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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re JOSE O., a Person Coming Under the  
Juvenile Court Law.

H039838  
(Santa Clara County  
Super. Ct. No. 311JV38682)

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE O.,

Defendant and Appellant.

In May 2013,<sup>1</sup> Jose O., 17 years old (the minor), was attending a continuation high school in San José. An acting principal of the school, Mark Shaddock, had encountered the minor in the hallway during second period after the minor had been absent without excuse from Shaddock’s first period class. Shaddock observed that the minor had a “suspicious bulge” in his front pocket that was not a wallet (and presumably not a cell phone). He patsearched the minor, felt a four- to five-inch hard object Shaddock believed to be a knife, and retrieved the knife from the minor’s pocket. The minor was detained by police in the gang unit at juvenile hall.

The Santa Clara County District Attorney filed a petition alleging the minor, previously adjudged a ward of the court, came within the provisions of Welfare and

<sup>1</sup> All dates are 2013 unless otherwise stated.

Institutions Code section 602 and had committed an act which would have constituted a felony had it been committed by an adult, namely bringing or possessing a weapon (folding knife) on school grounds (Pen. Code, § 626.10, subd. (a)).<sup>2</sup> The minor filed a motion to suppress this evidence under Welfare and Institutions Code section 700.1. The court denied the motion. After the minor admitted the charge alleged, the court sustained the petition and adjudged the minor to continue to be a ward of the court.

The minor claims the court erred in denying his suppression motion. He argues that Shaddock's search was not based upon sufficient objective facts to support a reasonable suspicion that he (the minor) was engaged in proscribed activity. We conclude in view of the totality of the circumstances surrounding the search that the trial court did not err in denying the suppression motion; therefore, we will affirm the dispositional order.

### FACTS<sup>3</sup>

Mark Shaddock is a history and science teacher as well as "teacher in charge" at Sunol Street Community School (Sunol) in San José. He has been at Sunol for five years. As teacher in charge, Shaddock assists with discipline and other administrative issues, and he serves as acting principal when Sunol's principal is away. Sunol is a continuation school with approximately 86 students that has on-campus probation offices and a separate "probation-run school with county office teachers." The school enforces a student dress code with a specified uniform.

While Shaddock was walking in the hallway between first and second period classes on the morning of May 8, he had an encounter with the minor. Because Shaddock was the minor's first period teacher and had not seen the minor that day, he stopped the minor. Shaddock asked him where he had been and whether he had a late pass. The

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<sup>2</sup> All further statutory references are to the Penal Code unless otherwise stated.

<sup>3</sup> The facts are taken from the testimony and other evidence provided at the hearing on the minor's motion to suppress.

minor replied that he did not have a pass. While Shaddock was looking at the minor from a distance of two to three feet, he “noticed something suspicious in his pocket. It didn’t look like a wallet or something.” (The minor was not wearing a backpack.) At about that time, another student stuck his head out of the classroom and said, “ ‘Hey, Jose. It’s a good thing they did . . . ’ ”<sup>4</sup> At that point, the student saw Shaddock and stopped speaking. Shaddock then asked the minor to accompany him to the principal’s office.

When they arrived at the office, Shaddock asked the minor to raise his hands above his waist and told him, “ ‘I’m gonna touch your pockets right now.’ ” The teacher then touched the minor’s left front pocket and felt a hard object approximately four to five inches long that Shaddock “deemed to be a knife.” He then instructed the minor to keep his hands up while Shaddock removed the object from the minor’s pocket. In conducting the search, Shaddock found a locking blade knife in the minor’s front pocket.

Before May 8, Shaddock had known the minor for approximately two weeks. The minor had been a student in Shaddock’s first period history class for approximately one week. The minor was Shaddock’s student three times per day. Shaddock had had no prior problems with the minor and considered him to be respectful. Shaddock had observed, however, that the minor wore pants that were “bigger.”

Sunol has a policy of not permitting students to carry pens or highlighters in their pockets because the school has “a large tagging problem.” Students are permitted to carry wallets, and may carry cell phones as long as they remain in their pockets.

