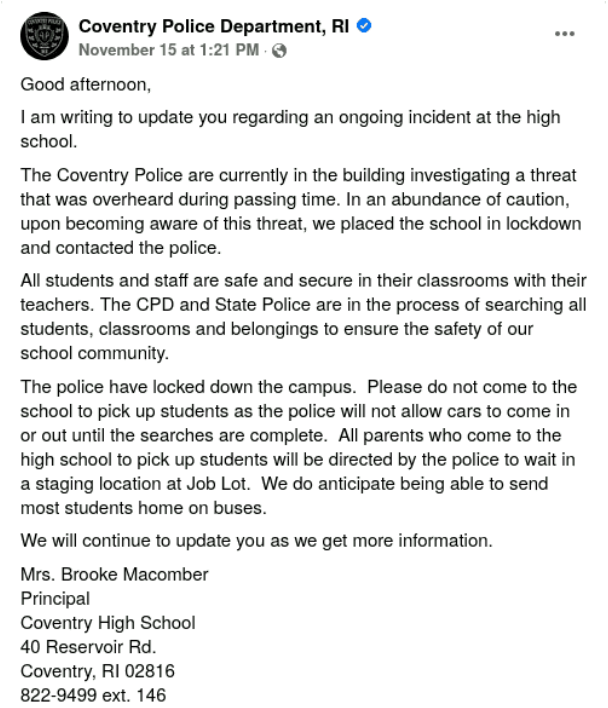
Can Police Dragnet Search All Students to Look for a Gun?

On November 15 at 1:21pm, Principal Brooke Macomber of Coventry High School issued a statement: “The Coventry Police are currently in the building investigating a threat that was overheard during passing time. In an abundance of caution, upon becoming aware of this threat, we placed the school in lockdown and contacted the police… The CPD and State Police are in the process of searching all students, classrooms and belongings to ensure the safety of our school community.”



Coventry Police Department, RI
November 15 at 1:21 PM ·

Good afternoon,

I am writing to update you regarding an ongoing incident at the high school.

The Coventry Police are currently in the building investigating a threat that was overheard during passing time. In an abundance of caution, upon becoming aware of this threat, we placed the school in lockdown and contacted the police.

All students and staff are safe and secure in their classrooms with their teachers. The CPD and State Police are in the process of searching all students, classrooms and belongings to ensure the safety of our school community.

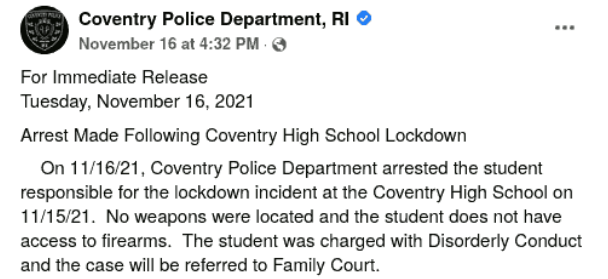
The police have locked down the campus. Please do not come to the school to pick up students as the police will not allow cars to come in or out until the searches are complete. All parents who come to the high school to pick up students will be directed by the police to wait in a staging location at Job Lot. We do anticipate being able to send most students home on buses.

We will continue to update you as we get more information.

Mrs. Brooke Macomber
Principal
Coventry High School
40 Reservoir Rd.
Coventry, RI 02816
822-9499 ext. 146

Coventry Police statement on high school gun search

The next day, Coventry Police issued a statement: “On 11/16/21, Coventry Police Department arrested the student responsible for the lockdown incident at the Coventry High School on 11/15/21. No weapons were located and the student does not have access to firearms. The student was charged with Disorderly Conduct and the case will be referred to Family Court.”



Coventry Police Department, RI
November 16 at 4:32 PM ·

For Immediate Release
Tuesday, November 16, 2021

Arrest Made Following Coventry High School Lockdown

On 11/16/21, Coventry Police Department arrested the student responsible for the lockdown incident at the Coventry High School on 11/15/21. No weapons were located and the student does not have access to firearms. The student was charged with Disorderly Conduct and the case will be referred to Family Court.

