

Court Dismisses Student's Claim That Confiscation of His Cell Phone While District Investigated Student's Suspected Misconduct Was an Unreasonable Search and Seizure

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Rorvik v. Snohomish School District, et al., 2018 WL 3917932. The U.S. District Court for the Western District of Washington rejects student's Section 1983 claims that District officials' confiscation of his cell phone, interrogation by Assistant Principal and search of his car violated his rights under the Fourth and Fifth Amendments

BACKGROUND

Plaintiff was an 18 year old senior at the Snohomish School District's Glacier Peak High School on the date of the incident. Plaintiff had parked his car on school grounds and was subject to the school's "Student Parking Rules and Regulations." The one page document, signed by the Plaintiff states that the signer understands that "by parking on campus, my vehicle is subject to search." The Student Parking Rules and Regulations also state that students are not permitted to go to their vehicle during school hours and "school inappropriate items" are not permitted in a student's vehicle.

A security monitor observed Plaintiff return to the school building from his car and demanded to see his permission slip. The security monitor questioned the authenticity of the permission slip and the Plaintiff confessed that he had forged the slip. The security monitor confiscated Plaintiff's cell phone and took him to the school's administration office where he was told to wait for the Assistant Principal. While Plaintiff was waiting for the Assistant Principal, the security monitor returned to Plaintiff's car and by looking through a window, observed a bong in the back of the vehicle. The Assistant Principal believed that this information established reasonable suspicion to search the car. Nonetheless, the Assistant Principal asked Plaintiff if there would be a problem if he were to search the car and the student said "no." When the Assistant Principal informed him that he was going to search the car, the student admitted to having a bong in the car.

A search of the car yielded two knives, a bag containing prescription and non-prescription pills, vape devices, drug paraphernalia and a BB gun. The student was given a forty day suspension from school which was reduced to twenty-five days when Plaintiff completed a drug and alcohol assessment. Plaintiff filed suit against the School District, the Assistant Principal and the security monitor alleging that his rights under the Fourth Amendment were violated by the confiscation of his cell phone and the search of his car and that this right against self-incrimination under the Fifth Amendment were violated by the questioning in the Assistant Principal's office. Defendants moved for summary judgment which was granted by the court, dismissing all of Plaintiff's claims.

DISCUSSION

Plaintiff alleged that by confiscating his cell phone, Defendants conducted an unreasonable search and seizure in violation of his Fourth Amendment rights. Plaintiff provided no evidence that his phone had been searched. Defendants provided testimony that the phone was confiscated for three hours while the District conducted an investigation of Plaintiff's conduct in order to prevent him from contacting anyone during the investigation. The court found that this was a reasonable practice as it limited the student's ability to interfere with an ongoing investigation by contacting persons such as co-conspirators to assist in concealing evidence. The claim relating to the confiscation of Plaintiff's cell phone was dismissed.

The court also dismissed Plaintiff's claims with respect to the search of his vehicle, finding that, even if Plaintiff had not given permission to search his car, his admission that he had a bong in his car constituted reasonable suspicion to search the car. A search of a student and/or his belongings 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. Thus, the court dismissed Plaintiff's claims relating to the search of his car.

Plaintiff also alleged that Defendants violated his Fifth Amendment right against self-incrimination as he was not given a *Miranda* warning at any point during the questioning. In dismissing this claim, the court recognized that the requirement of a *Miranda* warning applies only in a custodial interrogation resulting in information to be used in a criminal case. In order for questioning by a school official to constitute "custodial interrogation" the school official must be acting on behalf of law enforcement. There was no evidence that the Assistant Principal was acting on behalf of law enforcement in questioning the student. The School Resource Officer was not called until after the search of the Plaintiff's vehicle was completed. Further, the information obtained by the Assistant Principal through the questioning did not violate Plaintiff's right against self-incrimination as the information obtained through such questioning was not used in a criminal prosecution but rather was used only for purposes of a student disciplinary proceeding.

CONCLUSION

The *Rorvik* case is an illustrative example of two important elements of an investigation of suspected student misconduct. First, when it is necessary to search a student or his/her belongings, always be sure that you are able to articulate facts that form the basis for a reasonable cause to suspect that the search will result in evidence of a violation of the laws or school rules. Second, it is important to know when to get the school resource officer involved. Searches by school officials are subject to the reasonable suspicion standard rather than probable cause, and questioning of a student by school officials is not a "custodial interrogation" which requires *Miranda* warnings. Involving the School Resource Officer before the District completes its investigation of a suspected violation of a school rule may enable the student to argue that the school official was acting as an agent of law enforcement.