The school has a written search policy, entitled “Searches on School/Center Premises” that is signed by each student upon his or her admission. (Capitalization and emphasis omitted.) The minor and his mother signed this document, which was

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<sup>4</sup> The reporter’s transcript ends the quotation after “ ‘Hey, Jose.’ ” But it is clear from the context of Shaddock’s testimony that the partial sentence that followed—“ ‘It’s a good thing they did . . . ’ ”—was a quotation by Shaddock of the remainder of what the unidentified student had said.

introduced as an exhibit at the hearing.<sup>5</sup> The policy provides in part: “It is the policy of the Board that searches on school and center premises shall be conducted only in order to protect the safety and security of persons and to preserve discipline and good order. The right to inspect a student’s locker or person and to seize property is inherent in the authority granted the Board and those who administer its programs. That right, however, must be balanced by the rights of privacy of persons as well as freedom from unreasonable search and seizure of property as guaranteed by the Fourth Amendment of the U.S. Constitution. [¶] SCCOE maintains the right to search personal property of a student, including clothing, when there is a reasonable suspicion that school rules are being violated and/or a threat to the health and safety of students and staff exists.”

#### PROCEDURAL BACKGROUND

On May 10, the Santa Clara County District Attorney filed a petition (Petition H) under Welfare and Institutions Code section 602, subdivision (a) with the juvenile court below. In the petition, the People alleged that the minor had committed an act which would have constituted a felony had it been committed by an adult, namely bringing or possessing a weapon on school grounds (§ 626.10, subd. (a)). On the same date, a petition (Petition I) was filed, alleging the minor had originally been adjudged a ward of the court on November 21, 2011. It was alleged that the minor had committed three probation violations (1) by testing positive for marijuana on April 25, (2) by smoking marijuana on May 4 (based upon his own admission), and (3) by consuming alcohol on May 5 (based upon his own admission).

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<sup>5</sup> The minor’s counsel moved to augment the appellate record to include two exhibits submitted by the People at the hearing on the suppression motion: a signed Spanish version and an unsigned English version of the search policy document. We granted the motion. In response, the superior court clerk certified that no such exhibits could be located after a diligent search had been conducted. But both the minor and the Attorney General have referred to these exhibits in their respective briefs and there is no dispute as to their contents or that they were admitted as exhibits at the hearing on the suppression motion.

The minor thereafter filed a motion to suppress evidence pursuant to Welfare and Institutions Code section 700.1, arguing that the property seized and the statements obtained from the minor should be suppressed because they were products of an unlawful search and seizure. The motion was initially opposed orally by the People. After the presentation of evidence and argument at two hearings, and after consideration of supplemental briefing filed by both parties, the court denied the minor's suppression motion on May 24. It found that under the circumstances presented, Shaddock had a reasonable suspicion that justified his search of the minor. In so ruling, the court rejected the People's contention that the search was justified because the minor was on probation and subject to being searched at any time for any reason. Because there was no evidence that Shaddock was aware of, or relied upon the minor being subject to a probation search condition, the court concluded that under *In re Jaime P.* (2006) 40 Cal.4th 128, 139, the search could not be justified upon that ground.

Following the denial of the suppression motion, the minor admitted the allegations of Petition H. At the same time, he also admitted the allegations of Petition I, the separate petition alleging probation violations. The court sustained both petitions, adjudged the minor to continue to be a ward of the court, and found the minor not suitable for the deferred entry of judgment program. On June 13, the court denied without prejudice the minor's request that the offense be reduced to a misdemeanor, and it reinstated his probation subject to various terms and conditions. It determined that the minor's maximum term of confinement was three years two months, and that he was entitled to credit for time served of 156 days. He was ordered to remain in the custody of his parent, and to serve 90 days on the Electronic Monitoring Program.

