COURT OF APPEALS OF CHESAPEAKE

Present: Judges Lemaire, Alcaldo and Schulte
Argued at Richmond, Chesapeake

PARKASH SINGH

v.

PYTHAGORAS INNOVATION ACADEMIES

OPINION BY
JUDGE RICHARD LEMAIRE
MAY 18, 2020

FROM THE CIRCUIT COURT OF THE CITY OF BALTIMORE

Mr. Parkash Singh argues on appeal that the Circuit Court of the City of Baltimore erred in finding that appellee Pythagoras Innovation Academies did not violate the First Amendment or the Protecting Religious Expression Act by expelling Mr. Singh as a student due to his possession of an unsheathed kirpan. We disagree and affirm the Court's decision.

I. BACKGROUND

The record shows that appellant Mr. Singh was enrolled at Pythagoras Innovation Academies, a public charter school located in Baltimore's Charles Village neighborhood, from 2017 until his expulsion in 2020.

Mr. Singh, a student in his last year of high school, is a devout, practicing member of the Sikh faith, a religion founded by Guru Nanak that originates from the Indian subcontinent in the 15th century. To many in the Sikh faith, the wearing of the kirpan, a ceremonial sword of various shapes and sizes, is a religious command. See Eleanor M. Nesbit, *Sikhism: A Very Short Introduction* (2016). Mr. Singh subscribes to this religious command and has, since the age of seven, worn the kirpan in his daily life. His kirpan is a

small dagger with a four-inch blade, sheathed in a metalic cover that is attached at all times to his belt.

The issue of Mr. Singh's kirpan is one which has confronted the school on several occasions. Upon enrollment as a sophomore transfer student, the school administration reached an agreement with Mr. Singh's parents that he be allowed to wear the ceremonial blade so long as it remained fully sheathed on all occasions while on school premises. This arrangement went without incident for the first year of Mr. Singh's time at the school, but this changed on October 22, 2018, when he unsheathed the kirpan during recess after a friend asked to see the weapon. For this offense, Mr. Singh was suspended for five days and received a stern warning that a repeat offense may lead to more severe consequences.

The second incident, and the subject of the instant action, occurred on March 26, 2020. During a kickboxing unit in physical education class, Mr. Singh performed a high kick and, in the process, the kirpan came loose from its cover and fell onto the ground in plain sight of his classmates. Citing student safety concerns, the instructor attempted to confiscate the kirpan for the remainder of the class period, but Mr. Singh refused to surrender the blade on account of his religious commandments and was consequently dismissed from classes for the remainder of the day.

On March 28, Mr. Singh was summoned to a meeting with Principal Samantha Chow and informed that he was in violation of the Code of Student Conduct and, this being the second infraction, he would be expelled at the end of the academic year. The provision of the school rules cited by Ms. Chow reads:

> As a Pythagoras Academies Spartan, you are expected to show your school spirit and always behave in accordance to these rules. Don't forget: our Spartan values are equality, cooperation and nonviolence.

> The first rule is that Spartans don't hurt others. Weapons are not allowed on school premises under any circumstances without the written approval of the Principal. This includes any blade, explosive and firearm, whether operable or otherwise, along with any non-weapons being used as weapons (see Appendix). If you break this rule, you will be suspended from school for no less than one month and may face expulsion at the discretion of the Principal.

The appendix to the Code further clarifies that:

> A weapon is any tool that can be used to hurt another student or destroy school property. Weapons include, but are not limited to, guns (including fake, toy or "BB" guns), bullets, knives (including pocket knives and pen knives), swords, daggers, shanks, explosives, razors, blades, bats, clubs, brass knuckles, bombs, fireworks/firecrackers, "tasers" and any other tool or device that could be reasonably confused for a weapon.

The trial court held that Mr. Singh's claim implicated a First Amendment right and, applying strict scrutiny, found that the protection of student safety was a compelling government interest and that a ban on weapons on school grounds was narrowly tailored to further this goal. The court rejected Mr. Singh's argument that a religious exemption would be a less restrictive means towards the same goal, finding that exemptions risked undermining the integrity of a weapons ban. With regard to the state law claim, the Court determined that, the presence of a weapon being sufficient per se to establish the existence of a threat to others, the Act does not protect Mr. Singh's right to the kirpan on school premises.

