry meeting that was supposed to be held at the beginning of each school year did not happen. The juvenile court recognized that there was a lapse in enforcement of the plan for two days when J.G. was not searched. "Nobody was really on notice" at Kennedy about the status of J.G.'s safety plan during those days, perhaps due to insufficient communication among school staff about J.G.'s return to school mid-week. And the fact that J.G. brought

the handgun to school indicates that he probably did not believe the safety plan was still in effect.

¶37 But at the same time, the school resource officer testified that the plan was intended to continue throughout J.G.'s time at Kennedy, and the plan itself does not indicate any end date. The plan did include a process for modification and that process, which had taken place in April 2019, had not taken place since. J.G. also had another type of school-based plan, a Section 504 plan for educational accommodations, that continued year over year for as long as he was enrolled in a Denver public school. So he could not have been totally unfamiliar with the idea that a personalized, school-related plan could continue across school years.

¶38 High school students generally do experience a demarcation between grades. Summer vacation and the start of a new school year are transitional stages when circumstances and expectations may change for teenagers. But even keeping that sense of transition in mind, Kennedy's daily searches of J.G. lapsed for only two days. It was not reasonable for him to assume that the plan was no longer in place after such a short lapse in enforcement. Considering all the circumstances, J.G. had sufficient notice of the search requirement to diminish his expectation of privacy in his backpack.

III. Conclusion

¶39 J.G. was subject to an ongoing safety plan established in April 2019. When he was searched on August 29, the search was reasonable both at its inception and in its scope; the school's need to maintain a safe school environment outweighed J.G.'s diminished expectation of privacy in his backpack. Admission of the evidence of the handgun at his trial was appropriate. Accordingly, we affirm.