## DISCUSSION

### *I. Standard of Review*

“An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial

court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] ‘The [trial] court’s resolution of each of these inquiries is, of course, subject to appellate review.’ [Citations.] ¶ The court’s resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review.” (*People v. Williams* (1988) 45 Cal.3d 1268, 1301; see also *People v. Ayala* (2000) 23 Cal.4th 225, 255.)

All presumptions favor the trial court’s exercise of its power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence, and draw factual inferences, “ ‘and the trial court’s findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence.’ ” (*People v. Leyba* (1981) 29 Cal.3d 591, 596-597, quoting *People v. Lawler* (1973) 9 Cal.3d 156, 160; see also *In re Lennies H.* (2005) 126 Cal.App.4th 1232, 1236.) Where there is no controversy concerning the underlying facts, our task is simplified: The only issue is whether the rule of law, as applied to the undisputed historical facts, was or was not violated. This is an issue for our independent review. (See *People v. Thompson* (2006) 38 Cal.4th 811, 818.) In determining a claim that relevant evidence must be suppressed because it was obtained by unlawful means, courts of California “look exclusively to whether its suppression is required by the United States Constitution. [Citation.]” (*In re Randy G.* (2001) 26 Cal.4th 556, 561-562 (*Randy G.*), citing *In re Lance W.* (1985) 37 Cal.3d 873, 885-890.)

## II. *Search and Seizure Law Applicable to Public School Students*

The Fourth Amendment to the Constitution of the United States provides: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” (See also Cal. Const., art. I, § 13.) As the Supreme Court has explained: “The touchstone of the Fourth Amendment is reasonableness. [Citation.] The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable.” (*Florida v. Jimeno* (1991) 500 U.S. 248, 250; see also *Brigham City, Utah v. Stuart* (2006) 547 U.S. 398, 403.)

“[I]n order to claim the protection of the Fourth Amendment, a defendant must demonstrate that he personally has an expectation of privacy in the place searched, and that his expectation is reasonable.” (*Minnesota v. Carter* (1998) 525 U.S. 83, 88.) The defendant thus bears the burden “of establishing a legitimate expectation of privacy in the place searched or the thing seized. [Citations.]” (*People v. Jenkins* (2000) 22 Cal.4th 900, 972; see also *People v. McPeters* (1992) 2 Cal.4th 1148, 1171, superseded by statute on another ground as stated in *Verdin v. Superior Court* (2008) 43 Cal.4th 1096, 1106-1107.) And “[t]he Fourth Amendment’s protection against unreasonable searches and seizures applies only to governmental action. [Citation.]” (*In re William G.* (1985) 40 Cal.3d 550, 558 (*William G.*), citing *Coolidge v. New Hampshire* (1971) 403 U.S. 443, 487 (*Coolidge*).

Searches and seizures conducted by government officials without a warrant “are *per se* unreasonable under the Fourth Amendment [of the United States Constitution]—subject only to a few specifically established and well-delineated exceptions.” (*Katz v. United States* (1967) 389 U.S. 347, 357, fns. omitted; see also *Payton v. New York* (1980) 445 U.S. 573, 586; *People v. Thompson* (2006) 38 Cal.4th 811, 817-818.) Where the

defendant establishes that the search or seizure was made without a warrant, and was prima facie unlawful, “the burden then rest[s] on the prosecution to show proper justification. [Citation.]” (*Horack v. Superior Court* (1970) 3 Cal.3d 720, 725.)

Minor students have “fundamental constitutional rights which the state must respect.” (*William G., supra*, 40 Cal.3d at p. 556.) Students do not “shed their constitutional rights . . . at the schoolhouse gate.” (*Tinker v. Des Moines School Dist.* (1969) 393 U.S. 503, 506.) Thus, minor schoolchildren, like adults, have a fundamental right of privacy. (*New Jersey v. T.L.O.* (1985) 469 U.S. 325.) And like adults, they possess the protection from unreasonable searches and seizures guaranteed under the Fourth Amendment of the United States Constitution and under article I, section 13, of this state’s Constitution. (*William G.*, at p. 557.) But as explained by the United States Supreme Court, those Fourth Amendment rights must be viewed in the school context in which students find themselves: “Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere; the ‘reasonableness’ inquiry cannot disregard the schools’ custodial and tutelary responsibility for children.” (*Vernonia School Dist. 47J v. Acton* (1995) 515 U.S. 646, 656.)