II. ANALYSIS

An appellate court reviews questions of law de novo. *Rollins v. Commonwealth*, 37 Va. App. 73, 78 (2001). In the instant case, we are presented on appeal with two distinct claims: that Mr. Singh's expulsion violated the First Amendment, or alternatively violated the state Protecting Religious Expression Act (PRE Act). Both are pure questions of law, and neither party disputes the evidentiary facts established at trial.

A. Free Exercise Clause

Appellant first challenges the trial court's determination that the school did not infringe upon the First Amendment in expelling Mr. Singh. Citing the standard established in *Robert Carey v. Dixie Inn*, 101 M.S.Ct. 112 (2020), the court held that the school's actions must be held to strict scrutiny, but that the school's policy is both narrowly-tailored and furthers a compelling interest.

The trial court's use of the strict scrutiny standard is inappropriate. Although *Dixie Inn* purportedly establishes strict scrutiny as the standard of review for rules of general applicability, 101 M.S.Ct. at 112 ("even a neutral law of general applicability must meet the standard of strict scrutiny where the law substantially burdens the free exercise of religion") (citations omitted), the Court immediately proceeds in its analysis to ignore its own finding and shift the burden of proof onto the plaintiff. *Id.* ("[Plaintiff] failed to demonstrate that the the [sic] compelling government interest in combating discrimination can be advanced while allowing for religious exceptions.") (citations omitted). This is consistent with no form of strict scrutiny that we are aware of, since, of course, longstanding precedent dictates that the burden of proof ought to fall squarely on the state. *Horen v. Commonwealth*, 23 Va. App. 735, 748 (1997); see also *In re Dismemberment Abortion Ban Act*, 101 M.S. Ct. 106 ("Our precedent does not place the burden upon the plaintiff's [sic] in these cases.").

We can only conclude from this contradiction, since we are precluded from entertaining the possibility that the Supreme Court has made a mistake, see generally *Dismemberment Abortion Ban Act*, *supra* ("Obviously the Court below cannot overrule our precedent, regardless of whether it thinks it is out of date."), that the reference to strict scrutiny in *Dixie Inn* was merely dicta and that *Employment Division v. Smith*, 494 U.S. 872 (1990), remains controlling precedent.

Under the *Smith* standard, "generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified by a compelling governmental interest." 494 U.S. at 892. There is little contention that a prohibition of weapons on school grounds is such a neutral, generally-applicable regulation. Consequently, the regulation at hand does "not require heightened First Amendment scrutiny even though [it diminishes] some people's ability to practice their religion." *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 579 (1991). See also *Free Locke v. Davey*, 540 U.S. 712, 721 (2004).

The permissive tier of rational basis review requires "only that the classification challenged be rationally related to a legitimate state interest." *New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). We begin our analysis by noting the well-established proposition that protecting the physical safety of minors is a legitimate, even compelling, state interest. *Sable Communications v. FCC*, 492 U.S. 115, 126 (1989). The rational connection between this interest and the school's weapons policy, in our estimation, is self-evident: eliminating weapons from school premises promotes the safety of students, since weapons are associated with increased violence. See Thomas R. Simon, et al., *Students who carry weapons to highschool: comparison with other weapon-carriers*, 24 Journal of Adolescent Health 340 (1999).

The dissent asks us to cast away the well-established foundations of First Amendment jurisprudence in favor of so-called 'common sense,' but "common sense is a collective noun, like religion: there is not just one common sense." Antonio Gramsci, *Selections from the Prison Notebooks* (1971). In our society of laws, we cannot countenance the proposition that the Constitution dictates that the esoteric belief systems of certain subsets of the population should override general, religiously-neutral laws designed to protect the public safety. And as we have explained above, we find the idea that the vague and confused line of reasoning in *Dixie Inn*'s analysis supersedes the clear command of *Smith* to be unpersuasive.

As Mr. Singh's expulsion did not violate the Free Exercise Clause and the school policy in question clears rational basis review, we conclude that the First Amendment claim must fail.

