

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL JAMES PERREAULT,

Defendant-Appellant.

FOR PUBLICATION

January 19, 2010

No. 288540

Grand Traverse Circuit Court

LC No. 08-010586-FH

Before: Talbot, P.J., and O’Connell and Davis, JJ.

O’CONNELL, J. (*dissenting*).

I respectfully dissent.

I would affirm the decision of the learned trial court. The sole issue in this case is whether the assistant principal at Traverse City Central High School had reasonable suspicion that contraband would be found in defendant’s truck. It is a well-accepted principle of law that school officials may search a student’s person or property on the school premises pursuant to the lesser standard of “reasonable suspicion.” See *New Jersey v TLO*, 469 US 325, 341-343; 105 S Ct 733; 83 L Ed 2d 720 (1985). In *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996), our Supreme Court, citing *United States v Sokolow*, 490 US 1; 109 S Ct 1581; 104 L Ed 2d 1 (1989), noted, “Reasonable suspicion entails something more than an inchoate or unparticularized suspicion or ‘hunch,’ but less than the level of suspicion required for probable cause.”

An anonymous tip can provide reasonable suspicion if it is considered along with a “totality of circumstances” that show the tip to be reliable. *People v Faucett*, 442 Mich 153, 169; 499 NW2d 764 (1993). Further, the tip must carry with it sufficient indicia of reliability to support a reasonable suspicion of criminal activity. *Id.* However, a sufficiently detailed tip may provide reasonable suspicion of criminal activity, especially (but not necessarily) when there is independent corroboration of some of the facts. *Id.* at 170-172. However, the *police* may only search a motor vehicle without a warrant if they have probable cause to believe that evidence of a crime may be found therein. *People v Kazmierczak*, 461 Mich 411, 418-419; 605 NW2d 667 (2000). Taken together, this case law leads to one obvious conclusion: although probable cause is necessary to permit a *police* search of a motor vehicle, a school official only needs to have “reasonable suspicion” to search a student’s motor vehicle when it is located on the school premises.

In this case, Rick VanderMolen, the assistant principal at Traverse City Central High School, had been provided with a detailed anonymous tip from the “Silent Observer” program that implicated defendant in drug trafficking. In this case, the only issue is whether the anonymous tip, considered in light of the totality of circumstances, provided VanderMolen with reasonable suspicion that defendant was trafficking in drugs on school property and, consequently, justified his search of defendant’s vehicle.¹ The trial court found that, based on the totality of the circumstances, the tip provided VanderMolen with sufficient indicia of reliability to support a reasonable suspicion of criminal activity. I agree.

The trial court explained why the totality of the circumstances created a reasonable suspicion of criminal activity:

[W]ith respect to Mr. Perreault, [the report] indicates that he traffics in marijuana. That the anonymous witness said that they had seen him actually sell it and that he sells from school, his truck and in East Bay Park in Traverse City.

Well, the truck—actually, I guess it was an S-10, was the testimony—was parked in the parking lot of the Traverse City Central School. So, I guess, is that enough to create a reasonable suspicion that—that Mr. Perreault may be involved in drug dealing and that there might be evidence in his truck when this anonymous report, which is quite detailed, specifically says he sells from his truck. That would seem to me to create a reasonable suspicion.

The trial court then distinguished the standard applied to school officials from the probable cause requirement for a search warrant, stating:

Now, if we’re talking about validating an affidavit for a search warrant, it might require some corroboration in order to make it sufficient to reach the level appropriate to support a search warrant. . . . [R]easonable suspicion is a lesser standard.

A trial court’s factual findings in a ruling on a motion to suppress evidence are reviewed for clear error, and the trial court’s interpretation of the law or application of a constitutional standard is reviewed de novo. *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001). In this case, I cannot find any violation of the constitutional standard, nor can I conclude that the trial court committed clear error.²

¹ Defendant does not challenge on appeal the application of the “reasonable suspicion” standard as the proper standard that must be met to permit a school official to search a student’s vehicle located on school grounds.

² If the anonymous tip in question were a bomb threat or a claim that a weapon was located in the defendant’s vehicle, I suspect that school officials, most parents, and the majority in this case would conclude that because of the imminent threat, exigent circumstances, and the threat of harm to all students in the school, the tip alone would be enough to confer “reasonable suspicion” and justify a search of a student’s vehicle. I would also agree, but I see the
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The tip named four students who were selling drugs on school property. The tipster said that he was aware that these four students were the “big sellers” at Traverse City High School because the tipster had previously been involved in drug activity and one of the “big sellers,” a friend of the tipster, had begun selling marijuana to the tipster’s friends and ex-girlfriend. The tipster said that he had seen all four “big sellers” selling drugs. The tipster warned that drugs were being sold on school property and gave details of how the drugs were being sold. The tipster indicated that defendant “sells from school, his truck and East Bade [sic, Bay] Park in Traverse City,” and indicated that he had seen defendant sell marijuana.³ The tipster also noted that the drug trafficking that he was reporting was the largest threat to the school.

