

IN THE CIRCUIT COURT OF YIG COUNTY

STATE OF MISSOURI

Lindsey Spears, by and through)	
her Next Friend John Spears,)	
)	
Plaintiff)	Cause No. 11-CC-57
)	
)	
vs.)	
)	
)	
Missouri Department of Elementary)	
and Secondary Education,)	
)	
Defendant)	

Statement of the Case

Plaintiff Lindsey Spears is 16 years old. She is Hispanic. She brings suit by and through her Next Friend and Natural Parent, John Spears, against the Missouri Department of Elementary and Secondary Education (“DESE”). The lawsuit arises out of a program developed by DESE and used as a pilot in the Yig County R-VII School District, which program provided for suspicionless dog sniff patrols (“Operation Sniff Out”) at one of its high schools, Joplin High School (“Joplin High”).

In Count I of her lawsuit, Plaintiff challenges the constitutionality of the pilot program as a violation of the 4th Amendment to the U.S. Constitution, which protects against warrantless searches and seizures. Plaintiff also alleges that DESE specifically targeted Joplin High with the program based on racial profiling of Hispanics as drug users. Plaintiff seeks an injunction against DESE prohibiting further use of the pilot program, and a declaration that the pilot program is unconstitutional. Plaintiff also seeks damages for emotional distress arising out of an incident where Joplin High used Operation Sniff Out.

DESE Deputy Director and legal counsel Joyce Davenport (“Davenport”) developed Operation Sniff Out after attending a meeting of education professionals which focused on drug and alcohol problems in schools. At one of the sessions, a School Administrator from the state of Washington talked about a program implemented in Washington, and a representative from the North American Police Work Dog Association (“N.A.P.W.D.A.”) spoke.

Davenport put the program together for implementation in the fall of 2011. DESE decided to start the program off as a pilot program, and chose the Yig County R-VII School District as the first pilot. The program called for random suspicionless drug patrols by drug-sniffing dogs. Operation Sniff Out called for DESE to use the Missouri State Highway Patrol to conduct the patrols.

On Friday, September 2, 2011, during 5th hour at Joplin High, Principal Henry Skinner, announced over the school intercom that the school was in lockdown. Students were told to leave their possessions in their classrooms and go stand in the halls. Highway Patrol Troopers entered classrooms and led the drug-sniffing dogs up and down aisles to detect for drugs.

Plaintiff was in an American Government class during 5th hour. Drug-sniffing dogs entered the classroom after the students went out to stand in the halls. Several minutes later, the students were allowed to re-enter the room.

Because the DESE is a state agency, it is represented by the Attorney General.

Plaintiff's Witnesses

Plaintiff Lindsey Spears
Grace Proffit

Defendant's Witnesses

Joyce Davenport
State Trooper Andy Renko

DEPOSITION OF LINDSEY SPEARS

Comes now Lindsey Spears, and having been first duly sworn upon her oath, states as follows:

My name is Lindsey Spears. I am 16 years old, and currently a Junior at Joplin High, which is in Yig City, Missouri. My parents names are Joan and John Spears. I live with my parents at #5 Eagle Lane in Yig City, Missouri.

I filed suit against the Missouri Department of Elementary and Secondary Education ("DESE"), because of the program DESE developed know as Operation Sniff Out, and because of DESE singling out Joplin High for the pilot program.

I am Hispanic, on my mom's side of the family. Yig City has a large Hispanic community. Joplin High serves grades 9 through 12. While I don't know exact statistics, I would guess that about 50% of the students at Joplin High are Hispanic.

I do understand that generally there is a drug problem in the teen community throughout the United States, and understand that there is a drug use problem at Joplin High. However, I do not think that gives the state the right to treat everyone like suspects without having a reason to, and bring in drug sniffing dogs to search the school, the students, lockers, and our backpacks, books, and other possessions.

About September 2, 2011, well, first, we didn't have any advance knowledge about the program or the possibility that the State Highway Patrol would show up with drug sniffing dogs. It was never announced, or set out in any material sent to the students or parents. So, here we are sitting in class during 5th hour, and all of a sudden the Principal comes on the intercom and tells us we are in lockdown. Lockdown means you can't leave and no one can get in. It was very scary. My first thought was we must have someone in here with a gun. I mean, you see all of this violence on the news! Everyone was gasping, and our teacher, Ms. Proffit, looked scared as well. Then, the Principal simply told everyone to leave the classroom and go out and stand in the halls. At that point, we thought maybe there was a bomb in the room or something. In my class, Government, there were 20 students. We all went out in the hall.

