

## STUDENT SEARCHES AND SEIZURES: GEORGIA'S CURRENT APPROACH AND RECOMMENDED CHANGE

### I. INTRODUCTION

Since March 21, 2005, over seventy-five students and school administrators have been shot and killed, and another sixty-four wounded, by students possessing guns on school grounds.<sup>1</sup> With this rise in violence and the presence of guns on school grounds comes the need for better protection. Despite this, Georgia courts are inappropriately interpreting Georgia law governing law enforcement officer involvement in school searches. The result is unsafe schools and ineffective protection for the students, faculty, and staff.

This Comment explores how Georgia law should be interpreted, and also compares Georgia law with surrounding states' laws governing school searches by law enforcement officers. Two main issues will be discussed: (1) whether a search conducted by a law enforcement officer, on school premises, at the request of a school official should qualify as law enforcement officer involvement which would require probable cause; and (2) whether the mere presence of a law enforcement officer during a search conducted by a school official should qualify as law enforcement officer involvement, which would require probable cause.

Under current Georgia case law, a law enforcement officer is required to have probable cause in both of these situations in order to conduct a lawful search of a student.<sup>2</sup> Placing this requirement on law enforcement officers puts school officials and students in jeopardy. The Fourth Amendment and two Georgia cases, *Young v. State* and *State v. K.L.M.*, govern this topic in Georgia.<sup>3</sup>

---

1. *A Time Line of Recent Worldwide School Shootings*, <http://www.infoplease.com/ipa/A0777958.html> (last visited Mar. 10, 2008).

2. *State v. Young*, 216 S.E.2d 586, 594 (Ga. 1975); *State v. K.L.M.*, 628 S.E.2d 651, 652 (Ga. Ct App. 2006).

3. *Young*, 216 S.E.2d at 586; *K.L.M.*, 628 S.E.2d at 651.

## II. APPLICABLE LAW

A. *Fourth Amendment*

The Fourth Amendment does not require school officials to have probable cause in order to search a student.<sup>4</sup> As long as a school official's search of a student is reasonable, based on all the circumstances surrounding the search, it will be legal.<sup>5</sup> The Fourth Amendment originally applied only to the federal government, but became applicable to the states under the due process clause of the Fourteenth Amendment.<sup>6</sup>

When dealing with the Fourth Amendment in this context, one must also look to see how the exclusionary rule applies, or if it applies at all. The exclusionary rule allows for the suppression of evidence seized in violation of the Fourth Amendment.<sup>7</sup> However, it must be noted that the Fourth Amendment and the exclusionary rule are not coextensive.<sup>8</sup> Neither are they in Georgia, which by state statute applies the exclusionary rule only to searches and seizures made by law enforcement officers.<sup>9</sup>

B. *Facts of Young*

In *Young*, an assistant principal observed three students (one of the students was Young) sitting together on school premises.<sup>10</sup> As the assistant principal walked toward the three students, one of them jumped up and tried to conceal something in his pants.<sup>11</sup> When the assistant principal reached the students, he asked them to accompany him to his office, where he then asked each of them to empty their pockets.<sup>12</sup> Young

---

4. *Patman v. State*, 537 S.E.2d 118, 120 (Ga. Ct. App. 2000) (citing *New Jersey v. T.L.O.*, 469 U.S. 325, 341-42 (1985)); *see also Young*, 216 S.E.2d at 592.

5. *Patman*, 537 S.E.2d at 120; *see also Young*, 216 S.E.2d at 592.

6. *Young*, 216 S.E.2d at 588.

7. *Id.* at 587 (citing *Weeks v. U.S.*, 232 U.S. 383 (1914)).

8. *Id.* at 589.

9. O.C.G.A. § 17-5-30 (2007).

10. *Young v. State*, 209 S.E.2d 96 (Ga. Ct. App. 1974), *rev'd*, 216 S.E.2d 586 (1975).

11. *Id.*

12. *Id.*

complied and produced marijuana from one of his pockets; he was soon after arrested and charged with possession of one ounce or less of marijuana.<sup>13</sup> Young waived his right to a jury trial and was convicted in a Fulton County court by the trial judge.<sup>14</sup> The Defendant filed a motion to suppress which was denied.<sup>15</sup> Young then appealed, and the Georgia Court of Appeals reversed, ruling that “the assistant principal was a government agent, and concluded that his search of the student violated the Fourth Amendment and that the student’s motion to suppress the marijuana should therefore have been granted.”<sup>16</sup> The Supreme Court of Georgia granted certiorari in order to:

[D]etermine the extent to which the Fourth Amendment right against unreasonable searches and seizures and the associated exclusionary rule could be invoked by a minor student of a public high school to secure the suppression in a pending criminal prosecution of marijuana found upon his person by an assistant principal conducting a personal search not without cause but with less than probable cause for a search by a law enforcement officer.<sup>17</sup>

The Supreme Court of Georgia ruled that the search was constitutional, that there was no violation of the student’s Fourth Amendment rights, and that Young’s motion to suppress should have been denied.<sup>18</sup> The court pointed out that the exclusionary rule only applies when there is a “Fourth Amendment violation by law enforcement officers – not merely state action” such as by a public school official.<sup>19</sup> *Young* established that school officials are “allowed to search without hindrance or delay, subject only to the most minimal restraints necessary to ensure that students are not whimsically stripped of personal privacy and subjected to petty tyranny.”<sup>20</sup> Further, even if actions taken by a school official or state official are in violation of the Fourth Amendment, such actions do not

---

13. *Id.*

14. *Id.*

15. *Id.*

16. *Young*, 216 S.E.2d at 588.