Admittedly, the tipster provided more detailed information about one of the other “big sellers,” including information that this “big seller” was suspected of selling drugs to a freshman student and kept “a machete in the glove compartment of his blue Ford Explorer.” However, the tipster also provided identifying information concerning the other “big sellers,” including their names, their grades at school, and where they sold drugs. In particular, the tipster specified that defendant drove a truck and that another “big seller” drove a GMC Yukon. I believe that the tip, considered in its entirety, is sufficiently detailed to provide indicia of reliability. I do not think that the majority’s conclusion that “corroborating circumstances” outside of the tip must be

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aforementioned hypothetical as presenting a distinction without a difference. In my opinion, the presence of drugs on school property presents a similarly serious risk of harm to students that parents, school officials, and this Court should not accept. More importantly, the standard that a school official would be permitted to apply in order to justify a search, “reasonable suspicion,” is the same in both situations. The standard does not change simply because the contraband in question is viewed by some as “less threatening.”

On a separate note, some school districts have an official school policy that grants school officials “implied consent” to search a student’s property while that student or that student’s belongings are located on school property. The lower court record is devoid of any evidence whether Traverse City Area Public Schools has such a contractual relationship with parents or students.

³ The Silent Observer screener who took the tipster’s call filled out a tip sheet listing information that she had solicited from the tipster. When asking about defendant’s involvement in drug activity and receiving the tipster’s responses, she recorded the following information:

DRUGS

Regarding: Trafficking **Type:** Marijuana **Witnessed:** Seen

This information indicates that when asked whether he had witnessed the criminal activity, the tipster said that he had seen defendant trafficking in marijuana. If the tipster was reporting this information secondhand, I would reasonably assume that a trained call screener would note that the information was secondhand on the tip sheet, and not assume that recording the word “seen” would imply that this information was secondhand. In addition, I note that when the call screener recorded information about the “big seller” who was a friend of the tipster and about whom the tipster had significant firsthand information, she indicated that the tipster had “seen” him trafficking in marijuana and ecstasy. I believe that this provides an additional indication that the call screener’s use of the word “seen” to fill in the category “witnessed” indicates that the tipster had admitted seeing these “big sellers” engage in illegal activity firsthand.

present for an anonymous tip to be considered reliable, no matter how detailed and internally consistent the tip itself might be, is necessarily supported by the prevailing case law.

Regardless, there was information corroborating this tip, aiding in a determination that a reasonable suspicion existed to search defendant's vehicle. When Officer Warsecke, who served as a police liaison officer for the school, initially received the "Silent Observer" report, he verified that defendant and the seller with the GMC Yukon drove the vehicles described and noted this on the report. He also verified that another "big seller" who was not reported as having a vehicle did not, in fact, have a car registered with the school. VanderMolen also independently knew that defendant drove a truck, as was stated in the report, because defendant had driven recklessly in the parking lot earlier in the school year, and VanderMolen had discussed this behavior with defendant and his mother. Further, defendant's name appeared to be associated with some drug-related problems that were occurring at a local junior high school. Finally, just before VanderMolen began his search of the vehicle, he noted that he could see a plastic bag, later found to contain defendant's marijuana and related drug-trafficking supplies, through the truck window, although he could not determine what was inside that bag.

I believe that this information, taken together, was sufficient to provide VanderMolen with a "reasonable suspicion" that defendant was engaged in illegal activity on school grounds and to authorize his search of defendant's truck. Not only was the tip quite detailed and internally consistent, indicating its trustworthiness,⁴ but information in the tip was also corroborated.⁵ VanderMolen did not search defendant's truck because he had a "hunch" that contraband might be found therein. Instead, the tip and corroborating information provided VanderMolen with a particularized suspicion that defendant was engaging in criminal activity in his truck on school grounds, and that contraband was present in the truck. Accordingly, the tip carried with it sufficient indicia of reliability to support a reasonable suspicion of criminal activity, and VanderMolen's search did not constitute a violation of defendant's rights.