When we got out in the hall, three (3) State Troopers came quickly down the hall towards the classroom, with a giant German Shepherd. I am scared to death of German Shepherds. They went into the classroom with the giant dog. We all covered out in the hall. Ms. Proffit stood at the door to the classroom, which has a window at the top half, and watched what was going on inside. I could not see inside the classroom.

The State Troopers and giant dog were in the classroom for at least 20 minutes. Finally, they came out and we were allowed to return to the classroom. We still didn't even know what was happening. When I got back to my seat, I noticed that my backpack, that I am sure was previously zipped up, was opened. Everything was in it, but

there was big dog slobber all over my papers and the outside of the backpack. Other students told me there stuff had been messed with too.

DEPOSITION OF GRACE PROFFIT

Comes now Grace Proffit, and having been first duly sworn upon her oath, states as follows:

My name is Grace Proffit. I am 28 years old. I have a B.S. in Education from the University of Missouri-Kansas City. I am working on my Masters' degree in Education at the present time. I have been employed with the Yig County R-VII School District since 2007. I teach Government, Advanced Government, and American Politics.

Lindsey Spears is in my Government class this semester. Lindsey is one of my best students. I completely agree with her sentiments about DESE's development and implementation of Operation Sniff Out. What happened was absolutely appalling. Students do not lose their constitutional rights when they step off the school bus.

I am a card carrying member of the ACLU and am aware that the ACLU is of the position that drug sniffing patrols are unconstitutional. I am of the opinion they are unconstitutional. I do admit that I have no legal training and have not researched the cases that might be applicable to the issues. But, it seems to me to be pretty simple. The government can't search without reasonable cause. Doing a blanket search using sniffing dogs for no reason is pretty cut and dried.

I am familiar with the district's drug policy, which I identify as Exhibit D. Clearly Exhibit D does not authorize the type of suspicionless drug search contemplated in Operation Sniff Out. I am not aware that Joplin High has a large drug problem among students. I don't believe it is any worse than anywhere else in the state, though I haven't particularly studied the issue or reviewed any documentation about it.

I did witness the search that took place on September 2, 2011. I was teaching that day. I had no advance knowledge regarding Operation Sniff Out and no advance knowledge that a search would take place that day. I never saw Exhibit A, Exhibit B, or Exhibit C prior to being involved in this lawsuit. Teachers and students were never notified about Operation Sniff Out. I was teaching 5th hour Government. There are 20 students in that class. During class, the Principal came over the intercom and announced that we were in lockdown. He then stated that everyone needed to leave their possessions in the classroom and go out into the hallway. I rounded up the students and made sure that the Principal's instructions were followed. I had no idea what was going to happen. When we got out into the hall, I saw two State Troopers and a German Shepherd coming towards the classroom. I knew one of the State Troopers, Andy Renko. I also knew the dog, Tiny. I immediately asked Andy what was happening, and he advised they were doing a routine patrol to detect illegal drugs.

They entered the classroom. The students and I remained in the hall. I watched through the window in the door to the classroom. I can see the entire classroom looking through the window. The Officers took Tiny up and down the aisles. There are four rows of desks, plus my desk at the front of the classroom. I definitely saw that in addition to

taking Tiny up and down the rows, that Andy Renko specifically stopped and looked through all of the student backpacks. I did see that Tiny did not stop at any of the backpacks, so apparently he didn't detect any illegal drugs. The incident lasted approximately 5-10 minutes.

It is true that I dated Andy Renko for 3 years. We broke up in July of 2011. I broke up with him because I wanted a marriage commitment and he refused. Of course it was upsetting, but I would never lie just to see him hurt or lose his job. I admit to leaving the voicemail messages contained in Exhibit E. I was very upset. His job is very important to him, apparently more important than marrying me. That is why when I was drunk, having had a pity party with friends and drinking tequila for hours, I left him the message on July 20, 2011. I don't even really remember leaving that message.

The district is aware that I am testifying on behalf of Lindsey against DESE today. My job has not been threatened and I am not concerned about losing my job over this. I am speaking out for what is right.

DEPOSITION OF JOYCE DAVENPORT

Comes now Joyce Davenport, and having been first duly sworn upon her oath, states as follows:

My name is Joyce Davenport. I am 35 years old. I am a licensed attorney in Missouri. I am employed with the Missouri Department of Elementary and Secondary Education ("DESE"). I have worked at DESE for five years. Before that, I was in private practice. I obtained my J.D. from University of Missouri-Columbia in 2002.

At DESE, I am legal counsel and also Deputy Director. I get involved in all matters of school policy and I review proposed programs, policies, and procedures to make sure DESE complies with state and federal law.