Coventry Police statement on high school gun search

Captain Matthew Blair of the Coventry Police told *Motif* in an interview, “Somebody overheard what they believe was a student say ‘he has a gun’ – those four words. A teacher immediately confirmed it,

followed by a few other students that heard it in the hallway in between classes, so they immediately enacted what they call 'hold from passing,' which is basically nobody leaves class. And then after the school resource officer got involved, within the first couple minutes, they issued a lockdown for the whole school, until we were able to get more information. So they did that, were reviewing cameras and footage and talking to people involved. And they were unable to determine who exactly it was that said it, or even what group of kids it was said it. They basically had some kids in a hallway in hoodies that they couldn't identify… After a few minutes, I personally got there along with the chief and a few other people. Because we were unable to determine the extent of the threat or what exactly had taken place and what the context of it was, the decision was made to begin to search the students and their bags, room by room, including desks, trash cans, and brought in ballistic-sniffing canines and they were able to conduct a thorough and full search of each student at the school, each bag that each student had. We passed the ballistic-sniffing dogs through all the rooms, did what we were satisfied was a thorough search of the common areas, classrooms, and then walking dogs through the hallways where the lockers were. The handlers in particular were confident that if there were a gun, they would have alerted to it. We were satisfied after all students were released, after the search was conducted, that the school was safe, and they were allowed to return to classes the following day."

Individual students were searched for weapons by pat down, with male officers searching male students and female officers searching female students, Blair said, but that procedure found nothing suspicious and did not result in, for example, asking students to empty their pockets. Contents of bags and purses were searched more thoroughly, he said. The search faced practical problems in that about 1,600 students were on the premises at the time, he said.

As to the charges, Blair said, "The following day, the school resource officer was able to receive some tips from a few students and narrowed down the group of students that the comment came from to about four students, and then questioned those students individually, and basically was able to determine one of the students that actually made the comment, and the students that made the comment ended up admitting that he had made the comment."

Asked why the comment might have been made, Blair told *Motif* the student said "that he was reenacting a video game. That was the statement he had made to the school resource officer, and obviously there's a lot to that because he didn't come forward and say, 'Oh, no, I was just, you know, joking,' or whatever, the day before, 'I was making this comment,' because it would have probably alleviated some of the issues, or much of the issues that took place the day before, but he didn't do that. So whether that's true or not, we don't know. He didn't have a gun with him; he was checked. He didn't have access to guns as far as we know; that was followed up on. So basically, just a foolish comment made by a juvenile that kicked all that off."

We asked Blair whether consent to search was sought from either the students or their parents and guardians. "No, no, and the reason for that is because of the exigency of the issue at hand. Obviously, a student may have a gun or comment that someone in the school had a gun, we had to make sure the student population was safe. There's a public safety exception to the search warrant requirement, which is kind of what we would operate under in that circumstance: exigent circumstances, one, and then public safety exception would be number two. And we use kind of those exceptions to the search warrant requirement, which are well established in Supreme Court law, to conduct the least intrusive method of search that was available to us, which was the pat down search of the students to make sure that they were safe and get them out of there safely."

What would have happened if a student refused to be searched? “We would have still had to search them or bring them into another area to hopefully reason with them if it was that big of an issue where they refused, and we would have gotten school staff and/or parents involved. That didn’t happen. No, I think as a matter of fact, quite the opposite thing happened where, at least from the feedback we got the parents were, as a general rule, overall satisfied with our response to the situation,” Blair said, and no one objected “get a warrant.” Could they discipline that student? Could they suspend that student, prohibiting them from entering school premises? Even worse, could they physically forcibly search that student? In short, can the school draw an adverse inference that a refusal to be searched constitutes a threat *per se*?

