

STATE OF RHODE ISLAND
AND
PROVIDENCE PLANTATIONS

COMMISSIONER OF EDUCATION

JANE W. DOE

V.

JOHNSTON SCHOOL COMMITTEE

DECISION

Held: School Committee failed to prove that the student knowingly and intentionally possessed marijuana at Johnston High School.

Date: November 24, 1993

Travel of the Case

On October 18, 1993 Mrs. Jane Doe filed an appeal from the decision of the Johnston School Committee suspending her son for the balance of the 1993-94 school year. The school committee had voted at a meeting held on October 12, 1993, after hearing the matter, to exclude the appellant's son for the remainder of the school year because of his "violation of school regulations".

The undersigned was designated to hear the case, and the parties attended a hearing on October 27, 1993. The school committee appeared through its counsel, and the appellant appeared pro se.

The record in this matter closed on November 12, 1993, at which time the transcript was received at the department.

Jurisdiction to hear the appeal lies under Rhode Island General Laws §16-39-1 and §16-39-2.

Issues

(1) Do sufficient facts exist to warrant a finding that Student Doe was in possession of marijuana in Johnston High School on September 24, 1993?

(2) If so, is the suspension for the balance of school year 1993-94 appropriate?

Summary of Relevant Testimony¹

Mark Zarrella, a physical education teacher at Johnston High School, testified that on the date in question he observed Student Doe standing with another young man in the hallway of the second floor of the high school. When he observed the other student passing an envelope or package to Student Doe, Mr. Zarrella walked out of his classroom and approached Student Doe from behind. Just as he reached Student Doe and placed his hand on Student Doe's shoulder, the other student placed the package in Student Doe's hand. Mr. Zarrella asked Student Doe what he had in his hand, and Student Doe stated "I don't know what I have". Mr. Zarrella observed "an open piece of paper with leaves in it" in Student Doe's hand. Since he suspected that the package contained marijuana he took Student Doe into his classroom, took the package from him and questioned the student further. Student Doe continued to assert that he did not know what the package contained. He stated to Mr. Zarrella, "Student Roe just threw it to me to give to somebody". Mr. Zarrella then accompanied Student Doe to the principal's office at which time the police and the student's parents were notified.

Tr. pp. 13-17.

Thereupon Mr. Zarrella went out to the school's parking lot where he found Student Roe "with more drugs on him in a Marlboro cigarette box." Tr. p. 18.

Student Doe testified that after the bell rang to signify the end of classes on Friday, September 24th he walked out of his last class in Room 204. As he approached the elevator on the second floor, Student Roe, whom he knew slightly

¹We would note at the outset that the testimony of both Mr. Zarrella and Student Doe regarding what happened at school is entirely consistent.

and who had also attended the class in Room 204, called out to him "come here, I've got to ask you a favor". Student Roe asked Student Doe to give a package to another student who would be taking the bus home with him. Student Doe asked Student Roe what was in the package as it was handed to him. It was at this time that Mr. Zarrella confronted both boys. Student Roe ran away and Student Doe proceeded to respond to Mr. Zarrella's questions.

Student Doe also testified that he had not talked to Student Roe previously that day and had not been involved with doing "favors" for him on any other occasions. He testified he could not see what was in the envelope as it was handed to him because Student Roe's hand was closed. He denied having any knowledge as to what was actually contained in the package. He further testified that he was not going to the bus immediately after school but was in fact on his way to the school library to serve detention. Tr. pp. 29-38.

Student Doe's stepfather testified that on the evening that the school committee considered the issue of his suspension, the testimony of certain witnesses was taken out of the appellant's presence and despite request, no opportunity to question these other witnesses was provided. Tr. p. 4. He also notes that neither the initial letter notifying Mr. Doe of the hearing before the school committee (S. C. Ex. A) nor the subsequent notice of its decision (S.C. Ex. B) provide a "clear written statement of the reason" for the suspension. This, he argues, is in violation of the Regulations of the Board of Regents, July 8, 1976.²

²Regulations for Governing Disciplinary Exclusions of Students from school.

