

Vigil vs. Rio Largo Public Schools By Luke Holmen

Summary of Facts:

In the examined case, Cici Vigil moved to Rio Largo, New Mexico, with her mother and brother. Cici soon felt comfortable at the school, and became active in the Science Club. Her brother J.J., however, struggled to adjust to his new life. Cici Vigil entered the Spaceport Flight Competition and received a \$10,000 scholarship for her construction of a propelled rocket. During this time, Cici's brother, J.J. Vigil, often read *The Anarchist Cookbook* at school. The book included specifics on drugs, designing and building weapons and organizing protests. An anonymous bomb threat at their school, Rio Largo High School, caused a lockdown of the facility. J.J. was suspected to have called in the threat, but it was never proven. A security guard, Mr. Martin, confiscated *The Anarchist Cookbook* from J.J. while he was at school. Upon confiscating the book, Mr. Martin realized that ingredients described in the cookbook for making weapons were the same ingredients with which Cici had constructed her rocket. Mr. Martin called Sheriff Munson who arrested Cici and her brother, suspecting them of being engaged in terrorist activities. Cici's project was confiscated and under the school's zero tolerance policy concerning weapons and her consequent arrest, she was stripped of her prize and her scholarship.

Issues:

- 1) Under the 1st amendment, does J.J. have the right to read *The Anarchist Cookbook* at school?

- 2) Was Sheriff Munson's seizure of Cici's rocket at school a violation of her 4th amendment rights under the search and seizure clause?
- 3) According to the Rio Largo School Handbook, does the school's zero tolerance policy apply to the above case?
- 1) **Under the 1st amendment, J.J. has a legal right to read the *Anarchist Cookbook* at school. However, his behavior creates a reasonable suspicion that the book could be used to harm students, and thus the school is justified in seizing it.**

In *Tinker v. Des Moines School District*(1969)¹, the Supreme Court ruled that freedom of expression “does not end at the schoolhouse gate.” Although the Court defended the right to freedom of expression, it ruled that a student's right to property, expression, or conduct, could be restricted if it was shown to have the potential to “materially and substantially” disrupt the educational process, or inflict harm. In J.J.'s case, there is no specific evidence that J.J. intended to cause any harm, nor were there any objects found in his possession capable of causing harm. However, the suspicion that J.J. may have called in a bomb threat and the anti-social nature of his behavior gave school officials *reasonable suspicion* to seize *The Anarchist Cookbook*. Although the book is not in and of itself a weapon, it is nevertheless a dangerous object as it gives J.J. the potential to “materially and substantially” cause a dangerous situation to occur. According to the brief, it is likely that Mr. Martin seized the book in the cafeteria while it was in plain sight on J.J.'s person. In this case, he conducted a minimally intrusive search allowed under the 4th amendment and the school handbook and did not violate J.J.'s 1st amendment rights.

¹ *Tinker v. Des Moines School District* (1969, accessed 9 March 9, 2008); available from <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=393&invol=503> ; Internet

2) **Sheriff Munson's seizure of Cici's rocket did not violate her 4th amendment rights.**

The Supreme Court has ruled that the Fourth Amendment does not protect citizens against all government searches and seizures, but rather, only those that are deemed *unreasonable*. While students at public schools are entitled to a limited amount of protection from the 4th amendment, the U.S. Supreme Court has given school officials a wide amount of discretion concerning what is reasonable. In the case *New Jersey v. TLO* (1985)², the Court ruled that school officials had the right to search students without probable cause. In the case, the assistant principal Theodore Choplick searched a student's personal property on the suspicion that she was in violation of the school's policy prohibiting the possession of tobacco and marijuana. In effect, the Court ruled that a reasonable suspicion on the part of any official was sufficient for a search of both a student and their personal possessions. In reaching this conclusion, the Court applied the *reasonable suspicion test*, which requires that a search be justified at its inception and related in scope to the circumstances which justified the interference in the first place.

