In re Scott K.: The Juvenile's Right to Privacy in the Home

In *In re Scott K.*,[1] the supreme court held that article I, section 13 of the California Constitution[2] protects juveniles from unreasonable searches and seizures. This right, the court said, cannot be summarily waived by the juvenile's parents, either in their role as parents or as the owners of the house in which the search is to be conducted. In a vigorous dissent,[3] Justice Clark, while agreeing that minors are protected against unreasonable searches and seizures, argued that the parents' constitutional right to raise their children as they see fit allows them to authorize a search of their children's property. Justice Richardson[4] also dissented, arguing that the minor's interest in search and seizure protection must be balanced against the parents' interest in maintaining a lawful, stable home environment, and that the parents' interest should prevail in this case.

This Note argues that while the result in *Scott K.* was correct, the majority opinion failed to explain the rationale behind its conclusions and to delineate a clear and usable standard for determining when a minor's parents can consent to a search of his property. Part I discusses the case and the arguments made in the majority and dissenting opinions. Part II examines the threshold issue of whether the juvenile is constitutionally protected against unreasonable searches and seizures. Part III analyzes the issue of parental consent to a search of a minor's property, and proposes a test for determining when such consent is constitutional. This Note agrees with the majority opinion that minors are constitutionally protected against unreasonable searches and seizures, and argues that the parents of a competent minor should not be allowed to waive this right.

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1. 24 Cal. 3d 395, 595 P.2d 105, 155 Cal. Rptr. 671 (Newman, J.) (5-2 decision), *cert. denied*, 100 S. Ct. 468 (1979).

2. "The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated . . . ." While this provision is essentially the same as the fourth amendment to the United States Constitution, it has been given an independent interpretation by the California courts since People v. Brisendine, 13 Cal. 3d 528, 531 P.2d 1099, 119 Cal. Rptr. 315 (1975). *See also* CAL. CONST. art. I, § 26.

3. 24 Cal. 3d at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677.

4. *Id.* at 408, 595 P.2d at 113, 155 Cal. Rptr. at 678.

I

THE CASE

Scott's mother found marijuana in his desk drawer. After talking with other parents, she concluded that her son, who was seventeen, might be selling marijuana, and turned it over to the police. Narcotics officers investigated the matter, and then went to Scott's house and arrested him as he was working in the garage.

After the arrest, the officers took Scott into the house and got permission to search his room from his father. They had no search warrant. In the room the officers discovered a locked toolbox. The toolbox belonged to Scott and was not used by any other member of the family. Scott refused to open the box, but his father consented to its search. Using Scott's keys, the officers opened the toolbox and found nine baggies of marijuana.

At the juvenile court hearing, Scott moved to suppress the evidence found in the toolbox, contending that it was the product of an illegal search. The court denied the motion, stating that Scott's father could consent to the search because he owned the house in which the marijuana was found and because he had a duty to control his son's activities. The evidence was admitted, and the court found Scott to have unlawfully possessed marijuana for the purpose of sale.

The supreme court reversed. While recognizing that the constitutional rights of minors are not co-extensive with those of adults,[5] the court held that juveniles are entitled to protection against unreasonable searches and seizures. This right, the court stated, "may be infer[red] from the [United States Supreme C]ourt's recognition of minors' rights to privacy."[6] In support of this proposition, the court cited two U.S. Supreme Court decisions: *Planned Parenthood v. Danforth*,[7] in which the Court held that a competent minor has the right to decide whether to get an abortion, and *Carey v. Population Services International*,[8] in which the Court held that a state cannot restrict a minor's access to contraceptives. The majority also stated that search and seizure protection is mandated under the rule announced in *In re Gault*.[9] *Gault* held that minors have a liberty interest that entitles them to due process in delinquency proceedings, a protection that the *Scott K.* majority held to encompass the right to be free from unreasonable searches and seizures.

5. *Id.* at 401, 595 P.2d at 108, 155 Cal. Rptr. at 674.
6. *Id.*
7. 428 U.S. 52 (1976).
8. 431 U.S. 678 (1977).
9. 387 U.S. 1 (1967).

The court held that this right must "be protected even when the right imposes a burden on parents or limits parental control."[10] Thus, it concluded that the parents' authority to control and discipline their child does not permit them to waive his constitutional rights.