Finding of Relevant Facts

- On September 24, 1993 Student Doe was handed a package of marijuana³ by another student on his way from class at Johnston High School (Tr. pp. 14, 29, and 33).
- Upon handing Student Doe the package of marijuana, the other student requested that Student Doe deliver it to another student who rode the bus home from school. (Tr. pp. 33, 35)
- Student Doe did not know what was in the package, nor could he see what was contained inside as it was handed to him. (Tr. pp. 29,35)
- Student Doe asked what was in the package, but before the other student could answer both students were approached by the physical education teacher who observed the package being passed. (Tr. pp. 14, 33, 35)
- Both the letter notifying Mrs. Doe of the hearing on the issue of her son's suspension (S.C. Ex. A) and the letter informing her of the committee's decision (S.C. Ex. B) indicate the reason for suspension as "violation of school regulations".⁴
- Testimony was taken by the school committee out of the presence of the appellant. (Tr. pp. 47-48)

Decision

The Johnston School Committee's October 13, 1993 communication to Mrs. Doe regarding the reasons for its decision to exclude her son from school for the remainder of the year states only that he violated school regulations. We therefore do not know whether it concluded that Student Doe's possession of marijuana at

³It was stipulated that the package contained a controlled substance, i.e. marijuana.

⁴The October 4, 1993 letter of notice introduced into evidence by the school committee mistakenly identifies the reason as Student Roe's violation of school regulations, not Student Doe.

school was knowing and intentional, or whether it viewed Student Doe as an unwitting participant in a drug transaction which was short circuited by the physical education teacher. We view the state of Student Doe's knowledge and evidence of his intent to be crucial in this case.

Without a finding of knowing and intentional possession of an illegal drug we do not see how Student Doe could be guilty of misconduct.⁵ At the hearing at the Commissioner's level it was argued that (1) he was in possession of marijuana and (2) his receipt of this drug implicated him in a drug transaction. However, as we understand the argument of counsel for the school committee (Tr. pp. 52-58) Student Doe's knowledge, or lack thereof, is not relevant. The school committee argues to us that the fact Student Doe physically possessed marijuana, regardless of whether he intentionally did so, justifies exclusion from school. Clearly, however, if Student Doe had no knowledge of what was in the package, he is not guilty of misconduct, nor any behavior warranting disciplinary action by the school committee.

As indicated in our findings of relevant facts, the evidence introduced at the hearing before us did not demonstrate by a preponderance of the evidence⁶ that Student Doe knew he possessed marijuana in school that day. He testified he had no reason to anticipate Student Roe's request to "do him a favor". He could not see what was in the other student's hand as the package was transferred to him.

⁵A school disciplinary code which penalized unintentional violations of school rules or penalized students for unknowing possession of contraband or other items prohibited at school would be constitutionally suspect.

⁶See Footnote 9 in the Commissioner's decision in John M. Doe v. Warwick School Committee; November 18, 1989 and its discussions of the standard of proof in long-term suspension cases.

The testimony of the teacher who observed the package being handed to Student Doe confirms the lack of opportunity for Student Doe to look into the package and observe its contents.

It is true that the mere fact of physical possession raises an inference of knowledge of what was in the package.⁷ Here the inference is weak, given the circumstances surrounding his possession. Student Doe did not have the package in his possession but a moment before being approached by Mr. Zarrella. During that instant there was no overt action consistent with an intent to control the package - there was no opportunity for him to do so because at the same time he came into possession, he turned the package over to Mr. Zarrella.

Any inference that he did know what was contained in the package because of physical possession is rebutted by Student Doe's testimony that he had no knowledge. His testimony stands uncontradicted - indeed unchallenged on the record before us. Despite the availability of other witness who could, perhaps, have contradicted Student Doe's testimony on this issue, those witnesses did not appear to testify. We found Student Doe's testimony credible. Without his knowledge that he had been handed an illegal drug he was guilty of no misconduct.

For the foregoing reasons, the suspension is set aside. Student Doe should be reinstated immediately and that part of his disciplinary record relating to this suspension should be expunged.

We decline to rule on the effect of the procedural irregularities noted in the Findings of Relevant Facts, as we find Student Doe has not been shown to have been guilty of misconduct.

⁷See State v. Sundel; 121 R.I. 638, 402A2d585 (1979).

Kathleen S. Murray
Kathleen S. Murray, Hearing Officer

Approved:

Peter McWalters
Peter McWalters, Commissioner of Education

November 24, 1993
Date