17. *Id.*

18. *Id.*

19. *Id.* at 589 (emphasis added).

20. *Id.* at 591-93; *see also K.L.M.*, 628 S.E.2d at 652.

necessarily require the application of the exclusionary rule.<sup>21</sup>

The language in *Young* also gives school officials discretion in how to keep their schools safe. *Young* specifies that school officials must be allowed the latitude to enforce school policies and make effective searches.<sup>22</sup> *Young* also states that students are subject to all reasonable school rules and regulations, and school officials, who are given the right to make such rules and regulations, must be allowed to enforce them.<sup>23</sup> *Young* went even further by saying, “there are governmental interests of discipline, security, and enablement of the education function, to be served by allowing searches of students by the officials charged with their education and control.”<sup>24</sup> This language bestows upon school officials a great deal of discretion in how they enforce school policies, and how they conduct searches of students on school grounds.

However, once the *Young* court recognized this authority, it inadvertently restricted their discretion by stating, “the standards announced here for action by school officials will pass constitutional muster only if those officials are acting in their proper capacity and the search is free of involvement by law enforcement personnel.”<sup>25</sup> Unfortunately, the court was silent as to what constituted law enforcement involvement.<sup>26</sup> The lack of definition for the phrase “free of involvement by law enforcement personnel,” has stalled Georgia’s progress in this area of the law.<sup>27</sup>

---

21. *Young*, 216 S.E.2d at 591.

22. *Id.* at 592.

23. *Id.*

24. *Id.*

25. *Id.* at 593-94.

26. When considering the plain meaning of a word, the U.S. Supreme Court has often relied upon the dictionary definition. *U.S. v. Montgomery*, 468 F.3d 715 (10th Cir. 2006) (citing *Mississippi v. Louisiana*, 506 U.S. 73 (1992)). Using definitions elicited from the dictionary, the court in *Boim v. Quranic Literacy Institute*, 127 F. Supp. 2d 1002, 1012 (N.D. Ill. 2001), defined involve as “to engage as a participant” or to “oblige to take part.” Involve has also been defined as to “engage or employ.” *Reyes v. Brown*, 399 F. 3d 964, 969 (9th Cir. 2005) (construing *Ramirez v. Castro*, 365 F.3d 755 (9th Cir. 2004)).

27. *Young*, 216 S.E.2d at 593. This phrase seems inadvertent because the rest of the language in the case gives school officials great discretion in how they choose to keep their school safe and enforce rules. The paragraph that

*C. Facts of K.L.M.*

In *K.L.M.*, a high school principal was informed by a student that another student, K.L.M., was arranging to sell drugs during an in-school suspension.<sup>28</sup> In response to this information, the principal contacted the city's Director of Public Safety, Jeff Johnson, and asked for his assistance.<sup>29</sup> After Johnson arrived, the principal escorted K.L.M. into his office for questioning, where K.L.M. proceeded to deny arranging to sell or possessing any drugs.<sup>30</sup> "The principal then asked Johnson to search the boy. Johnson did so and found a bag containing marijuana in K.L.M.'s pocket and placed him under arrest."<sup>31</sup> K.L.M. later filed a motion to suppress the evidence found during the school search, which was granted by the trial court, and the State appealed.<sup>32</sup>

The Georgia Court of Appeals affirmed the decision made by the trial court, and based its decision on the "free of involvement by law enforcement personnel" language found in *Young*.<sup>33</sup> The Court of Appeals held that the search was not subject to the minimal restraints analysis applied to school officials because, despite the fact that Johnson was merely present for the safety of school personnel and performed the search only after being directed to do so by the school principal, he was a law enforcement officer involved in the search.<sup>34</sup> Therefore, as a law enforcement officer, he was required to have probable cause to search.<sup>35</sup>

*Young* set out to make a bright line rule, but managed only to murk-up the waters by failing to define the phrase "free of

---

included the phrase "free of involvement by law enforcement personnel" seemingly came in as an afterthought. However, even if this phrase was not inadvertent, the school environment of today is much different than it was in 1975, and a change is needed to better protect our school officials, students, faculty, and staff. *Id.*

28. *K.L.M.*, 628 S.E.2d 651.

29. *Id.*

30. *Id.* at 652-53.

31. *Id.*

32. *Id.*

33. *Id.* (noting *Young*, 216 S.E.2d at 593).

34. *Id.* at 653.

35. *Id.*; see also *Patman*, 537 S.E.2d 118.

involvement by law enforcement personnel.”<sup>36</sup> In its attempt to follow this bright line rule, *K.L.M.* set a rule that prevents school officials from requesting the help of law enforcement officers in conducting school searches in any manner.

