



**Safford Unified School District #1, et al. v. April Redding**  
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By: Robert G. Hanna, Jr., Esquire  
Lavery, Faherty, Young & Patterson, P.C.  
225 Market Street, Suite 304  
P. O. Box 1245  
Harrisburg, PA 17108-1245  
(717) 233-6633  
[rhanna@laverylaw.com](mailto:rhanna@laverylaw.com)

**ISSUE PRESENTED:**

Whether a 13-year-old student's Fourth Amendment right was violated when she was subjected to a search of her bra and underpants by school officials acting on reasonable suspicion that she had brought forbidden prescription and over-the-counter drugs to school?

**HOLDING:**

Because there were no reasons to suspect the drugs presented a danger or were concealed in her underwear, the Supreme Court held that the search did violate the Constitution, but because there is reason to question the clarity with which the right was established, the official who ordered the unconstitutional search is entitled to qualified immunity from liability.

**FACTUAL BACKGROUND:**

The matter began in 13-year-old Savana Redding's math class in October of 2003. The assistant principal came into the room and asked her to go to his office. There he showed her a day planner, unzipped and open flat on his desk in which there were several knives, lighters, permanent marker, and a cigarette. She identified the planner as hers but said a few days previously she had loaned it to a friend. She denied that any of the items in the planner belonged to her. The assistant principal then showed her four white prescription-strength ibuprofen 400-mg pills, and one over-the-counter blue naproxen 200-mg pill, all used for pain and inflammation, but banned under school rules without advance permission. She denied knowing anything about the pills. He then told her that he had received a report that she was giving these pills to fellow students. She denied doing so and agreed to let him search her belongings. A

female administrative assistant came into the office and together with the assistant principal searched her backpack, finding nothing.

At this point, the assistant principal instructed the administrative assistant to take her to the school's nurse's office to search her clothes for pills. There she was asked to remove her jacket, socks and shoes, leaving her in stretch pants and a T-shirt (both without pockets), which she was then asked to remove. Finally, she was told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants, thus exposing her breasts and pelvic area to some degree. No pills were found.

Savana's mother filed suit against the school district, the assistant principal, the administrative assistant, and the nurse for conducting a strip search in violation of her Fourth Amendment rights. The individuals moved for summary judgment and raised a defense of qualified immunity. The District Court granted the motion on the ground that there was no Fourth Amendment violation, and a panel of the Ninth Circuit affirmed. A closely divided Circuit sitting *en banc*, however, reversed. The Ninth Circuit held that the strip search was unjustified under the Fourth Amendment test for searches of children by school officials set forth in a prior U.S. Supreme Court decision. It went on to decide if the test for qualified immunity purposes had been clearly established. The decision reversed the grant of summary judgment as to the principal, but affirmed the judgments in favor of the other three individual defendants since they had not acted as independent decisionmakers.

## **DISCUSSION:**

The Fourth Amendment established a "right of people to be secure in their persons . . . against unreasonable searches and seizures." Generally, a law enforcement officer must have probable cause for conducting a search. Probable cause, as defined in this case, exists where the facts and circumstances within [an officer's] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed, and that evidence bearing on that offense will be found in the place to be searched.

In New Jersey v. T.L.O., 469 U.S. 325, 105 S. Ct. 733, 83 L. Ed. 2d 720, the U.S. Supreme Court recognized that the school "requires some modification of the level of suspicion of illicit activity needed to justify a search." It held that for searches by school officials that the public interest is best served by a Fourth Amendment standard of reasonableness that stops short of probable cause. This is a standard of reasonable suspicion to determine the legality of the school administrator's search of a student. A school search will be permissible in its 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 concept of probable cause has changed somewhat over time. "Perhaps the best that can be said generally about the required knowledge component of probable cause for a law enforcement officer's evidence search is that it raises a 'fair probability' or a 'substantial chance' of discovering evidence of criminal activity." *The lesser standard for school searches could as readily be described as a moderate chance of finding evidence of wrongdoing.*

In this case, the school's policies strictly prohibit the non-medical use, possession, or sale of any drug on school grounds, including "any prescription or over-the-counter drug, except those for which permission to use in school has been granted pursuant to Board policy. When the object of a school search is the enforcement of the school rule, a valid search assumes, of course, the rule's legitimacy. But the legitimacy of the rule usually goes without saying as it does here. The Court said plainly in T.L.O., that standards of conduct for schools are for the administrators to determine without second-guessing by courts lacking the experience to appreciate what may be needed. Except in patently arbitrary instances, Fourth Amendment analysis takes the rule as a given.

The bottom line is that the Supreme Court was comfortable with the search until it was extended to the point of making her pull out her underwear. The exact label for this final step in the intrusion is not important, though strip search is a fair way to speak of it. The very fact of Savana's pulling her underwear away from her body in the presence of the two officials who were able to see her necessarily exposed breasts and pelvic area to some degree, and both subjective and reasonable societal expectations of personal privacy support the treatment of such a search as categorically distinct, requiring distinct elements of justification on the part of the school authorities were going beyond a search of outer clothing and belongings.

The Court reasoned that in this case the content of the suspicion failed to match the degree of intrusion. Given that Wilson knew beforehand that the pills were prescription-strength ibuprofen and over-the-counter naproxen, common pain relievers found in Advil, or Aleve, he must have been aware of the nature and limited threat of the specific drugs for which he was searching. While just about anything can be taken in quantities that will do real harm, Wilson had no reason to suspect that large amount of the drugs were being passed around, or that individual students were receiving great numbers of pills. Nor could Wilson have suspected that Savana was hiding common painkillers in her underwear. What was missing from the suspected facts that pointed to Savana was any indication of danger to the students from the power of the drugs or the quantity, and any reason to suppose that Savana was carrying pills in her underwear. The majority found that the combination of these deficiencies was fatal to finding the search reasonable.

The Court went on to conclude that there was enough ambiguity in the prior case law to warrant the granting of qualified immunity to the individual defendants.

### **THE COURT'S CONCLUSION:**

The strip search of Savana Redding was unreasonable and a violation of the Fourth Amendment, but petitioners Wilson, Romero and Schwallier are nevertheless protected from liability through qualified immunity. The conclusions of the Court do not resolve the question of liability for the school district under Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978). This is a claim the Ninth Circuit did not address. The judgment of the Ninth Circuit was therefore affirmed in part and reversed in part and the case remanded for consideration of the Monell claim. It should be noted that Justice Souter, who is retiring, delivered the opinion of the Court in which four other members including Chief Justice Roberts, Justices Scalia, Kennedy, Breyer, and Alito joined. The remaining Justices joined in parts of the opinion but not in its entirety. Justices Stevens, Ginsburg and Thomas would not grant qualified immunity.