*New Jersey v. T.L.O.* is the seminal case concerning the lawfulness of on-campus searches of students. There, a public high school student (T.L.O.) and her friend were caught smoking in the bathroom in violation of school rules and were taken to the principal’s office. (*New Jersey v. T.L.O., supra*, 469 U.S. at p. 328.) The friend admitted she had been smoking, but T.L.O. denied the rule violation and said she did not smoke at all. (*Ibid.*) The assistant vice principal then demanded to see T.L.O.’s purse, found a pack of cigarettes and accused her of having lied to him. (*Ibid.*) He also saw a package of cigarette rolling papers and on closer inspection found a quantity of marijuana and indicia that T.L.O. had been selling the drug. (*Ibid.*) The United States Supreme Court

upheld the legality of the search, reversing the New Jersey Supreme Court's decision suppressing the seized evidence. (*Id.* at pp. 347-348.)

The Supreme Court first determined that the Fourth Amendment's prohibition on unreasonable searches and seizures was not limited to law enforcement, but applied in this instance to public school officials. (*New Jersey v. T.L.O.*, *supra*, 469 U.S. at pp. 333-337.) Recognizing that students in schools have a legitimate right of privacy (*id.* at p. 338), the court noted that a search of one's person or of a closed purse is "a severe violation of subjective expectations of privacy." (*Id.* at p. 338.) The fact that the searched person is a child rather than an adult makes it no less intrusive. (*Id.* at pp. 337-338.) And the fact that schoolchildren may find it necessary to carry noncontraband items to school does not suggest that they have waived their privacy rights simply by entering onto school grounds with the items. (*Id.* at p. 339.)

But the Supreme Court found that a student's privacy rights must be balanced against substantial concerns of faculty and administrators in maintaining discipline in the classroom and on school grounds. (*New Jersey v. T.L.O.*, *supra*, 469 U.S. at p. 339.) It noted: "Maintaining order in the classroom has never been easy, but in recent years, school disorder has often taken particularly ugly forms: drug use and violent crime in the schools have become major social problems." (*Ibid.*) Reiterating that the reasonableness of a search depends upon the context in which it occurs (*id.* at p. 337, citing *Camara v. Municipal Court* (1967) 387 U.S. 523, 536-537), the Supreme Court recognized the existence of an exception to the warrant and probable cause requirement for searches conducted by public school officials. It found that "the accommodation of the privacy interests of schoolchildren with the substantial need of teachers and administrators for freedom to maintain order in the schools does not require strict adherence to the requirement that searches be based on probable cause to believe that the subject of the search has violated or is violating the law. Rather, the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search."

(*New Jersey v. T.L.O.*, at p. 341.) The court concluded that a search of a student will be deemed reasonable when (1) it is “ ‘justified at its inception’ [citation] . . . [because] there are 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 school” and (2) the search as conducted was reasonable in its scope, i.e., it was “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.” (*Id.* at pp. 341-342, fns. omitted; see also *William G.*, *supra*, 40 Cal.3d at p. 564 [under both federal and state Constitutions, reasonableness of student search governed by whether school official has “reasonable suspicion that the student[s] . . . have engaged, or are engaging, in a proscribed activity (that is, a violation of a school rule or regulation, or a criminal statute)”].)