Finally, the court held that the search could not be justified on the basis of third-party consent.[11] The police could not justifiably rely on the consent of the father because, while he did own the house in which the search was conducted, he claimed no interest in the toolbox in which the marijuana was found.[12]

Justice Clark disagreed, arguing that to allow minors to overrule parental consent to a search would interfere with the parents' constitutional right to care for, discipline, and control their minor child. The parents' right, he said, can be limited only " 'if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.' "[13]

Clark argued that a search conducted with the consent of a parent is essentially the same as one conducted by the parent himself.[14] The police here acted in loco parentis, he claimed, and since searches by parents and by persons acting in loco parentis are not subject to constitutional limitations,[15] neither was the search here.

In a separate opinion,[16] Justice Richardson acknowledged the conflicting rights of parent and child, and advanced a test for deciding which right should prevail. He argued that parental consent should be sufficient to authorize a police search of a child's property where "reasonable grounds . . . support a belief that the place or thing searched will yield criminal evidence."[17] Using this test, he concluded that the search of the toolbox was reasonable.

II

EXTENSION OF SEARCH AND SEIZURE PROTECTION TO JUVENILES

The first question facing the court was whether juveniles should have constitutional protection from unreasonable searches and

10. 24 Cal. 3d at 403, 595 P.2d at 110, 155 Cal. Rptr. at 676.

11. For an explanation of third-party consent, see notes 49-52 and accompanying text *infra*.

12. 24 Cal. 3d at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677.

13. *Id.* at 406, 595 P.2d at 111, 155 Cal. Rptr. at 677, *quoting* Wisconsin v. Yoder, 406 U.S. 205, 234 (1972).

14. *Id.* at 407, 595 P.2d at 112, 155 Cal. Rptr. at 678.

15. *See, e.g., In re* Christopher W., 29 Cal. App. 3d 777, 105 Cal. Rptr. 775 (1st Dist. 1973) (search of students' lockers by school officials held valid); *In re* Donaldson, 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (3d Dist. 1969) (same).

16. 24 Cal. 3d at 408, 595 P.2d at 113, 155 Cal. Rptr. at 678.

17. *Id.* at 408-09, 595 P.2d at 113, 155 Cal. Rptr. at 679.

seizures. The court held that this protection should be extended to juveniles, basing its decision on two rationales: first, that it is inferable from the U.S. Supreme Court's "right to privacy" cases, and second, that it should be extended to juveniles under *In re Gault*.

A. Extension by Inference from Right to Privacy Cases

In a series of recent decisions, the U.S. Supreme Court established a right to privacy protecting certain personal decisions from governmental interference. This right, termed a "penumbral right" because it is not directly guaranteed by the Bill of Rights but can be logically inferred from it,[18] encompasses, among other things, marital relations (use of contraceptives by a married couple)[19] and a woman's decision to terminate her pregnancy.[20] This right to privacy, at least as far as it relates to the use of contraceptives and the decision to abort, was extended to juveniles in *Planned Parenthood v. Danforth*[21] and *Carey v. Population Services International*.[22]

The *Scott K.* majority appeared to argue that this "right to privacy" should, by virtue of *Carey* and *Danforth*, be granted to juveniles wherever it has been granted to adults. Thus, it reasoned, constitutional protection against unreasonable searches and seizures applies to juveniles because it affects their "privacy" interests.

The court's reliance on these cases is misplaced. The right sought by Scott is one specifically granted by the California Constitution—the right to be free from unreasonable searches and seizures. Thus, it was unnecessary for the court to take this circuitous route. Moreover, this right is distinct from that asserted in the privacy cases. While both protect the individual from governmental intrusions into his or her private affairs, the right to privacy "is not just concerned with a particular place, but with a protected intimate relationship."[23] Search and seizure protections, on the other hand, are meant to protect individuals from arbitrary governmental interferences with one's person and property.

B. Extension Under the Gault *Doctrine*

The second, more logical rationale underlying the *Scott K.* decision is that protection of minors from unreasonable searches and seizures is required under the due process analysis announced in *In re*

18. Griswold v. Connecticut, 381 U.S. 479, 484-85 (1965).
19. *Id.* at 485, 495-99.
20. Roe v. Wade, 410 U.S. 113 (1973).
21. 428 U.S. 52 (1976).
22. 431 U.S. 678 (1977).
23. Paris Adult Theater I v. Slaton, 413 U.S. 49, 66 n.13 (1973).