Defendant also indicates in his brief on appeal that the tipster likely did not report on defendant's wrongdoing because he had a vendetta against defendant. Instead, defendant claims that the tipster primarily wished to turn in his friend, and his revelation that defendant was also involved in drug dealing was "merely an afterthought that the tipster had no intention of revealing until making the call." This description of the tipster's statements regarding defendant as a "mere afterthought" undermines the notion that the tipster might have wished to falsely accuse defendant of wrongdoing and, serendipitously, provide an additional indication, based on the totality of the circumstances, that the tipster's information concerning defendant was valid and that VanderMolen had a reasonable suspicion to search defendant's vehicle.⁶

⁴ It is well established that often inconsistencies in an individual's statements can indicate that the statement is false. There is no such indication of inconsistencies in this anonymous tip.

⁵ VanderMolen also appropriately chose to search defendant's truck, as opposed to defendant's person or locker, because based on the tip, the truck was the locus of the criminal activity and, hence, the source of danger to the school.

⁶ It appears, instead, that the tipster provided all the information he could on these other "big
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In some ways, I find this case to be analogous to *People v Goforth*, 222 Mich App 306; 564 NW2d 526 (1997), and the doctrine of *in loco parentis*. In *Goforth*, the defendant claimed that his parents did not have the legal right to allow the police to search his bedroom in his parents' house, where evidence of marijuana trafficking activity was found, because he had "a legitimate expectation of privacy" in his bedroom. *Id.* at 308. This Court concluded that there is no absolute rule precluding parents from validly waiving their child's privilege against an unreasonable search of the child's bedroom in their parents' home, and concluded that the facts of this case indicated that an officer could reasonably believe that the defendant's mother had common authority over defendant's bedroom and could consent to the search. *Id.* at 315-316. In a separate concurrence, I noted, "excepting the most unusual of situations, a parent always has the right to consent to the search of the bedroom of a child residing with that parent." *Id.* at 317 (O'Connell, J., concurring). The parent, not the child, is in charge of the household; the child is not in charge of the parent.

A similar relationship exists with schools. School administrators act *in loco parentis*⁷ with students, and "[s]chools . . . are provided a tremendous measure of authority because of their responsibilities *in loco parentis*" *Baker v Couchman*, 271 Mich App 174, 203; 721 NW2d 251 (2006) (O'Connell, J., concurring in part and dissenting in part), rev'd 477 Mich 1097 (2007) (adopting O'Connell partial dissent).

Admittedly, the doctrine of *in loco parentis* does not obviate all of a student's Fourth Amendment protections in a public school setting. *TLO*, *supra* at 336-337. Yet the doctrine helps illustrate the tension placed on school administrators, who must balance their limitations as public employees with their responsibilities to protect students from the myriad of increasingly dire threats facing young people today.⁸ Although it is a delicate balance between preserving order in the school and safeguarding a student's individual rights, this case does not present a close question. Students know that drugs, weapons, and contraband are not permitted on school grounds. Bringing these items onto school property is simply an unacceptable practice in our society and at our schools.⁹ School officials have a responsibility to police the school and create a safe environment for all the students, and in this case, VanderMolen performed his duty

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sellers" and lacked a motivation to lie when doing so. Of course, the presence of marijuana and related trafficking supplies in defendant's truck proves the tipster's statement correct.

⁷ *In loco parentis* is Latin for "in the place of a parent" and is defined as "Of, relating to, or acting as a temporary guardian or caretaker of a child, taking on all or some of the responsibilities of a parent." Black's Law Dictionary (8th ed). "The [United States] Supreme Court has recognized that during the school day, a teacher or administrator may act *in loco parentis*. See *Vernonia Sch. Dist. v. Acton*, 515 U.S. 646, 115 S.Ct. 2386 (1995)." *Id.* A "person *in loco parentis*" is defined as "A person who acts in place of a parent, either temporarily (as a schoolteacher does) or indefinitely (as a stepparent does); a person who has assumed the obligations of a parent without formally adopting the child." *Id.*

⁸ I find it somewhat ironic that the traditional *in loco parentis* standard applied in public schools was weakened just as drugs and violence began their ascendancy as major threats within our schools. See *TLO*, *supra*.

⁹ Many schools even post signs in their student parking lots to this effect.

admirably. He had a reasonable suspicion that defendant was undermining the health and safety of the student body by trafficking marijuana on school grounds. VanderMolen, acting within the confines of the law, did what was necessary to protect the students of Traverse City Central High School from a drug dealer. His actions and diligence should be applauded.

/s/ Peter D. O'Connell