The California Supreme Court has held that the constitutional standard for detaining students on campus is more relaxed than the traditional standard for detention of citizens. In the typical case, a peace officer is justified in detaining a citizen on the street when “the circumstances known or apparent to the officer . . . include specific and articulable facts causing him to suspect that (1) some activity relating to crime has taken place or is occurring or about to occur, and (2) the person he intends to stop or detain is involved in that activity.” (*In re Tony C.* (1978) 21 Cal.3d 888, 893, superseded on other grounds by Cal. Const., art. I, § 28.) This reasonable-suspicion-to-detain standard is not required in the school context. Rather, “the broad authority of school administrators over student behavior, school safety, and the learning environment requires that school officials have the power to stop a minor student in order to ask questions or conduct an investigation even in the absence of reasonable suspicion, so long as such authority is not exercised in an arbitrary, capricious, or harassing manner.” (*Randy G.*, *supra*, 26 Cal.4th at p. 559; see also *id.* at p. 567.)

### *III. The Motion to Suppress Was Properly Denied*

The minor contends the court erred in denying his motion to suppress. Relying principally on *William G.*, *supra*, 40 Cal.3d 550, he argues that the undisputed facts did not support that Shaddock had a reasonable suspicion to justify a search. He contends further that Shaddock did not have a reasonable suspicion that the minor was armed and dangerous to justify the patsearch of the minor's pants pockets.

As a preliminary matter, Shaddock's initial detention of the minor to inquire about his absence from school earlier that day was an appropriate exercise of his authority to monitor school behavior, safety and discipline. There is nothing in the record to suggest that this detention was "exercised in an arbitrary, capricious, or harassing manner." (*Randy G.*, *supra*, 26 Cal.4th at p. 559.) Nor does the minor argue otherwise.

Further, Shaddock's actions of first patsearching and then removing the object he felt in the minor's left pocket were " 'justified at [their] inception' [citation]." (*New Jersey v. T.L.O.*, *supra*, 469 U.S. at p. 341.) The undisputed facts were sufficient to have provided Shaddock with a reasonable suspicion that the minor had violated or was violating the law or school rules. (See *ibid.*) These facts consisted of (1) the minor's having missed Shaddock's first period class without explanation and without having a late pass; (2) Shaddock's having observed from a close distance that the minor had "something suspicious in his pocket [that was not] a wallet or something"; (3) Sunol being a continuation school with at-risk students and on-campus probation offices (rather than a mainstream public school); (4) a document signed by the minor and his mother reciting the school's policy of conducting searches "to protect the safety and security of persons and to preserve discipline and good order," while balancing its right to search against the student's privacy and Fourth Amendment rights; and (5) Shaddock's having observed concurrently an unknown student address the minor, saying, " 'Hey, Jose. It's a good thing they did . . . , ' " and then abruptly terminating his speech upon noticing Shaddock.

The minor attempts to negate the significance of the above-listed fifth fact by asserting that Shaddock had testified he had not thought about the student having called out to the minor until he was sitting in the courtroom, “and that his main concern was what he thought he saw in [the minor’s] pocket.” This contention ignores Shaddock’s other testimony that the unknown student’s comment caused him to take further action in his encounter with the minor (i.e., taking the minor to the principal’s office to conduct a patsearch). Furthermore, we may consider this fact, regardless of whether Shaddock relied on it in making the decision to search the minor. (See *People v. Letner and Tobin* (2010) 50 Cal.4th 99, 145 [totality of circumstances justifying the officer’s conduct under Fourth Amendment viewed objectively, and “ ‘officer’s subjective motivation is irrelevant’ ”].) While the student’s spontaneous statement to the minor, coupled with the speaker’s action of abruptly becoming quiet, would not have been sufficient of itself to provide Shaddock with a reasonable suspicion to search the minor, they are relevant facts in considering whether the circumstances as a whole justified Shaddock’s actions.

Shaddock’s testimony that he saw the minor had “something suspicious in his pocket [that was not] a wallet or something,” while somewhat ambiguous, is nonetheless strongly supportive of Shaddock’s having had a reasonable suspicion that the minor had violated the law or school rules, thereby justifying the search. Although Shaddock’s characterization of the bulge in the minor’s pocket as “suspicious” was not developed further through questioning by the prosecutor or defense counsel, it is reasonably inferable that the bulge was not consistent with a cell phone. If Shaddock had believed it was consistent with a cell phone, he would not have characterized it as “suspicious,” since cell phones are permitted at the school so long as they are kept in students’ pockets. And while the bulge might have been similar in size and shape to one or a small group of pens or markers—seemingly innocuous objects—they would nonetheless have represented something “suspicious,” since a student’s possession of pens or markers would represent a violation of school rules.