I was involved in setting up Operation Sniff Out for DESE. I attended a program for school professionals in 2010. As part of the program, a School Administrator from the state of Washington talked about a program implemented in Washington, and a representative from the North American Police Work Dog Association ("N.A.P.W.D.A.") spoke about the training and qualifications of Officers and dogs performing patrols to obtain probable cause to search for illegal drugs on school campuses.

After attending the program, I did legal research on the legality of such programs, and concluded that such a program, if performed correctly, would comply with the law.

I drafted the Outline contained in Exhibit B. In putting together Operation Sniff Out, I also talked to Officer Andy Renko of the Missouri State Highway Patrol, and reviewed the procedure contained in Exhibit C. I also talked with School Administrators throughout the state about the program. The concept was generally well received.

I chose the Yig County R-VII School District as one of the pilot programs for two reasons. First, the district's size. As a new program, I wanted a school district outside of the large metropolitan areas. If there were any problems with its implementation, I wanted to get those worked out on a smaller scale.

Second, I picked Yig County because for a small community it has a large documented drug problem among the students. It is my understanding, though I don't have the written documentation, that Joplin High had over three dozen suspensions for drug possession and/or possession of drug paraphernalia in the 2010/2011 school year alone. For a school with approximately 800 students, I considered that significant. I am aware that Joplin High has a large Hispanic student population, though I don't know the exact percentages. I am Caucasian.

I did author Exhibit A. I did think it was important for students, parents and teachers to be informed about Operation Sniff in advance. In part, informing the students should

have a prophylactic affect. In addition, you would not want students and teachers to be unnecessarily fearful when the patrols take place. I did expect my instructions to be followed. I do not know why they were not followed in this instance, but this would be the responsibility of the district and not DESE.

I am now aware that the Yig County drug testing policy is Exhibit D, though I was not aware of the wording of that policy at the time we implemented Operation Sniff Out. I don't think it matters, because the patrol is not a search and is not a test.

I do not believe that Officer Renko searched the students backpacks. I think that Ms. Proffit is lying.

DEPOSITION OF OFFICER ANDY RENKO

Comes now Andy Renko, and having been first duly sworn upon his oath, states as follows:

My name is Andy Renko. I am 32 years old. I am single, never married. I live in Yig City, Missouri. I am an Officer with the Missouri State Highway Patrol. I have worked for the Highway Patrol since 2005. Prior to the Highway Patrol, I was a police officer with the Moberly, Missouri police department. I left there to join the Highway Patrol for job advancement.

I work in the Canine Unit. I currently work with a German Shepherd, whose name is Tiny. He is a very smart, skilled, and well trained dog. He works in drug detection, bomb searches, and people searches. I work with another Officer as well, John Kelley.

I have a B.S. in Criminal Justice Administration from the School of the Ozarks in Point Lookout, Missouri. I attended and graduated from the Kansas City Police Academy with 120 hours Basic Law Enforcement training in 2002. I have specialized police training in Drug Enforcement and Recognition. I have attended the Missouri Narcotics Enforcement Conference put on by the Missouri Department of Public Safety. I have specialized training in working with Canines. I am certified as a Drug Recognition Expert.

I have received no disciplinary action as a member of the Highway Patrol at any time.

I did work with DESE in Operation Sniff Out. I talked with Joyce Davenport as she was thinking about implementing the program, and told her about the benefits of having a trained dog to patrol schools to detect illegal drugs. How the program would work is that the dog would patrol and if the dog detected illegal drugs, the dog would sit and not move on. This would then be the basis of probable cause/reasonable cause to search a student's possessions or a locker. This search would take place with the Principal and student present. We would not simply search all the students' possessions. If we did that it would not be appropriate, nor would there be any need for the dog.

I did participate in the Operation Sniff Out patrol operation at Joplin High on September 2, 2011. The patrol did include Grace Proffit's 5th hour class. I learned that her class would be included that morning. I told Officer Kelley she would try and make trouble for me. I do recognize Exhibit E. Those are transcriptions of voicemail messages Grace left on my cell phone in the summer of 2011 after we broke up. She did break up with me because I would not commit to marriage. At the time, it was just as well. I had wanted to break it off for some time. Grace is a hot head, and becomes hysterical at the drop of a hat. I kept those voicemail messages because I was genuinely concerned she would do something to harm me and my career. Well, now she has tried to do just that. If the Highway Patrol concluded I actually searched those students' backpacks, I could lose my job.

Officer Kelley, Tiny, and I did patrol in the classroom that day. It lasted no more than 3-5 minutes, because Tiny did not light on any of the students' possessions in that classroom. I did not, and Officer Kelley did not, search any of the students' backpacks in that classroom.