Did the school and the police handle this correctly? On social media, the bulk of comments approve of the dragnet search of all students, but it is important to step back and look at, among other things, the law.

Police would never be allowed to conduct such a dragnet search of all people in a public place, such as a shopping mall, outside of a school setting, on the basis of an unattributed claim that someone heard someone else mention a gun, although Blair made exactly the opposite argument: “You can’t take the the situation outside of the circumstances that were at hand, which was we weren’t able to identify the students at all. So at that point, it’d be similar if there was a lockdown at a shopping mall, the same circumstances would have been undertaken.”

Citizens have a basic constitutional right, in the words of the Fourth Amendment, “to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures…” (The RI State Constitution has a similar provision.) In practice, this means police must have probable cause, or at least reasonable suspicion, to seize (detain) a person and search them, and by definition such probable cause or reasonable suspicion applies only to a particular individual or small group, based upon evidence pertaining to them specifically.

The courts have held that while the Fourth Amendment protects school students, in the landmark 1985 US Supreme Court decision in *New Jersey v. T.L.O.*, educators need only meet the lower standard of “reasonable suspicion” rather than “probable cause” in a school setting. In that case, two students were caught smoking tobacco cigarettes in the school restroom and one of them, identified by her initials “T.L.O.,” denied participating, after which the vice-principal searched her purse and found marijuana, rolling papers, a pipe, and – most damningly – a list of customers who owed her money from dealing drugs, as a result of which she was expelled and criminally charged.

The reasonable suspicion standard, enunciated in the 1968 US Supreme Court decision in *Terry v. Ohio*, requires “specific and articulable facts” – precisely the opposite of a dragnet search of everybody. Courts on many occasions held dragnet searches illegal, as in the 1979 US Supreme Court decision in *Ybarra v. Illinois*, holding that a search warrant for a bar and its bartender did not allow the police to search the customers who just happened to be in the bar.

Steven Brown, executive director of the RI chapter of the American Civil Liberties Union, told *Motif*, “The intrusive search of every student in the school under these circumstances is very troubling, but I am not sure there would be strong legal grounds for challenging it. Unfortunately, the courts have upheld mass searches of students under circumstances much less fraught than this.” Brown pointed to a 2011 US First Circuit Court of Appeals case, ironically involving the Coventry public schools and police a decade ago, *Lopera v. Coventry*, 640 F.3d 388, where a bitterly divided panel voted, 2-1, to affirm a

lower court summary judgment of a lawsuit that arose out of a high school boys competition.

In *Lopera*, the Central Falls soccer team played as visitors against the Coventry soccer team, and immediately afterward there were allegations by about 20 Coventry football players – not soccer players – that the Central Falls players had stolen iPods and cell phones from their locker room. As the appeals court explained, "Central Falls is a racially diverse community, and the Central Falls team consisted entirely of Spanish-speaking Hispanic players, save for one Portuguese player. Coventry, by contrast, is predominantly non-Hispanic and white, and its high school reflected this. The Central Falls players allege that Coventry players uttered racial epithets during the game, calling them 'spics' and demanding that they speak English."

The Central Falls coach, along with his assistant coach, searched his players and their bags, satisfying himself after a half-hour that nothing had been stolen, but then, the appeals court further summarized, the coach "testified, a crowd of fifty or sixty Coventry students and adults had gathered around the bus… members of the crowd yelled that they knew his players had the items. He testified that students and adults in the crowd stated that the players were 'from the ghetto,' knew how to 'hide things' and 'lie good,' and could not be trusted. The players recounted similar accusations and vitriol, including racial slurs like 'spic…' He also testified that members of the crowd stated that they would not let the Central Falls players leave until the items had been found."