The existence of the “suspicious” bulge as testified by Shaddock was a significant fact supporting the reasonableness of his decision to search the minor. It could have been “suspicious” in the sense that it represented the minor’s possession of something either illegal or that was in violation of school rules. That fact, together with the other facts described above, was sufficient to have provided Shaddock, based upon all of the circumstances, with a reasonable suspicion that the minor had violated or was violating the law or school rules and thereby warranting the search. (See *New Jersey v. T.L.O.*, *supra*, 469 U.S. at p. 341; see also *In re Cody S.* (2004) 121 Cal.App.4th 86, 91.)

Upon Shaddock’s having observed the “suspicious” bulge in the minor’s pocket (together with the other circumstances), it was appropriate for Shaddock to accompany the minor to a more private setting (the office), and, after telling the minor what he was doing, to patsearch the minor’s front pocket. This was a less intrusive method of investigation than reaching into the minor’s pant pocket to remove the object. Once Shaddock performed the patsearch and felt a four-to-five-inch hard object he “deemed to be a knife,” he was justified in performing the more invasive search of reaching into the minor’s pocket and removing the object. Shaddock’s two-stage search satisfied the *T.L.O.* scope requirement, i.e., that the search be “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.” (*New Jersey v. T.L.O.*, *supra*, 469 U.S. at p. 341.)

The minor contends that the search was unlawful under *William G.*, *supra*, 40 Cal.3d 550, a case involving facts that he asserts are “strikingly similar” to those here. In *William G.*, an assistant principal (Lorenz) observed from a distance William and two other male students walking on campus with William carrying a small black calculator case “to which the students’ attention was momentarily drawn. The case had what Lorenz thought was an odd-looking bulge.” (*Id.* at p. 555.) When he confronted them, Lorenz asked why the students were late for class. (*Ibid.*) While Lorenz was talking, William “placed the case in a palmlike gesture to his side and then behind his back.

Lorenz asked William what he had in his hand, to which William replied, ‘Nothing.’ When Lorenz attempted to see the case, William said, ‘You can’t search me,’ and then ‘You need a warrant for this.’ ” (*Ibid.*) Lorenz then accompanied William to his office, and, after several attempts to get William to deliver the case, took it from him, unzipped it, and found baggies of marijuana, a scale and cigarette papers. (*Ibid.*) Lorenz had no prior information that William was in possession of marijuana or had otherwise violated the law or any school rules. (*Id.* at p. 556.)

The California Supreme Court concluded the search was unlawful under a reasonable suspicion standard. It reasoned that Lorenz had given no facts indicating William had engaged in unlawful activity or conduct in violation of school rules. (*William G.*, *supra*, 40 Cal.3d at p. 567.) William’s “ ‘furtive gestures’ ” in attempting to hide the case were insufficient by themselves. (*Ibid.*) And William’s demand that Lorenz obtain a warrant did not provide the assistant principal with a reasonable suspicion upon which to base a search, because one cannot be penalized for asserting his or her constitutional rights. (*Ibid.*)

*William G.*, *supra*, 40 Cal.3d 550 is not controlling here for two reasons—one procedural, the other factual. First, the search in *William G.* occurred before the passage of Proposition 8, so the California Supreme Court’s decision was based upon both federal and state law grounds. (*Id.* at pp. 557-558, fn. 5; see *In re K.S.* (2010) 183 Cal.App.4th 72, 78, fn. 3.). Thus, to the extent the holding in *William G.* was based upon state law, it does not control here, since, given this is a post-Proposition 8 case, “we look exclusively to whether . . . suppression [of evidence due to an unlawful search and seizure] is required by the United States Constitution. [Citation.]” (*Randy G.*, *supra*, 26 Cal.4th at pp. 561-562.)