B. Protecting Religious Expression Act

Appellant further challenges the trial court's determination that the school's decision falls within the exclusion clause of the Protecting Religious Expression Act. The Act at section 3(a) provides that:

> No school, governmental agency or non-governmental organization that receives either full or partial funding from the Commonwealth may institute any ordinance, rule or regulation that prohibits, restricts or penalizes the wearing of any garments or accessories that are congruent with genuinely-held religious beliefs.

The Act further includes an exclusion clause which reads:

> This subsection does not apply to garments or accessories that are obscene or otherwise pose a threat to the safety of people around them. Schools should always make accommodations to serve the religious needs of citizens of Chesapeake in any

way a reasonable person shall identify to meet the needs while respecting safety [sic] of others.

We first address the question of whether the kirpan falls within the protection of section 3(a)—the answer is undoubtedly yes. As previously established, the kirpan is an accessory that is fundamental to the practice of Sikhism, and it is undisputed by either party that Mr. Singh is a devout and genuine follower of the faith. His kirpan unquestionably constitutes an accessory congruent with a genuinely-held belief.

The more difficult question is whether the school policy is covered by the exclusion clause. As we explain below, we believe that it does.

As a matter of law, a dagger is a deadly weapon because of its extreme potential for harm and lack of other common uses. Cf. *Floyd v. Commonwealth*, 191 Va. 674, 683 (1950) (an ax is a deadly weapon per se). The kirpan falls within this category, and its mere presence in a school environment thus poses a threat to the safety of other students. Consequently, we hold that the restriction of the kirpan falls outside the protections of the PRE Act and the school's policy is lawful.

The dissent argues that the kirpan should not be treated as an ordinary knife because the Sikh faith does not permit adherents to employ the blade as a weapon. Though Mr. Singh's religious convictions may prohibit him from using the knife offensively, its presence on school premises nonetheless tangibly increases the danger to other students. For instance, the kirpan may fall into the hands of another student with no such ethical command or, as occurred in the instant case, it may accidentally become unsheathed and potentially cause injury to others.

The dissent further argues that our interpretation of the exclusion clause ignores its second sentence concerning accommodations. In accordance with elementary principles of

statutory interpretation, we take the Act at its plain meaning—the language of the second sentence, which begins with the distinctly advisory language "schools should," is merely a recommendation that schools are requested to follow. As it is clearly non-binding upon the school, we decline to read compulsion into the Assembly's suggestion.

III. CONCLUSION

For the foregoing reasons, we hold that the school's dismissal of Mr. Singh did not violate the First Amendment or the Protecting Religious Expression Act. Accordingly, we affirm.

Affirmed.

Alcaldo, J., dissenting.

"[Justice] ever has been, and ever will be, pursued until it be obtained, or until liberty be lost in the pursuit." Alexis de Tocqueville, 1 *Democracy in America* (1835). In today's decision, the majority has pursued justice blindly to the ends of the world, only to lose at the end of its journey one of the most cherished liberties of our nation: the freedom of religion.

Deference to public authorities must stop where common sense begins. In the case before us today, everyone agrees on the essential premise: that the kirpan is a sacred symbol to the Sikh faith, that Mr. Singh is not a threat to public safety, and that the events that led to expulsion were an unfortunate accident. Common sense dictates one outcome; the Court has chosen the other.

I

The trouble begins with the majority's straitjacketed interpretation of the First Amendment, which ignores not only modern precedent but also lacks the most basic common sense.

"That they are endowed by their Creator with certain unalienable rights…" From the start of the Republic, Americans have looked to faith for guidance. Of course, a nation as expansive and diverse as the United States is home to various disparate groups, each with its own unique creeds and beliefs. The Founding Fathers, and indeed every generation of Americans since, has consequently seen it proper to enshrine within our Constitution the "freedom of every person to worship God in his own way." President Franklin D. Roosevelt, State of the Union Address (Jan. 6, 1941). "In fact, whoever has really practised a religion knows very well that it is the cult which gives rise to these impressions of joy, of interior

peace, of serenity, of enthusiasm which are, for the believer, an experimental proof of his beliefs." Émile Durkheim, *The Elementary Forms of the Religious Life* (1912).