Someone called the Coventry Police and reported something like a fight or riot, causing several cars to respond and box in the Central Falls bus. The police then conducted their own search of the Central Falls players after obtaining the consent of their coach, although he later claimed that he was placed under duress by the near-riot and therefore his consent was not voluntary. No stolen items were ever found, and Coventry Police escorted the bus out of town for the safety of the Central Falls team.

At no point, it must be emphasized, did the appeals court hold that the search was actually legal: instead, the issue was whether the Coventry Police could have reasonably believed that the Central Falls coach had authority *in loco parentis* (in the place of a parent) to consent to the search of his players and whether they could have reasonably believed that his consent was voluntary. That's the way qualified immunity for the police works: in the words of the appeals court, citing Supreme Court precedent, "The qualified immunity defense 'is designed to protect "all but the plainly incompetent or those who knowingly violate the law."'"

The ruling in *Lopera* was 2-1, with Judge O. Rogeriee Thompson dissenting on whether the consent to the search by the coach could be voluntary: "The appellants, a team of young Hispanic soccer players from Central Falls, Rhode Island were subjected to shockingly disgraceful and humiliating conduct by the police and their fellow citizens alike while visiting another high school in Coventry, Rhode Island. After playing a tense game against Coventry's team, the Central Falls players were surrounded by a mob seething with racial animosity and casting false accusations of theft… My colleagues think that a reasonable officer would be unaware of the duress this state of affairs would inspire in the team's coach… while he was surrounded by an angry mob and unable to depart with his players left little room for choice."

The decision in *Lopera* acknowledges the considerable jurisprudential uncertainty about the scope of authority of school officials to search students, noting that *T.L.O.* limits but does not eliminate their ability to act *in loco parentis*, citing the 1995 US Supreme Court decision in *Vermonia Sch. Dist. 47J v. Acton*, ruling students whose parents refused consent to their being drug-tested could be banned from

athletics.

Blair said about the recent gun search, “We operated under exigency, which those requirements are less restrictive, when you have a public safety emergency, and especially when you’ve got the safety and welfare of 1,600 students and 300-plus staff members at a public school, on top, in light of, what’s gone on in our country over the last couple decades. We take those things seriously. So that’s how we operate.” Asked directly to clarify, Blair confirmed that he was talking about school shootings.

But exigency is a legal doctrine that applies specifically and narrowly as an exception to seeking a judicial warrant when it would be otherwise required, such as to prevent the imminent destruction of evidence, and it is difficult to see that the police would not have had time to do that. The school was already locked down, there was a substantial presence of police officers and rescue workers, and calling a judge would have taken as little as 15 minutes. But would a judge have granted such a warrant for a dragnet search? Probably not.

Searching every student in a school is clearly a violation of the *T.L.O.* standard of “reasonable suspicion” which, by definition, must be based upon specific and particular information. The school officials and police in Coventry were certainly motivated by a fear that a student may have had a gun in school, but despite honorable intentions they have to accept that even high school students live in a free society with fundamental civil rights that must be respected. Blair was eloquent in defending each step of the process that his department followed, and it seems evident that they have the support of the community.

But a gun is not a magically dangerous object where mere possibility that someone may have mentioned one in a school hallway justifies the wholesale abrogation of basic civil liberties: remember that no one saw a gun, no one identified who possibly had a gun, and the dragnet search – regardless of its illegality – in fact found no gun. Even assuming for the sake of argument that an overheard remark constitutes a sufficient threat, “He has a gun” is still very different from “I have a gun” and nowhere near “I’m going to shoot someone.”

If a student who was subjected to the gun search sues, Coventry would try to argue a qualified immunity defense that there is no authoritative court decision saying they were in the wrong, but that is far from saying they were in the right. Given Coventry’s legal history of defending in court what Judge Thompson called “a mob seething with racial animosity,” this should be a road they are reluctant to travel.

Brown of the ACLU said, “We have not received any complaints about the [recent gun] searches. If we do, however, we will look into it more closely.”

As of press time, the Coventry superintendent and high school principal did not return telephone messages from Motif.