Gault.[24]

Gault established that while juvenile proceedings need not "conform with all of the requirements of a criminal trial or even of the usual administrative hearing," they "must measure up to the essentials of due process and fair treatment."[25] In applying this standard, later federal[26] and California[27] cases have looked to three factors: the historical importance of the right in question, the possible effects of its deprivation on the juvenile, and the possible effects of its protection on the efficiency, informality, and flexibility of the juvenile court system.

Under this analysis, constitutional protection against unreasonable searches and seizures should be extended to juveniles. Historically, this protection has been one of the most important of individual rights.[28] Guaranteed by the Bill of Rights[29] and by the constitution of every state,[30] search and seizure protection is a fundamental right "basic to a free society."[31]

Furthermore, denial of this right could have a potentially serious effect on the juvenile. Often, evidence uncovered by a questionable search is the sole or crucial factor leading to a court finding of juvenile delinquency. Thus, this evidence plays a major role in a court proceed-

24. 387 U.S. 1 (1967). Prior to *Gault*, the juvenile courts had operated under the theory of parens patriae, which was premised on the idea that the court was not interested in the guilt of the juvenile, but rather in his protection and rehabilitation. *See* Flannery, *The Applicability of the Fourth Amendment in Juvenile Delinquency Proceedings*, in COLUM. HUMAN RIGHTS L. REV., LEGAL RIGHTS OF CHILDREN 129 (1973). Under this system, the juvenile had no constitutional rights, having exchanged them for a more compassionate, individualized treatment. The *Gault* Court held that the juvenile courts had failed in their role as parens patriae—freedom from principles of due process had resulted in arbitrariness rather than compassion. 387 U.S. at 18-19. The Court also found that due process protections in juvenile proceedings would not impair the unique nature of the juvenile court system. *Id.* at 30.

25. 387 U.S. at 30, *quoting* Kent v. United States, 383 U.S. 541, 562 (1966). *Gault* required that the minor and his parents be given notice of charges, the right to counsel, the privilege against self-incrimination, and the right to cross-examine witnesses.

26. *E.g.*, Breed v. Jones, 421 U.S. 519 (1975) (protection against double jeopardy); McKiever v. Pennsylvania, 403 U.S. 528 (1971) (right to jury trial denied due to its potential for disruption of the juvenile process and the low liberty interest in its protection); *In re* Winship, 397 U.S. 358 (1970) (right to "beyond a reasonable doubt" standard of proof).

27. *E.g.*, *In re* Arthur N., 16 Cal. 3d 226, 545 P.2d 1345, 127 Cal. Rptr. 641 (1976) ("beyond a reasonable doubt" standard in parole violation hearings); *In re* Roderick P., 7 Cal. 3d 801, 500 P.2d 1, 103 Cal. Rptr. 425 (1972) (same standard for appellate review as is given to adults); Joe Z. v. Superior Court, 3 Cal. 3d 797, 478 P.2d 26, 91 Cal. Rptr. 594 (1970) (granting juveniles the same discovery rights as adults).

28. *See, e.g.*, Boyd v. United States, 116 U.S. 616, 625 (1886) (noting that the colonists' desire to be free from unreasonable searches and seizures was one of the causes of the American Revolution).

29. U.S. CONST. amend. IV.

30. 1 B. SCHWARTZ, *The Rights of the Person*, in 3 A COMMENTARY ON THE CONSTITUTION OF THE UNITED STATES 179 (1968).

31. Mapp v. Ohio, 367 U.S. 643 (1961); Wolf v. Colorado, 338 U.S. 25, 27 (1949), *overruled on other grounds*.

ing that gives the juvenile the stigma of being labelled a "juvenile delinquent" and threatens him with a loss of liberty through confinement to a juvenile institution.[32]