*D. A Lower Court’s Interpretation of these Cases*

What is truly disturbing is how Georgia’s lower trial courts are interpreting *Young* and *K.L.M.* Even though the rulings set out in Georgia’s trial courts are not binding authority, they do provide insight into the application of current law. A perfect example is the Carroll County State Court case of *State v. Osorio*.<sup>37</sup>

The facts of *Osorio* establish that on September 12, 2006, law enforcement officers went to Temple High School in Carroll County, Georgia with information leading them to believe that drugs and weapons may be on campus.<sup>38</sup> After arriving at the school, the officers informed the assistant principal, John Jacobs, (“Jacobs”) of their suspicions and beliefs. In response, Jacobs called student Kadeem Osorio (“Osorio”) to his office, at which time he searched Osorio’s book-bag.<sup>39</sup> Jacobs conducted the search; however, the officers remained in the room for security purposes.<sup>40</sup> Because Jacobs had previously been physically confronted by a student while conducting a search, he felt more comfortable having the officers in the room.<sup>41</sup> The search revealed what appeared to Jacobs as marijuana in Osorio’s book-bag.<sup>42</sup> After discovering the marijuana, Jacobs held the book-bag out so one of the officers, Chief Repetto, could look inside and confirm that the substance in the book-bag was marijuana.<sup>43</sup> Once the substance was confirmed to be marijuana, Osorio was arrested and charged with possession of

---

36. *Young*, 216 S.E.2d at 593-94.

37. *State v. Osorio*, No. S2006CR-843 (Carroll County State Ct., Ga. Jan. 29, 2007).

38. *State v. Osorio*, No. S2006CR-843, Transcript of Hearing on Defendant’s Motion to Suppress at 8 (Carroll County Ct., Ga. Jan. 29, 2007) [hereinafter *Osorio Transcript*].

39. *Id.* at 3.

40. *Id.* at 4.

41. *Id.*

42. *Id.*

43. *Id.*

one ounce or less of marijuana.<sup>44</sup>

Osorio filed a motion to suppress the marijuana evidence, alleging that the search was illegal. An evidentiary hearing was held, and the presiding judge granted Osorio's motion to suppress relying on *Young* and *K.L.M.*<sup>45</sup> The judge ruled that since Jacobs had law enforcement officers present while he conducted the search of Osorio's book-bag, it was not "free of involvement"<sup>46</sup> by law enforcement personnel.<sup>47</sup>

Factually, *Osorio* is distinguishable from *Young* and *K.L.M.* Visually, *Young* and *K.L.M.* are on opposite ends of the spectrum and *Osorio* falls somewhere in the middle. In *K.L.M.*, a law enforcement officer actually conducted the search.<sup>48</sup> In *Osorio*, the assistant principal conducted the search without any assistance from the officers present.<sup>49</sup> *Osorio* also differs from *Young* in that *Young* involved officers who were not present at the time of the search, whereas in *Osorio*, officers remained in the room while the assistant principal conducted his search.<sup>50</sup> However, like *Young*, it was the assistant principal who physically conducted the search.<sup>51</sup> The officers in *Osorio* testified that they were merely present for security purposes since there was a possibility that drugs and/or weapons were on

---

44. *Id.* at 12.

45. *Id.*

46. The Judge decided, that because the law enforcement officers were present during the search, they were involved; however, as stated earlier, involve is defined as "to engage as a participant" or to "oblige to take part." *Boim*, 127 F. Supp. 2d at 1012. In *Osorio*, the law enforcement officers did not "engage themselves as participants" they merely stood by as a security measure while the assistant principal conducted the search, nor should the law enforcement officers mere presence during the search qualify as them "taking part" in the search. *Osorio*, No. S2006CR-843, *supra* note 37. The phrases "to engage as a participant" or to "oblige to take part" leads one to believe that one must take an active role in the search which the officers did not do here. See *Boim*, 127 F. Supp. 2d at 1012. Law enforcement officers should not be deemed to be "involved" in the school official's actions merely because they are present. *Id.*

47. *Osorio Transcript*, *supra* note 38, at 12.

48. *K.L.M.*, 628 S.E.2d 651.

49. *Osorio Transcript*, *supra* note 38, at 12.

50. *Id.*

51. *Id.*

campus.<sup>52</sup> In Balancing all of the similarities and differences, the judge granted Osorio's motion to suppress.<sup>53</sup>

### III. CURRENT LEGAL ENVIRONMENT

#### A. *Ramifications of Georgia's Current Laws*

In failing to clarify what it meant by "free of involvement by law enforcement personnel," the *Young* court put students and school officials in harm's way.<sup>54</sup> School officials who adhere to the laws of our state are forced to search potentially dangerous students without the necessary aid of law enforcement officers. Currently, law enforcement officers cannot search students at the request of school officials unless the officer has probable cause, and according to the lower court's interpretations of *Young* and *K.L.M.*, law enforcement officers cannot even be present for security purposes without probable cause.<sup>55</sup> This type of law does not promote a secure atmosphere at our public schools. The Wisconsin Supreme Court established precisely why this type of law is not safe, and why school officials should be allowed to seek the assistance of law enforcement officers.

Teachers and school officials are trained to educate children and to provide a proper learning environment. Law enforcement officials, on the other hand, receive specialized training on how best to disarm individuals without subjecting themselves or others to danger. When faced with a potentially dangerous situation beyond their expertise and training, school officials must be allowed "a certain degree of flexibility" to seek the assistance of trained law enforcement officials without losing the protections afforded by the reasonable grounds standard.<sup>56</sup>

---

52. *Id.*

53. *State v. Osorio*, No. S2006CR-843, Order Granting Defendant's Motion to Suppress at 1-3 (Carroll County Ct., Ga. Jan. 29, 2007) [hereinafter *Osorio Suppression Order*].

54. *Young*, 216 S.E.2d at 593.

55. *Osorio Suppression Order*, *supra* note 53.

