

SJC Holds Search of School Intruder Unconstitutional: Commonwealth v. Villagran, 477 Mass. 711 (2017)

In a case that should alarm school officials, school staff, parents and students, the Supreme Judicial Court (SJC), on August 29, 2017, held that a Milton police officer's search of a suspicious individual on Milton High School grounds violated the intruder's Fourth Amendment right against unreasonable searches and seizures. As a result, the evidence discovered in the search - a firearm, marijuana and approximately \$3,000 in cash - should have been suppressed. The Court vacated the defendant's convictions for carrying a firearm without a license, carrying a dangerous weapon on school grounds, disturbing a school, and possession of a class D substance with intent to distribute, and remanded the case for further proceedings.

Background

The facts below showed that 19-year old Jonathan Villagran of Watertown, MA, gained access to Milton High School approximately five minutes before dismissal on March 25, 2015, by claiming he needed to use the bathroom, then misrepresenting that he was a student named "Cruz" who wished to access his locker. When an administrative aide became suspicious, the suspect immediately departed the building claiming he had left his car running. After observing the suspect on surveillance cameras pacing the parking lot, the aide alerted the principal and vice principal who went out to speak to the suspect. Villagran said he was there to meet a girl. The principal and vice principal detected an odor of marijuana and observed Villagran's red, glassy eyes. They asked the suspect to come inside; Villagran agreed. They also contacted the Milton Police Department.

Upon arrival, Milton Police Sergeant Kristen Murphy noted that the school administrators appeared upset. She entered the conference room where the suspect was waiting and immediately detected a strong odor of marijuana. Villagran, seated at the conference room table, appeared nervous. His knees were shaking. Sgt. Murphy asked Villagran to stand up; he complied. She then patfrisked him and recovered a large bag of what appeared to be marijuana and a "wad" of money from the pocket of his hooded sweatshirt. She then "patted down" the outside of the suspect's backpack and felt something hard. Upon searching the backpack, Sgt. Murphy found a bottle of alcohol, more money, a pair of sneakers and a pistol. She then placed Villagran in handcuffs and read him his rights. The principal ordered the school placed on lockdown, where it remained for approximately two hours. Sgt. Murphy radioed for all available Milton police officers to respond. Approximately twenty officers were dispatched to the school.

Patfrisk and Backpack Search Violate Fourth Amendment Rights

In a decision authored by retiring Justice Geraldine Hines, the SJC ruled that both the patfrisk and the search of his backpack violated Villagran's Fourth Amendment rights. A police officer's conduct in a school setting, Justice Hines wrote, is governed by the same Fourth Amendment standards as in other settings. Thus, a patfrisk "must be justified by reasonable and articulable suspicion that the defendant [is] engaged in criminal activity and the defendant [is] armed and dangerous." And a warrantless search "must be justified by probable cause and an exception to the warrant requirement." Here, the Court could discern "no basis for reasonable articulable suspicion of criminal activity," nor did Sgt. Murphy have any information to suggest that the defendant was armed. Therefore, the patfrisk was unconstitutional. So was the backpack search. "[T]he facts," Justice Hines reasoned, "fall far short of the showing necessary for probable cause." Further, no exception to the warrant requirement applied - whether exigent circumstances, incident to a lawful arrest or consent.

School Officials Governed by Less Stringent Constitutional Standards

To quell the concerns of school administrators, the SJC made plain that the Fourth Amendment standard applicable to school officials is “less stringent” than that applicable to police officers. School officials need not obtain a warrant to search someone under their authority, and such a search will be upheld as lawful so long as it is “reasonable under all the circumstances.” *New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985). Still, the SJC lauded the Milton High School principal and vice principal for being “appropriately cautious” in calling the Milton Police “to insure the safety of the students in their charge.” Certainly, law enforcement personnel are better equipped and better trained to deal with campus threats and suspicious intruders. Yet, the irony of the Court’s decision is that it effectively discourages future school officials from calling police under similar circumstances. Instead (the Court implies), school officials should detain and search the suspect themselves. That is because, “in responding to behavior that presents a potential or real threat to student safety,” a school official’s actions are governed by a less stringent constitutional standard. This is not what administrators and parents want to hear. Faced with a “potential or real threat to student safety,” trained police officers should do the job.

Villagran Decision Makes Public Schools Less Safe

In a dissent joined by Justice Elspeth Cypher, Justice David Lowy stated the obvious: any individual “who attempts to gain entry to a school, where public access is restricted, does not have the same expectation of privacy as an individual in a home, on a street corner, or even in a motor vehicle.” Justice Lowy would have found Sgt. Murphy’s patfrisk and search reasonable under the Fourth Amendment. The alternative, he wrote, “would have been to return the backpack [to the suspect] and release him, without knowing what the bag contained, at a time students were likely milling about the school grounds.” The bottom line is the *Villagran* decision makes public schools less safe.