Finally, the effects of such protection on the informality, efficiency, and flexibility of the juvenile court system must be considered. Admittedly, the extension of search and seizure protection to juveniles would result in the necessity of an evidentiary hearing whenever the admissibility of a piece of evidence is challenged on search and seizure grounds. Such an evidentiary hearing, however, would not convert the juvenile court proceeding into a full-blown adversarial trial.[33] Nor would it affect the informality of the hearing itself or the flexibility of the juvenile court judge in dealing with the individual case. The evidentiary hearing would be conducted separate from the fact-finding process, and could even be handled by a different judge. Thus, the trial judge would still be able to conduct the fact-finding process in an informal manner and would retain the flexibility desired in the juvenile system. The evidentiary hearing may tend to lengthen the time necessary to process the juvenile, but this slight loss of efficiency does not outweigh the loss of liberty that would be suffered by many juveniles if they were denied this protection. Therefore, under the test established in *Gault* and its progeny, juveniles are entitled to protection against unreasonable searches and seizures.[34]

III

PARENTAL WAIVER OF MINORS' RIGHTS

A. A Proposed Test: The Competent Minor

The determination that juveniles are constitutionally protected against unreasonable searches and seizures creates a conflict between that right and the parents' right to care for, discipline, and control their minor child.[35] The *Scott K.* majority, however, failed to delineate a rational standard for determining which right should prevail in future

32. *Cf. In re* Gault, 387 U.S. at 44 (failure to provide right to cross-examination, notice of charges, and protection against self-incrimination).

33. Fear of such an effect was one of the reasons advanced by the U.S. Supreme Court for denying juveniles the right to trial by jury in McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1970).

34. Flannery comes to a similar conclusion. If the U.S. Supreme Court were to apply its balancing test to the question of whether fourth amendment protections should be extended to juveniles, he says, "the balance should be struck in favor of extending the exclusionary rule to the juvenile court." Flannery, *supra* note 24, at 161.

35. *See* Wisconsin v. Yoder, 406 U.S. 205 (1972) (allowing Amish parents to withdraw their children from public schools before the age required by state law); Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925) (invalidating a law requiring parents to send their children to public rather than parochial schools); Meyer v. Nebraska, 262 U.S. 390 (1923) (invalidating a law prohibiting the teaching of the German language to children).

cases, stating only that "[t]his court has insisted that a minor's due process right be protected even when the right imposes a burden on parents or limits parental control."[36]

This Note proposes that parents should not be able to waive a minor's right to be free from unreasonable searches and seizures if the minor is competent to comprehend and assert his rights. This standard is justified on two grounds. First, since a minor can knowingly and intelligently waive his constitutional rights,[37] it would be incongruous to hold that he cannot also assert them. Second, it furthers the interests of both the child and the state, and adequately protects those of the parents.

1. Capacity of the Minor

The first argument for allowing the competent minor to assert his constitutional right to be free from unreasonable searches and seizures is that it follows logically from the California Supreme Court's decision that a competent minor can waive his constitutional rights to remain silent and to be represented by counsel. In *People v. Lara*,[38] the court rejected the proposition "that every minor is incompetent as a matter of law to waive his constitutional rights to remain silent and to an attorney unless the waiver is consented to by an attorney or by a parent or guardian . . . ."[39] Therefore, a waiver of these rights by a minor is valid if done knowingly and intelligently.[40]

The *Lara* court's approach demonstrates that the key factor in determining whether a child can waive his constitutional rights is the child's individual capacity rather than the presence or absence of parental consent. While that case did not involve a search and seizure, and absence of parental consent is less extreme than opposition to parents' express wishes, the minor's competence should, by analogy, also be the key factor in determining whether a child can *assert* his constitutional rights. It would be incongruous and inequitable to allow the competent minor to waive his constitutional rights but to refuse to allow him to assert these same rights. Therefore, where the minor knowingly and intelligently asserts his rights, this assertion should prevail regardless of his parents' desires.[41]

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36. 24 Cal. 3d at 403, 505 P.2d at 110, 155 Cal. Rptr. at 676.

37. People v. Lara, 67 Cal. 2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967).

38. *Id.*

39. *Id.* at 378-79, 432 P.2d at 212, 62 Cal. Rptr. at 596.

40. *Id.* at 379, 432 P.2d at 212, 62 Cal. Rptr. at 596.