Religious freedom is therefore one of the most sacred liberties of the American republic, a fact recognized by the Supreme Court when it reaffirmed the strict scrutiny standard in religious discrimination cases, sub silentio with *In re Stopping Abuse and Indoctrination of Children Act of 2015*, 100 M.S.Ct. 111 (2015), and explicitly in *Carey v. Dixie Inn*, 101 M.S.Ct. 113 (2020). The majority's reliance on *Smith* is misplaced in light of this more recent precedent, as some of our sister courts have observed. *Carey v. Dixie Inn*, Case No. 19-21 (Dix. 2019) (rev'd on other grounds) ("*Smith* is simply no longer an applicable test.").

Strict scrutiny is the "most rigorous and exacting standard of constitutional review." *Miller v. Johnson*, 515 U.S. 900, 920 (1995). To survive strict scrutiny, "the law must be a necessary element for achieving a compelling governmental interest." *Mahan v. NCPAC*, 227 Va. 330, 336 (1984). In turn, necessity requires the law to be "the least burdensome means available for attaining the governmental objective in question." *Id.* I do not question the majority's observation that the state has a compelling interest in protecting student safety, but, in my estimation, Appellee has failed to demonstrate that the presence of the kirpan has a real—not merely speculative—impact on the safety of students, and thus that a religious exemption from the rule would undermine the objective. Ergo, the school policy's restriction on the kirpan does not materially improve upon the advancement of the interest in question and fails the narrow tailoring prong of the test.

As the school policy as applied to the instant case cannot withstand strict scrutiny, I would hold that Mr. Singh was deprived of his free exercise rights under the First Amendment.

II

If the majority is unwilling to accord the protection of the First Amendment to Mr. Singh, one would be excused at least to believe that the Protecting Religious Expression Act, an act expressly passed by the Assembly to protect religious accessories, would still afford him relief. However, in a cruel twist, the majority has clipped the law's wings before it could even take off by constricting its erstwhile expansive protections into oblivion.

The majority's holding that all knives are per se deadly weapons is not only conclusory, it is incorrect in light of our longstanding precedent that "whether a weapon is to be regarded as deadly often depends more on the manner in which it has been used than on its intrinsic character." *Pannill v. Commonwealth*, 185 Va. 244, 254 (1946). The kirpan is no mere dagger because its dominant use is as a religious icon and its offensive use is strictly prohibited by Sikh teachings. To a devout Sikh, a kirpan is no more a weapon than a box cutter is to a mailman, as it "is worn in devotion to truth and should only be drawn as a last resort in a righteous cause." W. Owen Cole, *Understanding Sikhism* (2004).

Moreover, the ruling today ignores the clear intent of the Assembly that the protections of the PRE Act ought to be interpreted liberally. The Act's exception clause provides that "[s]chools should always make accommodations to serve the religious needs of citizens of Chesapeake in any way a reasonable person shall identify to meet the needs while respecting safety of others." Far from the majority's interpretation that the remotest sign of danger triggers the exception clause, the legislature stipulated that a balancing test be applied between religious freedom and student safety interests in the eyes of a reasonable person.

The religious freedom interest claimed by Mr. Singh under the Act is real, reasonable and simply palpable. A reasonable person would clearly understand the

spiritual importance of the kirpan to any faithful Sikh, and acknowledge the deep ethical quandary that would emerge if Mr. Singh was forced to choose between his faith and his education. In contrast, a reasonable person would assess the security risk to be low, as Mr. Singh is a model student and responsible kirpan owner who has attended Pythagoras Academies for three years with little incident, beside a single youthful misunderstanding of the limitation of the rules. His possession of a small ceremonial blade, even if briefly exposed in an accident, would create at the very most an apprehended sense of danger—one that cannot outweigh the grave injury to Mr. Singh's religious freedom if the school's unjust expulsion is allowed to stand today. Moreover, given that the blade is at all times attached in a metallic constraint to Mr. Singh's belt, I find the majority's conjecture that a danger to student safety may arise from the kirpan falling into the possession of another student to be fanciful.

III

The Court's decision today places unthinking and legalistic adherence to the letter of the law over reason, common sense and the plain intent of the Assembly, legitimizing a clear instance of discrimination against a religious minority in our Commonwealth's schools.

I respectfully dissent.