Under Supreme Court precedent, students at school are entitled to a more limited *reasonable expectation of privacy* than adults and juveniles in non-school settings. According to the case in question, the rocket was seized at school, the sheriff had reasonable suspicion of a terrorist activity and this reasonable suspicion outweighed Cici's right to a reasonable expectation of privacy. If the sheriff had seized the rocket at Cici's house, he would have needed a search warrant, or the consent of Cici's mother in order to legally seize the suspected contraband. However, he had the right to seize it at

²*New Jersey v. TLO*(1985, accessed 9 March 2008); available from <http://caselaw.lp.findlaw.com/scripts/getcase.pl?navby=CASE&court=US&vol=469&page=325> ; Internet

school. Contestants of this opinion may argue that in footnote 4 of the majority opinion of *New Jersey v. TLO* (1985)³, the Court noted that its ruling only applied to school officials acting on their own and not at the behest of law enforcement, and thus *New Jersey v. TLO* (1985)⁴, would not apply to this case. However, the sheriff acted at the request of a school official. This is evidenced by the fact that Mr. Martin called Sheriff Munson to the scene. At no point did Sheriff Munson request that Mr. Martin or any other school official seize the rocket.

3) Neither *The Anarchist Cookbook* nor the rocket fall under the school's zero tolerance policy concerning weapons, and the school cannot strip Cici of her scholarship without due process of law.

While the seizure of both the rocket and the book were legal, it is important to remember that officers require *probable cause* in order to arrest a person. Reasonable suspicion is granted to law enforcement officers and school officials in order that they may search students, not arrest them. In the case in question, the school or the law must prove that either the children had intent, motive, or means to commit a crime. In Cici's case her rocket was clearly not intended to be a weapon, therefore, it does not fit the school's zero tolerance policy. The handbook states that a weapon includes "any object...even manufactured for a nonviolent purpose, that has a potentially violent use... if, under the surrounding circumstances, the purpose of keeping or carrying the object is for use or threat as a weapon." Cici created the rocket with the help of the Science Club; a school organization. She built it in order to enter it in a contest for a scholarship. Clearly she never had the intent of using it as a weapon.

³ Ibid.

⁴ Ibid.

In J.J.'s case, although *The Anarchist Cookbook* does have designs and ingredients for weapons, it is, in and of itself, most assuredly not capable of harming anyone, and therefore, does not qualify as a weapon. There is no evidence that J.J. ever built a weapon using the *Anarchist Cookbook* or any other resources. Cici's rocket, the only possible weapon available in the case, was on display at the time that J.J. was arrested and, therefore, most decidedly not in his possession. The bomb threat made on the school the previous year was never officially linked to J.J. either, and thus the evidence of J.J.'s intent to use or create a weapon is too weak to warrant an arrest.

The zero tolerance policy of the school concerning weapons is an excellent policy designed to protect students and staff from unreasonable risk of harm. There do not need to be any exceptions to this policy as long as it is followed by the exact wording of the handbook and good judgment is used by school officials concerning the purpose of potentially dangerous objects in the possession of students.

Opinion

The search and seizure of both the rocket and the book were justified by reasonable suspicion on the part of school officials. At no time was Mr. Martin requested by Sheriff Munson to search a student or their property. However, once examined, it becomes clear that neither student had intent to create or use a weapon. Neither seized item falls under the school's description of a weapon. There is insufficient evidence of probable cause and thus the students were illegally arrested.

Even if the arrests were determined to have probable cause, at no time during the events was the mother of the children informed of the situation, nor were the children informed of their rights by the school. Thus the arrest is in violation of the school

handbook which requires that the school “attempt to contact the parent and... advise the student of his/her rights.”

It is integral to point out that the school does not hold jurisdiction of any kind over South Central New Mexico University or the sponsors of The Spaceport Flight Competition. Without due process of law proving that Cici committed a crime, or intended to do so, the school cannot legally take away her scholarship. As an agent of the government of New Mexico, the school would be in violation of the 14th amendment.