56. *State v. Angelia D.B.*, 564 N.W.2d 682, 691 (Wis. 1997) (citing *T.L.O.*, 469 U.S. at 340). In *Angelia D.B.*, a Neenah High School student informed the assistant principal, David Rouse, that he had observed a knife in another student's backpack, and indicated that the student might also have

Lower court decisions, like *Osorio*, while not binding, clearly illustrate how the authority of *Young* and *K.L.M.* is being interpreted. If a school official reasonably believes that a student may be armed or have drugs, he or she cannot request that a law enforcement officer assist in the search or be present during the search unless the officer would have probable cause to be there.

The fact that Georgia courts are interpreting *Young* and *K.L.M.* in a way that does not allow school officials to have a law enforcement officer present as a safety precaution shows that the law either needs to be changed by the legislature, or the Supreme Court of Georgia needs to properly define “free of involvement by law enforcement personnel.”<sup>57</sup> The language in *Young* that the courts should focus on is school officials “must be allowed the latitude to make effective searches. . .”<sup>58</sup> In other words, if a school official thinks that in order to conduct a

---

access to a gun. *Id.* at 684. In response to this information Rouse contacted Officer Dan Dringoli, a City of Neenah police officer and school liaison officer on duty at Neenah High School, to assist him. *Id.* After arriving at Rouse’s office, Dringoli interviewed the informant, who repeated what he had observed and identified the other student by her first name, Angelia. Dringoli then went to Angelia D.B.’s classroom with Dean of Students Mark Duerwaechter, who entered the classroom and escorted Angelia D.B. to the hallway outside. *Id.* Dringoli identified himself and informed Angelia D.B. that they had received information that she may be carrying a knife or gun. *Id.* Dringoli then conducted a brief pat down search of Angelia D.B.’s pants and had her search her backpack while he observed. *Id.* No weapons were discovered during this brief pat down. *Id.* Angelia D.B. then accompanied Dringoli to his office, where another police officer was present. *Id.* While in the office Angelia D.B. denied that she possessed any weapons, however, Dringoli informed her that he was going to check her further. *Id.* Dringoli first had Angelia D.B. remove her jacket which he searched and found no weapons. Dringoli then lifted up the bottom of Angelia D.B.’s shirt to reveal her waistband. *Id.* It was there that officer Dringoli found a nine-inch knife locked in the open position. *Id.* Angelia D.B. was then placed under arrest. *Id.* The Supreme Court concluded “that an application of the *T.L.O.* reasonable grounds standard, and not probable cause, to a search conducted by a school liaison officer at the request of and in conjunction with school officials of a student reasonably suspected of carrying a dangerous weapon on school grounds is consistent with both the special needs of public schools recognized in *T.L.O.* and with decisions by courts in other jurisdictions.” *Id.* at 690-691.

57. *Young*, 216 S.E.2d. at 593-94.

58. *Id.* at 592.

safe and effective search a law enforcement officer needs to be present, he or she should be given that latitude.<sup>59</sup> The courts should also focus on the sentence in *Young* that states, “[t]he administrators to whom we accord the right to make such rules and regulations must be allowed to enforce them.”<sup>60</sup> Implicit in this particular phrase is that school officials (administrators) must be allowed to enforce the rules they establish in a reasonable manner under the circumstances. As it is now, if a school official enforces a rule with the assistance of a law enforcement officer, he or she cannot do so without running the risk that any evidence found will later be suppressed.

*Young* also states that searches by school officials “are designed to allow enforcement of multiple rules, regulations, and prohibitions which are imposed to maintain an atmosphere of security and calm necessary to allow education to take place.”<sup>61</sup> The ironic part of this is that *Young* says school official searches “are imposed to maintain an atmosphere of security,” but then shortly thereafter states that school searches are to be conducted “free of involvement by law enforcement personnel.”<sup>62</sup> *Young*, as currently interpreted, severely hinders the ability of school officials to create an atmosphere of security by imposing this restraint.

In fact, a close reading of *Young* would suggest that the lower court’s reading of that phrase has been too literal. First, since no law enforcement or peace officer was involved in *Young*, the statement was dicta. Second, in making that statement the court cited to *Corngold v. United States*,<sup>63</sup> a case decided well before the federal courts started to back-off an overly expansive application of the exclusionary rule.<sup>64</sup> The facts of *Corngold* indicate that the law enforcement official involved went far

---

59. As stated previously, “When faced with a potentially dangerous situation beyond their expertise and training, school officials must be allowed “a certain degree of flexibility” to seek the assistance of trained law enforcement officials without losing the protections afforded by the reasonable grounds standard.” *Angelia D.B.*, 564 N.W.2d at 690-91 (citing *T.L.O.*, 469 U.S. at 340).

60. *Young*, 216 S.E.2d at 592.

61. *Id.*

62. *Id.* at 593-94.

63. *Corngold v. U.S.*, 367 F.2d 1 (9th Cir. 1966).