Second, *William G.* is factually distinguishable. The only facts supporting Lorenz’s search of William were his tardiness; possession of a case that had a bulge, efforts to conceal the case from Lorenz; and his response, “ ‘Nothing,’ ” to Lorenz’s

question as to what he was holding. In contrast, here there were facts in addition to the facts common with *William G.* These additional circumstances, as noted above, include that (1) Shaddock had observed “something suspicious in [the minor’s] pocket”; (2) Sunol, as the court below observed, being not “your normal public school[],” but a continuation school having a need and a likelihood of a higher level of scrutiny to the behavior of its at-risk students; (3) the school’s written policy, signed by the minor and his mother, concerning its right to conduct searches “to protect the safety and security of persons and to preserve discipline and good order”; and (4) the exclamation of an unknown student to the minor, “ ‘Hey, Jose. It’s a good thing they did . . . ,’ ” with the student abruptly terminating his speech upon noticing Shaddock.

The minor argues that there was not a reasonable suspicion he was armed and dangerous and Shaddock’s action in patting him down was therefore unlawful. In *Terry v. Ohio* (1968) 392 U.S. 1 (*Terry*), the United States Supreme Court, acknowledging that pat searches for weapons constitute a “serious intrusion upon the sanctity of the person” (*id.* at p. 17), held that a patsearch between citizens and peace officers during ordinary encounters on the street is justified only when the officer reasonably believes, based on the totality of the circumstances, that the particular person he or she is questioning or detaining is armed and dangerous. (*Id.* at pp. 24, 27.) The minor’s importation of *Terry* stop-and-frisk principles into the public school setting is misplaced.

As noted, under *New Jersey v. T.L.O.*, *supra*, 469 U.S. 325, a school official may conduct a search of a student—not a frisk limited to an investigation for weapons—when the official, under all the circumstances, has a reasonable suspicion that the student is engaging in, or has engaged in conduct that is either unlawful or in violation of school rules. Here, Shaddock, before conducting the limited patsearch of the minor, had such a reasonable suspicion.

Finally, the minor cites *People v. Dickey* (1994) 21 Cal.App.4th 952. There, the court held that a patsearch of a motorist based upon the officer’s generalized concern that

the defendant “ ‘potentially may have been armed’ ” was unreasonable. (*Id.* at p. 956.) Because the minor’s argument concerning the applicability of *Terry* is without merit, his reliance on *People v. Dickey* is similarly misplaced.

As the California Supreme Court has stated, in balancing the need for the search in the public school context against the invasion involved in the search, it must be recognized that “[t]he governmental interest at stake is of the highest order. ‘[E]ducation is perhaps the most important function of state and local governments.’ [Citation.] ‘Some modicum of discipline and order is essential if the educational function is to be performed.’ [Citation.] . . . Those officials must be permitted to exercise their broad supervisory and disciplinary powers, without worrying that every encounter with a student will be converted into an opportunity for constitutional review.” (*Randy G., supra*, 26 Cal.4th at p. 566.) Furthermore, “[t]he need of schools to keep weapons off campuses is substantial. Guns and knives pose a threat of death or serious injury to students and staff. The California Constitution, article I, section 28, subdivision [(f)(1)], provides that students and staff of public schools have ‘the inalienable right to attend campuses which are safe, secure and peaceful.’ ” (*In re Latasha W.* (1998) 60 Cal.App.4th 1524, 1527.) Recognizing these principles, Shaddock’s search of the minor—based upon a totality of the circumstances—satisfied the constitutional requirement that there be sufficient objective facts to create a reasonable suspicion that the minor had violated or was violating the law or school rules. (See *New Jersey v. T.L.O., supra*, 469 U.S. at p. 341.)

#### DISPOSITION

The dispositional order is affirmed.

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Márquez, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P.J.

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Grover, J.