41. While the analogy between the child's assertion and waiver of his constitutional rights is useful in establishing that courts should focus on the minor's competence in determining whether parents can waive his constitutional rights, the comparison breaks down at some point. For example, this presumption is not appropriate in cases involving a minor's waiver of his constitutional

2. Policy Considerations

The second argument is that protection of juveniles against unreasonable searches and seizures follows from a balancing of the interests of the parent, the child, and the state.[42]

The minor's interest in this right is in avoiding the stigma and loss of liberty that could result from the admission of disputed evidence in a delinquency hearing.[43] The parents' interest is in their ability to raise their child as they see fit and in maintaining discipline in the home.[44] While both these interests are important, three factors indicate that the minor's interests should prevail.

First, there is not a sufficient nexus between allowing the parent to waive the child's search and seizure rights and enhancing parental authority or strengthening the family unit to permit such a waiver. The need for such a nexus was demonstrated in *Planned Parenthood v. Danforth*,[45] which involved a state statute requiring parental consent for a minor to get an abortion. In holding that the statute violated the minor's right to privacy, the U.S. Supreme Court stated: "[i]t is difficult . . . to conclude that by providing the parent with absolute power to overrule a determination, made by the physician and his minor patient, to terminate the patient's pregnancy will serve to strengthen the family unit."[46]

Similarly, parental authorization of a police search over the child's objection will not necessarily, or even probably, increase cohesion within the family unit. While permitting parental waiver may establish that parents have legal authority over children, rejection of what the

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rights. Where there is doubt about a person's capacity—as with a minor—he should be given the greatest protection possible from police misconduct. Thus, the minor should be accorded a presumption of competence to assert constitutional rights but a presumption of noncompetence to waive those rights.

42. This balancing test has been used by both the U.S. and California Supreme Courts in cases involving parent-child conflicts. *See, e.g.*, Parham v. J.R., 99 S. Ct. 2493 (1979) (minor's challenge of parents' attempt to have him committed to a mental institution); *In re* Roger S., 19 Cal. 3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977) (same).

A possible objection to the resolution of parent-child conflicts through use of a balancing test is the argument that under Wisconsin v. Yoder, 406 U.S. 205, and cases cited therein, the parents' right to care for, discipline, and control their minor child is subject to limitation by the state only "if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens." 406 U.S. at 234. This view was espoused by Justice Clark in his *Scott K.* dissent. *See* text accompanying note 17 *supra*. *Yoder* and its supporting cases are distinguishable from *Seott K.*, however, since those cases involved attempts by the state to restrict the parental right to control the child rather than the child's assertion of his constitutional rights. In fact, the *Yoder* court noted that "[t]he state's argument proceeds without reliance on any actual conflict between the wishes of parents and children." 406 U.S. at 232.

43. *See* text accompanying note 32 *supra*.

44. 24 Cal. 3d at 405, 595 P.2d at 111, 155 Cal. Rptr. at 677 (Clark, J., dissenting).

45. 428 U.S. 52 (1976).

46. *Id.* at 75.

child feels as a justifiable constitutional claim will not tend to strengthen the parents' control over their child. Rather, it might weaken this control, due to the resentment it would be likely to produce.

Second, the parents' interest in controlling and disciplining their child would be adequately protected under the proposed standard, since they would retain the right to conduct a private search or to authorize a police search of his property under most circumstances. The constitutional prohibition of unreasonable searches and seizures applies only to government conduct.[47] Thus, the parents' ability to conduct a private search of their child's property would not be diminished.[48] Moreover, the parents would still be able to consent to a police search of much of their child's property under the third-party consent doctrine. In California, a third party that has "joint control or access to places or items to be searched [that would] indicate that the person authorizing the search has the authority to do so"[49] may validly consent to a search of those places or items. Since the parents have such an interest in the house generally,[50] including their child's bedroom and "the furniture therein, i.e. the dresser, dresser drawers and bed,"[51] they may validly consent to a search of those areas. Only that property over which they have no interest or control, such as Scott's toolbox, is excluded from this authority.[52]

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47. Stapleton v. Superior Court, 70 Cal. 2d 97, 100, 447 P.2d 967, 968-69, 73 Cal. Rptr. 575, 576-77 (1968).

48. Very little police involvement is required, however, for a search to be considered government action for constitutional purposes. In Lustig v. United States, 338 U.S. 74, 78-79 (1949), the Court stated that

> [t]he decisive factor . . . is the actuality of a share by a federal official in the total enterprise of securing and selecting evidence by other than sanctioned means. It is immaterial whether a federal agent originated the idea or joined in it while the search was in progress. So long as he was in it before the object of the search was completely acomplished, he must be deemed to have participated in it.

