

Grant Cole  
10/02/12

In the Matter of B.A.H., a Youth  
State of Oregon, Appellant,  
v.  
B.A.H., Respondent  
August 31, 2011  
Searches at School

State v. B.A.H., 263 P.3d 1046, 1047 (Or. App. 2011)

## Facts:

Brandon<sup>1</sup> was caught by a teacher in a school bathroom with a cigarette lighter. The school had a policy that students were not allowed to carry lighters with them on school grounds. Brandon had also been in trouble twice before for tobacco violations as well as one drug violation. The teacher escorted Brandon to Murdoch's office down the hall.

Murdoch, a school official who was responsible for disciplining students was aware of Brandon's previous record of tobacco and drug violations. In the office with Murdoch was a second school official and an armed, uniformed police officer. Murdoch suspected Brandon of having other items on him that also violated school policy. Murdoch asked Brandon to empty his pockets, pull up his pant legs, and open up the sleeves of his jacket. The second school official in the room noticed that Brandon looked like he was hiding something in his jacket sleeve and asked Brandon what he was hiding in his jacket. Brandon pulled a small container out of his jacket sleeve that was filled with a white powder that was subsequently found to be methadone.

Brandon faced a juvenile delinquency case in which the state alleged that, if committed by an adult, he would be charged with possession of a controlled substance. Brandon's lawyer filed a motion to suppress the evidence seized during the warrantless search at Brandon's school. The court granted the defense's motion and the state appealed the decision.

## Relevant law:

Oregon Constitution. Article 1, §9:

No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

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<sup>1</sup> The respondent's name in this case is confidential because it involves a youth in the juvenile justice system. I made up the name "Brandon" to make this case easier to read.

### School Policy at Brandon's School:

[In order to] ensure a learning environment which protects the health, safety and welfare of students and staff. To assist the Board in attaining these goals, district officials may, subject to the requirements below, search a student's person and property, including property assigned by the district for the student's use. Such searches may be conducted at any time on district property or when the student is under the jurisdiction of the district at school-sponsored activities.

### Questions:

1. If you were an attorney for the State of Oregon, (the prosecution) what arguments would you make to convince the court that the search was reasonable?
2. If you were Brandon, what arguments would you make to convince the court of appeals that the search was unreasonable?
3. If you were a judge on the Court of Appeals, how would you rule on whether or not the evidence found during the search (the methadone) could be used against Brandon?
4. How important is Brandon's history when deciding whether or not the search was reasonable?
5. Does it matter that there was a police officer in the room with Brandon when he was being searched?
6. Do you think that the school official should be able to search a student in this situation?
7. Do you think a police officer should be able to search a student in this situation?
8. What would happen if an officer needed a warrant to be able to search a student in a situation like the one with Brandon?
9. Do you expect the things in your pockets to be private when you go to school?
  - a. What about the things in your backpack?
  - b. In your locker?
  - c. On your cell phone?
  - d. In your car parked in a school parking lot?
    - i. What about a friend's car?

## Issues:

There are many exceptions to the general requirement that a law enforcement official must obtain a warrant before searching a person, a home, or the things, “effects”, that belong to a person.

Did the search conducted by Murdoch fit into an exception to the general rule that a warrant is needed to search a person?

## Arguments:

Brandon’s Arguments:

1. Brandon has a reasonable expectation of privacy as to the things in his jacket. Article 1, §9 of the Oregon Constitution requires that a warrant be obtained before he can be searched.
2. The lighter found on Brandon does not pose a significant threat to the safety of the other students or the staff of the school.
3. The presence of a police officer in the office changes the nature of the search from an administrative search to a law enforcement search.

School Arguments:

1. The school officials have a responsibility to ensure that the school environment is safe for students and staff. A lighter is frequently accompanied by drug paraphernalia which threatens the safety of the school environment.
2. Brandon’s history of tobacco and drug violations supports Murdoch’s suspicion that Brandon was carrying substances that violated school policy on him.

## What Happened at Trial?:

The Court of Appeals found that the lower court was wrong when it granted the defense motion to suppress the evidence of the methadone. A previous decision by the Oregon Supreme Court, found that there is an exception to the warrant requirement when a school official perceives there to be an immediate threat to student or staff safety. As long as the school official’s perception of the threat is based on specific and articulable facts, then the courts will give school officials the authority to make a determination to search a student based on safety precautions.<sup>2</sup> In this previous decision, the court decided that a student in possession of drugs is, by definition, a safety threat.<sup>3</sup>

The Court of appeals also acknowledged the potential of school officials to abuse their power and unreasonably interfere with the rights guaranteed by the fourth amendment of the US constitution and section 9 of Article 1 of the Oregon State Constitution. Dealing with this

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<sup>2</sup> State ex rel. Juv. Dept. of Clackamas County v. M.A.D., 233 P.3d 437, 439 (Or. 2010)

<sup>3</sup> Id. at 393, 233 P.3d 437

potential for abuse, the court noted that a school official cannot rely on old evidence or generalizations about student drug use. This decision is limited to a school official acting on his or her responsibility to protect students and staff.

The court reversed the decision of the juvenile court to exclude the seized evidence. The case is then remanded back down to the juvenile court to be decided in accordance with the reasoning presented by the court of appeals.

## Reasoning:

The court of appeals found that the search conducted by the school official was appropriate by characterizing the search as an administrative search. Administrative searches are one of the many exceptions to the general requirement that a warrant is needed to search someone. We are subject to administrative searches all of the time and they are an expanding and unclear area of criminal law.

Airport security, border crossings, and metal detectors in court houses are all examples of administrative searches that people deal with regularly. As this court notes, an administrative search is supported by a non law enforcement reason, such as school safety. In this case, the court shows how even though there was a police officer present and the student was subsequently arrested, school safety was still the primary purpose and not law enforcement.

## Impact:

A warrantless search conducted by a school official may be done without probable cause, consent, or another exception to the warrant requirement when a school official reasonably suspects that a student is in possession of something that poses an immediate threat to the safety of the other students or staff. Controlled substances pose a threat to other students and staff.

## Application:

Consider whether the court would be likely to allow the following searches:

1. Gary is walking on the sidewalk a block from his high school. The principal of the school watches Gary light a cigarette with a lighter. She walks over to Gary and asks him to empty his pockets and let her look in his backpack.
2. Sonya is in class and puts her keys on her desk. Her teacher notices that on her keychain is a small container that looks like it might contain pepper spray. He sends Sonya to the vice principal's office. The vice principal tells Sonya to let him look through her backpack. Sonya is a straight A student and has never been in trouble.

3. Steven was caught with drugs on school property twice last school year . A janitor at the school finds a small bag of marijuana in a trashcan down the hall from Steven's locker. The janitor shows the bag to the principal, who immediately pulls Steven from his class and searches his pockets and backpack.

Discussion Questions:

1. Do you think that a school official should be able to search a student when they suspect that the student may be carrying something that threatens the safety of the school environment?
2. Do you agree with the court when they say that possession of a controlled substance (drugs) is a threat to the safety of a school?
3. When the court finds that a search was improper or not supported by reasonable suspicion, the court will not allow the evidence resulting from the search to be used at trial. Is this a good solution to the problem of school officials or police overstepping their authority to search someone?
  - a. Are there any other ways that the courts could solve this problem?
  - b. Does this rule (the exclusionary rule) provide justice to the parties involved? Why or why not?