STATE OF MINNESOTA
IN COURT OF APPEALS
A11-936

In the Matter of the Welfare of:
B. M. T., Child.

Filed February 13, 2012
Reversed
Collins, Judge[*]

Rice County District Court
File No. 66-JV-10-3730

Lori Swanson, Attorney General, St. Paul, Minnesota; and

G. Paul Beaumaster, Rice County Attorney, Benjamin Bejar, Assistant County Attorney, Faribault, Minnesota (for respondent state)

David W. Merchant, Chief Appellate Public Defender, Susan J. Andrews, Assistant Public Defender, St. Paul, Minnesota (for appellant B.M.T.)

Considered and decided by Peterson, Presiding Judge; Larkin, Judge; and Collins, Judge.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

In this appeal from a delinquency adjudication of fifth-degree controlled substance crime, appellant challenges the district court's order admitting evidence discovered during a warrantless search of his backpack. Because the search was not based on a

[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

reasonable suspicion that appellant had violated either the law or a school rule, the district court erred by refusing to suppress the evidence. We therefore reverse.

FACTS

Appellant B.M.T. was a student in the Faribault School District, attending both the high school and Focus, a special-education program located several blocks from the high school. B.M.T. was one of 16 full- or part-time students in the Focus program, which shares a building with the Rice County Day Treatment Program, a substance-abuse program for students.

Karen Baldwin, the administrator in charge of both Focus and the treatment program, testified that a staff member approached her and said "there had been a lot of drug talk." The staff member did not elaborate and mentioned no names. When questioned at the suppression hearing, Baldwin could not remember details of the conversation with the staff member. She thought the drug talk involved "using, or accessing" drugs, but there was no indication of contraband then existing on the Focus or treatment-program premises, nor was there reference to any particular student. When the conversation between the staff member and Baldwin occurred, the students were away at the high school for physical-education classes. Not all of the students carry backpacks. Those who did left their backpacks in the Focus classrooms. Baldwin decided to search the backpacks.

Baldwin's stated purpose for the search was to "enforc[e] our policies of not allowing contraband on school grounds." Based on her experience, talk regarding drug use among students "would cause suspicion that someone could have something on

them." In the backpack identified as B.M.T.'s, Baldwin found pills, Tylenol with codeine, in a plastic bag. When Baldwin questioned him, B.M.T. admitted owning the backpack but denied that the pills were his.

After the suppression hearing, the district court ruled that Baldwin "had a reasonable suspicion that there could be some violation of the school rules or state law" and that the search was reasonable in scope. The district court denied the suppression motion. B.M.T. ultimately was adjudicated delinquent of fifth-degree possession of a controlled substance. This appeal followed.

D E C I S I O N

We review the district court's findings for clear error and its rulings on constitutional questions as a question of law subject to de novo review. *State v. Anderson*, 733 N.W.2d 128, 136 (Minn. 2007). A person's right to be free from unreasonable searches and seizures is protected by both the United States and Minnesota Constitutions. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The language of the two constitutions is identical, but even when this is true, the Minnesota courts will "apply the state constitution if we determine that the [United States] Supreme Court has retrenched on Bill of Rights issues, or if we determine that federal precedent does not adequately protect our citizens' basic rights and liberties." *Anderson*, 733 N.W.2d at 140 (quoting *Kahn v. Griffin*, 701 N.W.2d 815, 828 (Minn. 2005)).

The Fourth Amendment prohibition against unreasonable searches, through the Fourteenth Amendment, "protects the rights of students against encroachment by public school officials." *New Jersey v. T.L.O.*, 469 U.S. 325, 333-34, 105 S. Ct. 733, 738

(1985). Although generally a lawful search requires either a warrant or a showing of probable cause, the Supreme Court has held that because of the "special need" of schools to maintain order, neither a warrant nor probable cause is necessary in order to conduct a lawful search of a student. *Id.* at 340-41, 105 S. Ct. at 742. But such student-search exception is not unfettered; it depends on "the reasonableness, under all the circumstances, of the search." *Id.* at 342, 105 S. Ct. at 742. The Supreme Court set forth a two-part test: (1) the search must be justified at its inception; that is, a school official must have "reasonable grounds for suspecting that the student has violated or is violating either the law or the rules of the school"; and (2) the scope of the search must be reasonably related to the circumstances justifying the search. *Id.* at 341-42, 105 S. Ct. at 742-43.[1] The Supreme Court commented that "the requirement of reasonable suspicion is not a requirement of absolute certainty: sufficient probability, not certainty is the touchstone of reasonableness under the Fourth Amendment." *Id.* at 346, 105 S. Ct. at 745 (quotation omitted).

The Minnesota Supreme Court has addressed the question of reasonable suspicion in the context of a search of an offender on probation who had consented to random warrantless searches. *Anderson*, 733 N.W.2d at 138. Just as the United States Supreme Court did with school searches, the *Anderson* court identified probation status as

[1] A somewhat different test applies to random drug tests of students involved in school athletics and other extra-curricular activities. *See Bd. Of Educ. of Indep. Sch. Dist. No. 92 v. Earls*, 536 U.S. 822, 122 S. Ct. 2559, 2569 (2002); *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 664-65, 115 S. Ct. 2386 (1995). These two cases have been distinguished from *T.L.O.*, which "govern[s] the search of an individual student based on a perceived rule violation." *Shade v. City of Farmington*, 309 F.3d 1054, 1060 (8th Cir. 2002).

presenting a "special need" that justifies departure from the normal warrant or probable cause requirements. *Id.* at 136. The supreme court employed a balancing approach, weighing the offender's "individual privacy rights against the state's legitimate interests" under a totality-of-the circumstances approach. *Id.* at 137-38. In doing so, the supreme court concluded that "reasonable suspicion" must be more than "an unarticulated hunch" and must provide "a particularized and objective basis for suspecting a person of criminal activity." *Id.* at 138 (quotations omitted). In order to intrude on a person's privacy interest, there must be a "sufficiently high probability that criminal conduct is occurring." *Id.* (quotation omitted).

We conclude from the record before us that the search of student backpacks was based on nothing more than an unarticulated hunch drawn from general discussion among students regarding drugs, and not justified at its inception. The information Baldwin acted on was simply that the staff member had overheard students engaged in drug talk, but nothing specific to possessing, selling, buying, or using drugs then and there. Moreover, the drug talk was not attributed to named students, and Baldwin agreed that there was no reference to any particular backpack or student, including B.M.T. Apparently, Baldwin acted on the belief that when such "drug talk" occurs, there is a *chance* that someone *could* be found to be in possession of contraband. On this record, the requisite standard of a "sufficiently high probability" that criminal conduct or a violation of a school rule was occurring has not been met; therefore, the search was not based on reasonable suspicion and, thus, was unlawful.

Reversed.