See also Stapleton v. Superior Court, 70 Cal. 2d at 103, 447 P.2d at 970, 73 Cal. Rptr. at 578, in which the court found that "the police need not have requested or directed the search in order to be guilty of 'standing idly by'; knowledge of the illegal search coupled with a failure to protect the petitioner's rights" is sufficient for it to be considered a police search.

49. People v. McGrew, 1 Cal. 3d 404, 412, 462 P.2d 1, 6, 82 Cal. Rptr. 473, 478 (1969). *See also* People v. Hill, 69 Cal. 2d 550, 446 P.2d 521, 72 Cal. Rptr. 641 (1968); People v. Smith, 63 Cal. 2d 779, 409 P.2d 222, 48 Cal. Rptr. 382 (1966). The federal standard, as set forth in United States v. Matlock, 415 U.S. 164, 171 (1974), is that a third party consent is valid when that party "possess[es] common authority over or other sufficient relationship to the premises or effects sought to be inspected."

50. *See, e.g.*, Woodward v. United States, 254 F.2d 312 (D.C. Cir.), *cert. denied*, 357 U.S. 930 (1958); Maxwell v. Stephens, 229 F. Supp. 205 (E.D. Ark. 1964).

51. People v. Daniels, 16 Cal. App. 3d 36, 45, 93 Cal. Rptr. 628, 632 (4th Dist. 1971).

52. *See, e.g., id.*; People v. Cruz, 61 Cal. 2d 861, 395 P.2d 889, 40 Cal. Rptr. 841 (1967) (police could not search boxes and suitcases belonging to a friend of the party consenting, even though found in the consenting party's apartment); People v. Eagan, 250 Cal. App. 2d 433, 58 Cal.

Third, the minor's interests in liberty and in avoiding stigma cannot be adequately protected by other means. The minor's parents can be generally expected to act in their child's best interests, but this may not always be the case. The interests of the child, in some situations, might conflict with those of his parents, or with his parents' perceptions of justice. In such a situation, the parents might choose to advance their interests to the detriment of those of their child. Thus, only if the minor is given the responsibility to waive or assert his rights on the basis of his own interests, regardless of those of his parents, can his interests be fully protected.

There are several state interests involved here. The most important interest is in obtaining justice in the individual case. Some might argue that "justice" means only the prevention of crime and the punishment of criminals. While these are important considerations, they are not as important as the protection of individual rights. As the U.S. Supreme Court said in *Weeks v. United States*,[53] "[t]he efforts of the courts to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in the fundamental law of the land."[54] Thus, when the punishment of a criminal and the protection of a fundamental right conflict, it is the right that must prevail.

Another state interest is in promoting the use of search warrants by the police. This interest "rests upon the desirability of having magistrates rather than police officers determine when searches and seizures are permissible and what limitations should be placed upon such activities."[55] The proposed standard would further this interest. Police officers, faced with the possibility that the evidence gained from a search of a minor's possessions, if based on parental consent, would be suppressed, would have a direct incentive to obtain a warrant whenever practicable.

The state also has an interest in maintaining the integrity of the judicial system.[56] As pointed out in *Gault*, this requires the juvenile court to present "the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process . . . ."[57] If the parents can override a competent minor's assertion of his constitutional rights, this interest would not be furthered, since

Rptr. 627 (2d Dist. 1967) (search of minor's kitbag unreasonable even though consented to by minor's stepfather, with whom the minor lived).

53. 232 U.S. 383 (1914).

54. *Id.* at 393.

55. Trupiano v. United States, 334 U.S. 699, 705 (1948).

56. *See* Mapp. v. Ohio, 367 U.S. 643, 659 (1961).

57. 387 U.S. at 26.

" 'even the juvenile who has violated the law may not feel that he is being fairly treated' "[58] under such a rule.

Finally, the state has an interest in preserving both the authority of parents and the unique nature of the juvenile court system. As has been shown above,[59] these interests would not be harmed if the proposed standard were adopted. Therefore, since the interests of the state and of the child would be furthered by the proposed standard and the interests of the parent would not be harmed by it, the competency standard is justified.