64. *See Young*, 216 S.E.2d. at 588-90.

beyond the passive involvement of the law enforcement officers in *K.L.M.* and *Osorio*.<sup>65</sup> The *Corngold* court found that:

[T]he customs agents joined actively in the search. They held open the flaps of the large package; removed, opened, and inspected the contents of the small boxes which it contained; and marked the small boxes for future identification. Thus, at the very least, the search of appellant's package was a joint operation of the customs agents and the TWA employee. When a federal agent participates in such a joint endeavor, 'the effect is the same as though he had emerged in the undertaking as one exclusively his own.'<sup>66</sup>

By implication, it is the active involvement that implicates both the Fourth Amendment and the exclusionary rule; therefore, the legislature should be free to take action along the limits of the recommendation made herein.<sup>67</sup> This is reason to believe that if a case was again taken to the Supreme Court of Georgia, that court would clarify the phrase "free of involvement by law enforcement personnel" consistent with this analysis.

If any of the students in *Young* would have had a gun and become agitated, the assistant principal would have been virtually defenseless. One can easily imagine a situation like the one in *Young* resulting in the assistant principal being shot.<sup>68</sup> In this hypothetical situation, many would inquire as to why the assistant principal did not have a law enforcement officer present while he conducted his search of the student. The assistant principal in *Osorio* had actually been attacked before while conducting a search of a student and, therefore, he requested that the law enforcement officers at the school be present while he searched Osorio's book-bag.<sup>69</sup> However, since the law enforcement officers were present, the judge said the

---

65. See, e.g., *K.L.M.*, 628 S.E.2d 651; *State v. Osorio*, No. S2006CR-843.

66. *Corngold*, 367 F.2d at 5-6.

67. See *infra* section V.

68. "It could be hazardous to discourage school officials from requesting the assistance of available trained police resources. Even in *Terry*, the Court recognized that it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties." *Angelia D.B.*, 564 N.W.2d at 690 (construing *Terry v. Ohio*, 392 U.S. 1, 23 (1968)).

69. *Osorio Transcript*, *supra* note 38, at 4.

search was improper and the evidence found was suppressed.<sup>70</sup> In hindsight, one could argue that the assistant principal did not need the officers present during the search because the student was nonviolent and nobody was hurt. But again, had the student injured someone, skeptics would have asked why the assistant principal did not have officers present while he conducted the search. In both of these hypothetical situations, the answer to why the assistant principals did not have a law enforcement officer present while he conducted the search would be because Georgia law prevented law enforcement officers from being there. The same hypotheticals could be applied to *K.L.M.*, and the same questions and answers would apply.

The bottom line is that law enforcement officers should be allowed to be present while school officials perform dangerous duties, such as searching a student for drugs or guns, to ensure the safety of all school officials and students present at school. School needs to be a place where children can go and feel safe.<sup>71</sup> Allowing law enforcement officers to be present while a school official conducts a search of a student, or allowing law enforcement officers to assist in a search at the request of a school official would help establish a safer school environment.<sup>72</sup>

#### *B. Approaches of Other States to Student Searches and Seizures*

Other states are approaching the issue of law enforcement officer involvement in school searches differently and, as a result, many of these states have established laws that afford school officials and students more protection while conducting a search.<sup>73</sup> Many of these states are basing their new laws on

---

70. *Osorio Suppression Order*, *supra* note 53.

71. School official searches “are imposed to maintain an atmosphere of security.” *Young*, 216 S.E.2d. at 592.

72. The main reason the Supreme Court in *T.L.O.* “lowered the fourth amendment standard applicable to searches of students at school was to protect and maintain a proper educational environment for all students...” *People v. Dilworth*, 661 N.E.2d 310, 319 (Ill. 1996).

73. *See, e.g., J.A.R. v. State*, 689 So. 2d 1242, 1244 (Fla. App. 1997) (holding “[i]f a school official has a reasonable suspicion that a student is carrying a dangerous weapon on his or her person, that official may request

their interpretation of a United States Supreme Court case, *New Jersey v. T.L.O.*<sup>74</sup>

In *T.L.O.*, a teacher at a Piscataway High School in New Jersey discovered two girls smoking in a bathroom.<sup>75</sup> One of the girls was T.L.O. Because smoking in the bathroom was a violation of a school rule, the teacher took the two girls to the principal's office.<sup>76</sup> Once in the office, the assistant vice-principal proceeded to question the girls about what they were

---

*any police officer to perform the pat-down search for weapons without fear that the involvement of the police will somehow violate the student's Fourth Amendment rights or require probable cause for such a search"); Dilworth, 661 N.E.2d at 316-18 (holding that the reasonable suspicion standard, and not probable cause standard, applied to determine whether the search conducted by the officer was permissible); Angelia D.B., 564 N.W.2d 682 (holding that the T.L.O. reasonable grounds standard applies to a search conducted on school grounds by a police officer at the bequest of, and in conjunction with, school officials); In re Josue T., 989 P.2d 431, 439 (N.M. 1999) (holding that the reasonableness standard, rather than the probable cause standard, applied to school resource officer's search of juvenile at request of school official); Cason v. Cook, 810 F.2d 188, 192 (8th Cir. 1987) (applying the reasonableness standard established in T.L.O. applied because the police involvement was minimal); Shade v. City of Farmington, Minn., 309 F.3d 1054, 1060-61 (8th Cir. 2002) (holding reasonableness standard applies to searches of students by school officials in conjunction with police officers, rather than probable cause standard, where school officials initiated the search); In re D.D., 554 S.E.2d 346, 353 (N.C. Ct. App. 2001) (holding that the reasonableness standard applies to school searches where school officials initiate the search and law enforcement involvement is minimal, or in conjunction with school officials); State v. Szymanski, No. CA 2000-1-005, 2001 WL 185467, at \*1-4 (Ohio App. 12th Dist. Feb. 26, 2001) (holding the reasonable suspicion standard in T.L.O. applies if a law enforcement officer is present while a school official conducts a search); Myers v. State, 839 N.E.2d 1154, 1160 (Ind. 2005) (holding that "where a search is initiated and conducted by school officials, or where school officials initiate a search and police involvement is minimal, the reasonableness standard is applicable"); Rudolph ex. rel. Williams v. Lowndes County Bd. Of Educ., 242 F. Supp. 2d 1107, 113-14 (M.D. Ala., 2005) (holding that, reasonable suspicion, rather than probable cause, is the appropriate standard for assessing legality of searches conducted by law enforcement officers at the request of school officials).*

74. *T.L.O.*, 469 U.S. 325.

