

**Facts/Issues:** On May 3, 2014, Jensen Beach High School ( JBHS), which is in the Martin County School District, held its senior prom. Each student who purchased a ticket for the prom was required to sign the Martin County School Board's zero tolerance form for off campus activities, which states:

Jensen Beach High School, along with Martin County School District, has a ZERO TOLERANCE POLICY for alcohol, drugs, or tobacco. Any form of tobacco, alcoholic beverages, or drugs is not permitted on property owned or controlled by the Martin County School District or at any school-sponsored activity, including activities conducted outside of Martin County. Students and guests attending such activities and events may be subject to a breath test. Any form of profanity is strictly prohibited. School policies are enforced.

*Please be advised that failure to uphold these rules will result in immediate disciplinary action and possible recommendation for expulsion.*

A group of JBHS students arrived at the school's prom between 10:15 P.M. and 10:36 P.M. aboard a chartered "party bus." JBHS Dean of Students Lori Kane informed the approximately 37 students they would not be permitted to enter the prom until the bus was inspected. Martin County Sheriff's Deputy Norm Brush asked the bus driver for consent to search the bus.

The driver allegedly gave Brush permission to search the bus. During the search, Brush discovered an empty champagne bottle inside of the bus. The driver told Brush that the champagne bottle belonged to the students. Each of the students, including plaintiffs, denied knowledge and/or ownership of the champagne bottle.

The students were informed that they would be required to take and pass a breathalyzer test before entering the Prom. Kane asked JBHS Assistant Principal Iuliucci, who had already left to go home, to return to the prom site because she was the only JBHS official certified to administer breathalyzer tests. Iuliucci arrived approximately 45 minutes later and administered breathalyzer tests. All the students passed the tests and were permitted to enter the prom. However, by that time the prom, which ended at midnight, was over.

During the wait for the tests, two students, Kendell McCormick and Kaelyn Drazkowski, were heard by school officials using profanity and were later suspended from school for three days.

A number of students on the “party bus” filed suit in federal district court against Martin County School District (MCSD) and the Martin County Sheriff’s Office (MCSO). They alleged: that the search of the bus and the conducting of the breathalyzer tests violated their Fourth Amendment search rights; that detaining the students in order to conduct the tests violated their Fourth Amendment seizure rights; that MCSD’s de facto policy that all students arriving at the prom are subject to a vehicle search and/or breathalyzer was applied in discriminatory manner to students arriving in limos or buses in violation of the students’ Fourteenth Amendment equal protection rights; and, that the Martin County Sheriff’s Office had failed to properly train its police officers. In addition, the two students suspended for using profanity alleged that their First Amendment speech rights were violated.

MCSD and MCSO filed motions for summary judgment.

***Ruling/Rationale:*** The district court granted defendants’ motions for summary judgment. It first addressed the students’ claim against MCSD and MCSO that the search of the bus violated their Fourth Amendment right to be free from unreasonable searches. The court disposed of the factual dispute about whether the students continued to have a reasonable expectation of privacy as to the interior of bus on the ground it was immaterial because “[e]ven assuming Plaintiffs had a legitimate expectation of privacy in the cabin of the bus at the time of the search, the bus driver validly consented to the search.” It found that the fact that the driver was a third party did not affect the validity of the consent because U.S. Supreme Court precedent held that “a third party’s consent is valid if he has mutual use of

the property, with joint access to, or control of, the area for most purposes.”

The district court also rejected the students’ argument that the driver’s alleged oral statement and hand gesture are inadmissible hearsay. It stated: “The bus driver’s statement ‘go ahead,’ and gesture waiving Deputy Brush onto the bus, are indications of consent that amount to verbal acts, and as such, are not hearsay.” Because the consent was given voluntarily by the driver, who “maintained joint access and immediate control over the vehicle,” and there were no allegations that the students objected to the driver’s consent, the court concluded that Deputy Brush’s search of the bus passed Fourth Amendment muster.

Turning to the claim alleging that the breath test was unconstitutional, the court rejected the students’ attempt to break the claim down into two separate subsections: (1) the breath test policy is unconstitutional; and (2) even if the policy is constitutional, it was unconstitutional as applied to the students. It said that it was “unable to discern any substantive difference between the two subsections” because “these subsections both attack the breath tests as unconstitutional searches under the Fourth Amendment.”

Because the search took place in the school setting, the district court applied the standard established in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985). Under the *T.L.O.* standard a search’s reasonableness depends on whether it was justified at its inception, and whether the search as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place. It asserted that typically a search is justified at its inception if a school official has 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. It also noted that “searches are reasonably related in scope when 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.” The district court found that in the instant case, the defendants had reasonable suspicion for believing the students had consumed alcohol in violation of school policy (and probably state law) based on Deputy Brush’s discovery of the champagne bottle on the bus and the driver’s statement that the bottle belonged to the students. As a result, conducting the breathalyzer tests was “reasonably related to the objective of determining whether [the students] were intoxicated prior to entering the Prom because the breathalyzer test specifically tested for the presence of alcohol in Plaintiffs’ bloodstream.” It also found “the breath test was not excessively intrusive in light of [the students’] age and sex because the test merely required [the students] to exhale.”

The district court next took up the issue of whether detaining the students in order to conduct the breathalyzer tests violated the students’ Fourth Amendment right to be free unreasonable seizures. It pointed to the U.S. Court of Appeals for the Eleventh Circuit, which has jurisdiction over federal district courts in Florida, which has held that the reasonableness standard articulated in *New Jersey v. T.L.O.* . . . [applies] to school seizures by law enforcement officers.” Because the students were the non-moving party on the motions for summary judgment, the court presumed that they had been seized.

However, just as the court had concluded that the breath tests had satisfied the *T.L.O.* standard, it also concluded that the defendants had a reasonable suspicion of student alcohol consumption justifying the requirement that each student undergo a breathalyzer test before being admitted to the prom. It pointed out that any delay in conducting the tests due to the wait for the assistant principal to return was attributable to the students who arrived at 10:15 P.M. when the prom tickets expressly stated that doors would close at 10:00 P.M. It also stressed that “the amount of time it took

to administer all of the breathalyzer tests to the students was reasonable.” The court stated: “I find that Defendants’ decision to detain Plaintiffs until all of the breath tests were administered was reasonable under the circumstances.” Turning to the equal protection claim, the district court concluded:

[The students] have failed to articulate a facial challenge to the policy. To the extent [the students] claim that on the night of the Prom the policy was applied in a discriminatory matter, [the students] fail to provide any evidence to demonstrate that Defendants instituted a policy, formally or informally, that only buses or limos arriving at prom were searched for evidence of alcohol and/or students arriving on buses or limos were given breath tests.”

The district court then took up the First Amendment speech claim. It rejected the two students’ argument that school officials lacked the authority to discipline them for the alleged use of profanity because the speech occurred off-campus. The court stated that in *Morse v. Frederick*, 551 U.S. 393, 410 (2007), the Supreme Court “made clear that school officials have the authority to regulate student speech at an off-campus, school sponsored event.” It pointed out that because the profanity occurred at a school-sponsored event, i.e., prom, school officials were justified in regulating such speech.

Lastly, the district court concluded the students’ failure to train claim, against the law enforcement officers, was unsuccessful because the students had failed to show any