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Search of Student Cell Phones: Recent Decision Favoring Schools

One difficult issue facing public school officials is under what circumstances are searches of the personal items of students legally permissible. Nowhere is this more difficult than when the personal item in question is the content of electronic messages and images on a cell phone. The law in this area is still evolving, as a recent case out of California demonstrates.

In the case of *In re Rafael C.,* which was first issued on March 25 and then modified on April 21, 2016, a California Appellate Court ruled that school officials did not violate a student's Fourth Amendment rights regarding search and seizure when school administrators searched his cell phone in connection with an ongoing school investigation. The matter evolved from school administrators' discovery of a firearm on campus in a trash can. Administrators, suspecting a particular student, seized and searched his cell phone. During the cell phone search, the

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administrators located photographs within text messages sent by the student, including one in which the student appeared to be holding the firearm that was found on campus. The student was subsequently charged with and brought before a juvenile court for possession of an assault weapon. During the juvenile matter, the student sought to suppress evidence from the student's phone, claiming the search was improper. The juvenile court found the search to be reasonable, however, and denied the student's motion.

The California court reviewed whether or not the search of the student and the student's cell phone was constitutional, including whether the school had sufficient reasonable suspicion to conduct the search. As described in a previous Priority Briefing, here, the Fourth Amendment to the United States Constitution protects our right to be secure in our "persons, houses, papers and effects against unreasonable searches and seizures…" and requires that law enforcement obtain a search warrant supported by probable cause "particularly describing the place to be searched…" In applying the Fourth Amendment to schools, the United States Supreme Court ruled in the 1985 case of *New Jersey v. T.L.O.* that even though students have a

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reasonable expectation of privacy in their persons and personal belongings, school officials, unlike police officers, do not have to have probable cause, but only a reasonable suspicion, that a student is in possession of fruits and/or instrumentalities of criminal activity, and/or contraband, to conduct a warrantless search of a student. Moreover, searches by school officials are subject to a two-part "reasonableness" test. Provided that school officials are, first, able to point to factual circumstances which justified their decision to seize a student's phone and, second, limit the scope of their search of its content to the circumstances which justified the seizure in the first place, the Supreme Court's ruling should have no impact on their authority to conduct warrantless searches of student's phones. But, as with any item of personnel effects, justification for the initial search alone does not necessarily justify a highly intrusive examination of the item's contents.

In *In re Rafael C.* the court determined that the search of the student and the cell phone were reasonable in inception, scope and intrusion. Facts leading the court to its determination of reasonableness include that the firearm was discovered on campus, the student had been present in the area, the student

had been acting suspiciously and ignored instructions from school administrators, and the student was fingering his pocket where the cell phone was located during questioning. The court also noted that the school administrators feared that there might be other guns on campus and that the student may be using the cell phone to communicate with accomplices. Based on these facts, the court determined that the school administrators had reasonable grounds for suspecting the search would turn up evidence that the student was violating or had violated the law or school rules and that the school had sufficiently limited the search in scope and intrusion.

Importantly, the court also decided that a warrant was not needed to search the student's phone, thereby rejecting the application of *Riley v. California*, a recent United States Supreme Court determination, to school matters. In *Riley*, the United States Supreme Court determined a law enforcement officer violated the Fourth Amendment when he viewed the digital contents of a suspect's cell phone without consent and without obtaining a warrant. We discussed the *Riley* case in an earlier Priority Briefing, found here. In this matter, however, the California court differentiated *Riley* from school matters by

citing the pivotal United States Supreme Court decision, *T.L.O. v. New Jersey*: "The warrant requirement, in particular, is unsuited to the school environment: requiring a teacher to obtain a warrant before searching a child suspected of an infraction of school rules (or of the criminal law) would unduly interfere with the maintenance of the swift and informal disciplinary procedures needed in the schools." The California court found that *Riley* did not address the particular factual situation before it – namely, a search of a student's cell phone by school administrators – and therefore it was not proper to consider in this case.

We emphasize that, despite the outcome of *In re Rafael C.*, the law regarding search of student cell phones is not settled. It is important to note that this decision from the California Appellate Court is not binding on Illinois courts. There is no case law in the state or federal courts of Illinois that directly addresses the issue of reasonableness of student cell phone searches in a post-*Riley* context. Courts in other jurisdictions have arrived at different conclusions than the California Appellate Court. Until the case law is settled in Illinois or nationally, school officials must continue to be

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careful to balance the interests of the school/government against the student in determining whether or not a search will be reasonable under the Fourth Amendment. Further, the decision in *In re Rafael C.* clearly addresses matters involving a search by a school administrator and not a school resource officer; therefore, schools are cautioned to use additional discretion and care in any matters involving school resource officers.

Given the uncertainty in this area, school administrators should consult with legal counsel when considering a search of a cell phone. If you have any questions, please contact one of our attorneys at our Flossmoor ((708) 799-6766) or Oak Brook ((630) 928-1200) offices.