75. *Id.* at 328.

76. *Id.*

doing in the bathroom.<sup>77</sup> T.L.O.'s companion quickly admitted that she had been smoking, but T.L.O. denied smoking in the bathroom and claimed that she did not smoke at all.<sup>78</sup> The assistant vice-principal then searched T.L.O.'s purse.<sup>79</sup> Upon opening the purse he found a pack of cigarettes.<sup>80</sup> As he removed the cigarettes the assistant vice-principal discovered a package of cigarette rolling papers.<sup>81</sup> In his previous experiences possession of rolling papers by high school students was closely related with marijuana use.<sup>82</sup> Therefore, the assistant vice-principal proceeded to search the purse more closely and uncovered a small amount of marijuana, a smoking pipe, empty plastic bags, a large number of one-dollar bills, an index card of students names who apparently owed T.L.O. money, and two letters that implicated T.L.O. in drug dealing.<sup>83</sup>

The State brought delinquency charges against T.L.O. in juvenile court. T.L.O. filed a motion to suppress the evidence found in her purse, claiming the search violated the Fourth Amendment.<sup>84</sup> The Juvenile Court denied her motion, and held the Fourth Amendment applied to searches conducted by school officials; however, the Fourth Amendment is not violated if the search is reasonable.<sup>85</sup> On appeal from the final judgment of the Juvenile Court, the New Jersey Superior Court Appellate Division affirmed the trial court's finding that there had been no Fourth Amendment violation.<sup>86</sup> T.L.O. appealed this ruling, and the New Jersey Supreme Court reversed the judgment of the Appellate Division and ordered the suppression of the evidence found in T.L.O.'s purse.<sup>87</sup> The United States Supreme Court then granted the State of New Jersey's petition for certiorari, and reversed the New Jersey Supreme Court's decision.<sup>88</sup> The

---

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.* at 329.

85. *Id.*

86. *Id.* at 330.

87. *Id.* at 331.

88. *Id.*

United States Supreme Court stated the Fourth Amendment's prohibition on unreasonable searches and seizures applies to searches conducted by public school officials, but:

Because the search resulting in the discovery of the evidence of marihuana dealing by T.L.O. was reasonable, the New Jersey Supreme Court's decision to exclude that evidence from T.L.O.'s juvenile delinquency proceedings on Fourth Amendment grounds was erroneous. Accordingly, the judgment of the Supreme Court of New Jersey is *reversed*.<sup>89</sup>

*T.L.O.* established a two part test to be followed when determining whether a school search is reasonable: (1) whether the search was "justified at its inception," and (2) whether the search was reasonably related in scope to the circumstances that justified the search in the first place.<sup>90</sup> The *T.L.O.* Court held that a search conducted by a school official is justified at its inception if "there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."<sup>91</sup> *T.L.O.* then stated the that search would be reasonably related in scope 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."<sup>92</sup> However, the Supreme Court of the United States temporized by stating they were only considering searches conducted by school officials acting alone, and that the two questions presented are not to be construed as the "appropriate standard for assessing the legality of searches conducted by school officials in conjunction with or at the behest of law enforcement agencies. . ."<sup>93</sup> Nonetheless, this was the opportunity that several of the states were waiting for in order to expand their laws surrounding school searches and law enforcement officer involvement.<sup>94</sup>

Since the ruling in *T.L.O.*, court decisions have placed police officer involvement in school and student searches in three

---

89. *Id.* at 347-48 (emphasis added).

90. *Id.* at 341; *see also Myers*, 839 N.E.2d at 1160.

91. *T.L.O.*, 469 U.S. at 342.

92. *Id.*

93. *Id.*

94. *See* cases cited and accompanying text *supra* note 73.

different categories: (1) searches initiated by school officials or where police involvement is minimal; (2) searches initiated and conducted by the school resource officer; and (3) searches initiated by “outside” police officers for investigative purposes.<sup>95</sup> In categories (1) and (2), the reasonableness standard set out in *T.L.O.* is applied, and in category (3) the probable cause standard is applied.<sup>96</sup>

In a North Carolina case involving a school resource officer<sup>97</sup> who conducted a search of a student, the Court of Appeals of North Carolina applied the reasonable suspicion standard set out in *T.L.O.*<sup>98</sup> The court stated that the *T.L.O.* “standard governs conduct by school resource officers working ‘in conjunction with’ school officials,” where these officers are primarily responsible to the school district rather than to the local police department.<sup>99</sup> The facts of *In Re S.W.* show that the school’s resource officer, Deputy Carpenter, was an employee of the Durham County Sheriff’s Department, but he was assigned to serve as Riverside High School’s full-time resource officer.<sup>100</sup> Deputy Carpenter walked the school hallways during school hours and assisted school officials with discipline matters.<sup>101</sup> The court also pointed out that “Deputy Carpenter’s employment as a resource officer mandates that he help maintain a drug free environment at school.”<sup>102</sup> In the instant case, Deputy Carpenter smelled a strong odor of marijuana on a student as he walked by.<sup>103</sup> He then asked the student to follow him into the hallway, where he located two of the school’s assistant principals.<sup>104</sup> Deputy Carpenter then asked the two assistant principals and the student to accompany him into the

---

95. *Dilworth*, 661 N.E.2d at 316-17; see also *Myers*, 839 N.E.2d at 1160.