B. Application of the Competency Test

While the California courts have never decided on a minor's competency in the search and seizure context before, the general task of determining a minor's competence and maturity is not new to them. In *Bellotti v. Baird*,[60] for example, the U.S. Supreme Court held that a minor could have an abortion over her parents' objection if she demonstrated, in court or at an administrative hearing, "that she is mature enough and well-informed enough to make her abortion decision, in consultation with her physician, independently of her parents' wishes."[61] And in *People v. Lara*,[62] the California Supreme Court stated that in determining if a minor has intelligently waived a right, the totality of the circumstances should be examined, including the child's age and "such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement."[63] The *Lara* test, because it does not rely on any single, arbitrary factor and because California courts have experience in applying it, is the preferable standard in the search and seizure context.

The police[64] and the courts, however, need a more workable rule than a strict competency test would provide. Competency is a difficult issue, and the trial courts should be given some guidance toward its

58. *Id.*, *quoting* S. Wheeler, JUVENILE DELINQUENCY—ITS PREVENTION AND CONTROL 33 (1966).

59. On parental authority, see notes 47-52 and accompanying text *supra*; on the unique nature of the juvenile court system, see notes 33-34 and accompanying text *supra*.

60. 99 S. Ct. 3035 (1979).

61. *Id.* at 3048 (footnote omitted). *See also* Wisconsin v. Yoder, where Justice Douglas argued that the interests of the child should have been considered in that case because the minor was "mature enough to express potentially conflicting desires . . . ." 406 U.S. at 242 (Douglas, J., dissenting).

62. 67 Cal. 2d 365, 432 P.2d 202, 62 Cal. Rptr. 586 (1967).

63. *Id.* at 383, 432 P.2d at 215, 62 Cal. Rptr. at 599.

64. This standard would act as an incentive for the police to obtain warrants where practicable. *See* text accompanying note 55 *supra*. However, if the police have no warrant and there are no exigent circumstances, the deterrent effect of this standard on police conduct is doubtful, since they might decide to conduct a search based on parental consent on the chance that the state could prove the minor to be noncompetent.

resolution. Therefore, this Note proposes that minors aged fourteen and above be accorded a rebuttable presumption of competence. Under this standard, the state would have the burden of showing, by a preponderance of the evidence, that a minor aged fourteen or above is noncompetent if any evidence gained from a search done on his parents' consent is to be admitted. Where the minor is under fourteen, the burden of proof would shift, requiring the minor to demonstrate competence in order to have the evidence excluded.

While the selection of fourteen as the age at which this presumption arises is necessarily somewhat arbitrary, it is logically justified and is supported by California law. As the California Supreme Court pointed out in *In re Roger S.*:[65] "[t]raditionally, and modernly by statute, minors have been presumed competent to accept responsibility for criminal acts at age 14. It would be anomalous indeed if they were not also presumed to have sufficient capacity to exercise due process rights at that age."[66] Thus, while the type of understanding needed to form criminal intent may differ from that needed to comprehend due process rights, the analysis applies to both: a minor should be able to take steps to protect himself from police misconduct concerning the same criminal acts for which he is presumed capable of accepting responsibility.

CONCLUSION

Although the majority opinion in *In re Scott K.* was little more than a series of conclusory statements, its result was sound. By extending search and seizure protection to juveniles, the court continued the *Gault* policy of granting juveniles essential due process rights, the deprivation of which could have serious consequences for the minors involved. In determining that this right cannot be summarily waived by the minor's parents, the court came to a result justified by the competent minor's ability to waive his constitutional rights and by a balancing of the interests of the child, the parent, and the state.

The court failed, however, to develop a standard to be used in future search and seizure cases involving juveniles. This Note proposes that a minor should be able to assert his right to be free from unreasonable searches and seizures if he is competent to comprehend that right, and that his parents should not be permitted to waive it. For practicality, the competence of a minor aged fourteen or above should be presumed, subject to rebuttal at an evidentiary hearing. This standard furthers the minor's interests in liberty and in avoiding stigma, while protecting the parents' interest in familial control and furthering the

65. 19 Cal. 3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977).

66. *Id.* at 931, 569 P.2d at 1292, 141 Cal. Rptr. at 304 (citations omitted).

state's interests in obtaining justice, encouraging the use of warrants for police searches, and maintaining the integrity of the judicial system.

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