

STATE BOARD OF EDUCATION

STATE OF GEORGIA

LEMUEL LACKEY,

Appellant,

vs.

**CLAYTON COUNTY
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 1994-17

DECISION

PART I

SUMMARY

This is an appeal by Lemuel Lackey (Appellant) from a decision by the Clayton County Board of Education (Local Board) to terminate his teaching contract because a gun was found in his car by two students who were repairing the brakes on Appellant's car. Appellant claims there was no evidence to support the Local Board's decision, and the Local Board acted arbitrarily because he was unaware the gun was in the car since the gun was placed under the front seat of his car without his knowledge. The Local Board's decision is reversed.

PART II

FACTUAL BACKGROUND

Appellant was in his third year as a physical education teacher at Lovejoy High School in Clayton County. On December 11, 1993, Appellant visited his parents. His father borrowed his car to retrieve a hunting dog. Appellant's father placed a .25-calibre pistol under the front seat. When Appellant's father returned home, he forgot about the pistol under the seat and failed to retrieve it or tell Appellant about it.

The following Tuesday, December 14, 1993, Appellant took his car to the Power Transportation Lab at Lovejoy High School so the students could obtain experience working on real problems. During the afternoon, two students assigned to repair the car accidentally dropped the car keys into the space between the center console and the driver's seat of the two-seat sports car. When he looked under the driver's seat to locate the keys, one of the students discovered the pistol. The two students reported their discovery to the automotive instructor. The automotive instructor locked the car and went in search of Appellant. The two students went to the principal's office and reported their discovery to the principal.

A security officer and an assistant principal recovered the pistol from the car. The pistol was under the seat in a holster and not visible to anyone sitting in the car or looking into the car. The pistol had six rounds of ammunition in the clip. Appellant told the security officer that he thought the gun was his brother's.

Appellant was charged with possessing a weapon on campus. The Local Board held a hearing on January 10, 1994. At the conclusion of the hearing, the Local Board voted to terminate Appellant's teaching contract. Appellant filed a timely appeal to the State Board of Education.

PART III

DISCUSSION

Appellant argues on appeal that he did not violate the Local Board's "zero tolerance" policy against weapons on campus because he was unaware the gun was under the front seat of his car. Alternatively, he argues that even if he violated the policy, his lack of knowledge prevented a finding of good and sufficient cause to terminate his contract.

The Local Board argues that its policy is reasonable because of the need to protect its students, and because there was evidence to sustain the decision. The Local Board claims that Appellant's lack of knowledge does not provide any justification for endangering students by giving them access to a gun.

The only issue in this case is whether Appellant was aware the gun was in his car. "In all hearings, the burden of proof shall be on the school system" O.C.G.A. § 20-2-940(e) (4). The Local Board contends that knowledge can be inferred in the absence of any direct evidence of knowledge based upon the circumstantial evidence, citing the court decisions in Ledesma v. State, 251 Ga. 487 (1983), Burrell v. State, 171 Ga. App. 648 (1984), and Dominy v. Mays, 150 Ga. App. 187 (1979), and State Board of Education decisions in Roderick J. v. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991), Crosby v. Appling Cnty. Bd. of Educ., Case No. 1991-32 (Ga. SBE, Mar 12, 1991), and Medeiros v. Clayton Cnty. Bd. of Educ., Case No. 1992-21 (Ga. SBE, Sep. 10, 1992).

Unlike the instant case, in each of the cases cited by the Local Board, corroborating evidence existed concerning the central finding. In the instant case, there was no evidence to show that Appellant knew or could have known that the gun was under the car seat. On the contrary, the only evidence was that Appellant did not know the gun was under the seat. The State Board of Education concludes that the Local Board failed to carry the burden of proof.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that there was no evidence to support the Local Board's decision. The Local Board's decision, therefore, is

REVERSED.

This 12th day of May, 1994.

Mr. Billingslea, Mrs. King, Mr. Sessoms and Mr. William were not present. Mr. Lathem's seat is vacant due to his resignation effective December 31, 1993.

Robert N. Brinson
Vice Chairman for Appeals