96. *Myers*, 839 N.E.2d at 1160.

97. “A school resource officer is a commissioned police officer assigned to a public school by the officer’s police department.” *Josue T.*, 989 P.2d at 431.

98. *In re S.W.*, 614 S.E.2d 424 (N.C. Ct. App. 2005).

99. *Id.* at 426-27 (citing *In Re J.F.M.*, 607 S.E.2d 304, 309 (N.C. Ct. App. 2005).

100. *Id.* at 426-27.

101. *Id.*

102. *Id.* at 427.

103. *Id.* at 425.

104. *Id.*

school's weight room, where he conducted a search of the student.<sup>105</sup> The search produced ten small plastic bags of marijuana and the student was arrested.<sup>106</sup> The student later filed a motion to suppress the evidence, arguing that the search was unlawful.<sup>107</sup> The trial court denied the student's motion and he appealed.<sup>108</sup> The Court of Appeals affirmed the ruling of the trial court.<sup>109</sup>

An Ohio case, *State v. Szymanski*, established that the reasonable suspicion standard set out in *T.L.O.* applies if a law enforcement officer is present while a school official conducts a search.<sup>110</sup> In *Szymanski*, the school's assistant principal had reason to believe that a student was carrying guns in his car; however, when the assistant principal received this information, the student was not attending school due to being suspended.<sup>111</sup> On February 17, 1999, while still on school suspension, the student was observed in the school hallway by the assistant principal.<sup>112</sup> The assistant principal then approached the principal and asked how to proceed.<sup>113</sup> The principal instructed the assistant principal to call the police and request a law enforcement officer to be present while a search of the student's car was conducted.<sup>114</sup> The assistant principal then asked the student into her office, where she informed him that she was going to search his car for guns.<sup>115</sup> When the assistant principal and the student arrived at the car, Officer Steve Herrick of the Lebanon Police Department was there waiting in uniform.<sup>116</sup> Officer Herrick then stated that he was merely an observer and that the school was in control.<sup>117</sup> The assistant principal then

---

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.* at 428.

110. *Szymanski*, 2001 WL 185467 at \*1-4.

111. *Id.* at \*1.

112. *Id.*

113. *Id.*

114. *Id.* at \*2.

115. *Id.*

116. *Id.*

117. *Id.*

asked the student to open his trunk.<sup>118</sup> As the trunk opened, a pistol was found lying on top of some clothes.<sup>119</sup> Upon seeing the gun Officer Herrick asked everyone to step back as he took possession of the pistol.<sup>120</sup> Officer Herrick proceeded to ask the student if there were any more firearms in the car and student answered affirmatively.<sup>121</sup> Officer Herrick then observed an end of a rifle in the trunk and took possession of that firearm as well.<sup>122</sup> The student was charged with conveying a deadly weapon on school property.<sup>123</sup> The student later filed a motion to suppress the weapons seized from his vehicle, which was denied; the student was later convicted.<sup>124</sup> The student then appealed, stating the trial court erred in overruling his motion to suppress.<sup>125</sup> The Court of Appeals of Ohio affirmed the trial court's ruling and stated that, under the circumstances, the search of the student's car was reasonable and the standard set out in *T.L.O.* applied even though Officer Herrick was present; "a school must act when necessary to protect the safety and well being of its students from potential outbreaks of violence."<sup>126</sup>

An Indiana Supreme Court case, *Myers v. State*, held that "where a search is initiated and conducted by school officials, or where school officials initiate a search and police involvement is minimal, the reasonableness standard is applicable."<sup>127</sup> In *Myers*, the school officials of Austin High School decided to sweep the school's grounds for drugs.<sup>128</sup> The school officials determined the areas to search and actually conducted the searches.<sup>129</sup> However, the police determined the time and date of the sweep and supplied the school with trained narcotics dogs.<sup>130</sup> During the sweep, the students' cars were

---

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. *Id.* at \*1.

123. *Id.* at \*2.

124. *Id.*

125. *Id.*

126. *Id.* at \*5.

127. *Myers*, 839 N.E.2d at 1160.

128. *Id.* at 1157.

129. *Id.* at 1160.

130. *Id.*

subjected to the narcotics dog sniff test.<sup>131</sup> As one of the dogs walked by Myers' car, it alerted the school officials that it had found something.<sup>132</sup> A subsequent search of the vehicle revealed a firearm.<sup>133</sup> Myers was then charged with possession of a firearm on school property.<sup>134</sup> Myers filed a motion to suppress the firearm seized from his vehicle.<sup>135</sup> The trial court denied Myers' motion and the Indiana Supreme Court affirmed.<sup>136</sup> The Court stated it upheld the trial court denial of Myers' motion to suppress because the police only assisted the school officials, "and because the search was predominantly initiated and conducted by the school officials of Austin High School and was reasonable. . ."<sup>137</sup>

These three cases address three different scenarios: (1) a search initiated and conducted by a school resource officer; (2) a search conducted in the presence of an outside law enforcement officer; and (3) a search conducted with the assistance of outside law enforcement officers. In each of these scenarios, the presiding court ruled that the searches were reasonable and the courts denied each defendant's motion to suppress. Through these rulings, the courts allow school officials to conduct their required duties in a manner that promotes a safer environment for the students and the investigating school. These states are allowing their school officials to make judgment calls about having a law enforcement officer present or assisting in a search if the school official believes such is necessary for a safe and effective search. Georgia should observe how these states are enforcing and interpreting their laws governing school searches and law enforcement involvement, and should do what it takes to follow in their footsteps.<sup>138</sup>

---

131. *Id.* at 1157.

132. *Id.* at 1159.

133. *Id.* at 1157.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* at 1161.

138. Georgia should also change how it classifies school resource officers. Under current Georgia law a school resource officer is not deemed to be a school official (even though they often perform the exact same duties and are often primarily responsible to the school district rather than the local police

## IV. CONCLUSION

To the detriment of school officials and students attending schools throughout our state, Georgia law governing law enforcement officer involvement in school searches<sup>139</sup> is excessively restrictive. If Georgia law is not changed or interpreted in a way which will allow law enforcement officers to assist school officials while conducting school searches, then our state is inviting a dangerous outcome. Georgia needs to follow the path laid down by other states. Law enforcement officers should be allowed to be present while school officials perform dangerous duties, such as school searches, to ensure the safety of all students and school officials. *Young* started to make this progressive step in 1975 when it stated that school officials “must be allowed the latitude to make effective searches,” and “the administrators to whom we accord the right to make such rules and regulations must be allowed to enforce them.”<sup>140</sup> It is now time for Georgia law to give these words meaning, and not qualify them with the phrase “free of involvement by law enforcement personnel.”<sup>141</sup> Georgia should allow school officials to utilize all resources available to them, including law enforcement officers. Accordingly, the answer to

---

department), and must have probable cause to search a student. *State v. Scott*, 630 S.E.2d 563 (Ga. Ct. App. 2006); *see also Patman*, 537 S.E.2d at 118. However, other states have recognized the fouled logic in treating these two individuals differently. Tennessee: In *R.S.D. v. State*, No. M2005-00213-5C-R11-JV, 2008 WL 315568, at \*9 (Tenn. Feb. 6, 2008), the Tennessee Supreme Court stated, “we hold that the reasonableness standard is the appropriate standard to apply to searches conducted by a law enforcement officer assigned to a school on a regular basis and assigned duties at the school beyond those of an ordinary law enforcement officer such that he or she may be considered a school official as well as a law enforcement officer, whether labeled an ‘SRO’ or not.” California: *In re William V.*, 4 Cal. Rptr.3d 695, 698-700 (Cal. Ct. App. 2003) (Police officers assigned to high school as a school resource officer is a school official for purposes of Fourth Amendment, and need only have reasonable suspicion to conduct a search of a student).

139. Author’s definition of a school search for purposes of this conclusion: A school search is defined as a search of a student, his locker, or his automobile for illegal drugs, weapons, or other illegal or dangerous substances or materials.

140. *Young*, 216 S.E.2d at 592.

141. *Id.* at 593-94.

the two main issues should be: (1) a search conducted by a law enforcement officer, on school grounds, at the request of a school official *should not* qualify as law enforcement involvement under *Young*, and *should not* require probable cause on the side of the law enforcement officer; and (2) the mere presence of a law enforcement officer during a search conducted by a school official *should not* qualify as law enforcement officer involvement under *Young*, and *should not* require probable cause on the side of the law enforcement officer.

#### V. RECOMMENDATION

Based on the argument herein, the Georgia legislature should consider the following recommendation:

**Section 1:** School officials *may* request the presence or assistance of an “outside” law enforcement officer for the purpose of conducting a search of a student, his locker, his automobile, or other personal property currently on school premises for illegal drugs, weapons, or other illegal or dangerous substances or materials.

**Section 2:** Where the type of searches mentioned in Section (1) are conducted by school officials alone, or where “outside” law enforcement officer involvement is minimal, the reasonableness standard *shall* apply.

**Definitions:**

School official shall include: 1) the principal; 2) the assistant principal; 3) any other school administrator; 4) teachers; and 5) school resource officers.

School resource officer is defined as a commissioned police officer assigned to a public school.

“Outside” law enforcement officer is defined as a police officer not assigned to a public school.

Reasonableness standard:<sup>142</sup>

Part I: Whether the search was justified at its inception.  
A search conducted by a school official is justified at its

---

142. *T.L.O.*, 469 U.S. at 342.

inception if “there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.”<sup>143</sup>

Part II: Whether the search was reasonably related in scope to the circumstances that justified the search in the first place. The search will be reasonably related in scope 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.”<sup>144</sup>

DUSTIN W. HIGHTOWER\*

---

143. *Id.*

144. *Id.*

\* J.D. Candidate, May 2008, John Marshall Law School. B.B.A., University of West Georgia, cum laude. I would like to thank the Carroll County Solicitor, Mr. Jimmy Tuggle, for inspiring me to write on this topic, and Ashley Meister for all of her helpful research.