IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. P.C.C., Appellant.	No. 40046-4-II UNPUBLISHED OPINION

Hunt, J. — PCC[1] appeals her juvenile court, misdemeanor, marijuana possession adjudication. She argues that the juvenile court erred in denying her motion to suppress evidence her school's assistant principal obtained while searching her backpack, which she contends was illegal. We affirm.

FACTS

I. Marijuana Possession

On May 29, 2009, 15-year-old Port Townsend High School student PCC arrived at school late and presented the attendance secretary with a fake excuse note, which included her mother's

[1] It is appropriate to provide some confidentiality in this juvenile case. Accordingly, it is hereby ordered that initials will be used in the case caption and in the body of the opinion to identify the parties and other juveniles involved.

forged signature. When the secretary informed assistant principal Patrick Kane about the forged note, Kane summoned PCC from her classroom and asked her to accompany him to his office. As they walked to the principal's office, PCC spontaneously announced, "I am not on meth," catching Kane off guard. Clerk's Papers (CP) at 38. Looking at her quizzically, Kane responded, "I don't understand what you are talking about," to which PCC volunteered, "My mom thinks I am taking meth." CP at 38.

In his office, Kane explained to PCC that he brought her in to ask her about the forged late note. PCC told him that she wrote the note because her mom would not excuse her. Kane explained to PCC that signing her mother's name was forgery, he had questions about her truancy, and, based on her unprompted comment, he was now concerned that she had contraband. Kane and administrative intern Todd Clawson told PCC that they were going to search her backpack; in it they found a book titled, *The Art of Deception*, which had been hollowed out to form a hidden space that contained two lighters and a small purse containing green leafy vegetable matter, which Kane recognized as marijuana.

Kane called the police to report finding the marijuana. Officer William R. Corrigan came to the school to talk to PCC. Kane told Corrigan that PCC had presented a forged absence excuse note to the school, which violation permitted the search by school officials. Corrigan inspected the green leafy vegetable matter and arrested PCC for possession of marijuana.

II. Procedure

The State charged PCC with misdemeanor marijuana possession. PCC moved to suppress the marijuana, arguing that the search was illegal. Kane, the sole witness at the CrR 3.6 hearing,

testified that normally he would not search a student's belongings based on a forged note, but he searched PCC's backpack because she had spontaneously stated, without any questioning by him, "I'm not on meth," which concerned him that there might be some contraband of that nature. Report of Proceedings (RP) at 6.

The juvenile court denied PCC's motion to suppress and issued findings of fact and conclusions of law, including:

> 1. Assistant Principal Patrick Kane is a school official.
> 2. School searches are governed by the Fourth Amendment.
> 3. A search by a school official is reasonable if justified at its inception and if it is reasonable in its scope.
> 4. Mr. Kane had reasonable grounds for suspecting that a search would turn up evidence that showed [PCC] had violated either the law or school rules.
> 5. Mr. Kane's search of [PCC]'s backpack was a result of [PCC]'s own words and the act of turning in a forged note regarding her absence from school.
> 6. The search was limited in its scope and not excessively intrusive.
> 7. The search of [PCC]'s backpack was not accomplished at the request of law enforcement. Law enforcement was summoned after the fact.

CP at 38 (Conclusions of Law 1-7).

PCC stipulated to the facts in the police reports. The juvenile court adjudicated that she had committed misdemeanor marijuana possession. PCC appeals.

ANALYSIS

PCC argues that the assistant principal's search of her backpack was illegal and, therefore, the juvenile court should have suppressed the evidence found inside.[2] We disagree. We review

[2] PCC also argues that she offered an exculpatory statement, not a confession, and, thus, the information used to justify the search lacked probative value. The State does not respond to this argument. Although PCC suggests that the State needs reminding that an exculpatory statement is not a confession, nowhere does the State argue that PCC confessed. Rather, the State argues that her blurted statement created suspicion under the circumstances. Furthermore, although PCC correctly argues that her statement was a denial, not a confession, a denial is not per se

de novo questions involving allegations of constitutional violations. *In re Det. of Strand*, 167 Wn.2d 180, 186, 217 P.3d 1159 (2009).

The Fourth Amendment to the U.S. Constitution and Article I, section 7 of the Washington Constitution protect people from unreasonable searches and seizures and invasions of privacy, respectively[3]. In some circumstances, article I, section 7 provides greater protection than its federal counterpart. *York v. Wahkiakum Sch. Dist. No. 200*, 163 Wn.2d 297, 306, 178 P.3d 995 (2008). But in the school context, Washington courts have generally followed federal analysis,[4] upholding a school official's warrantless search of a student when based on reasonable individualized suspicion.[5] *York*, 163 Wn.2d at 308-09. Here, unlike the random drug testing of

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exculpatory. Here, for example, PCC's denial was suspicious.

[3] U.S. Const. amend IV; Wash. Const. art. I, § 7.

[4] In *York*, 163 Wn.2d at 303 our Supreme Court noted:

> [W]e have never decided whether a suspicionless, random drug search of student athletes violates article I, section 7 of our state constitution. Therefore, we must decide whether our state constitution follows the federal standard or provides more protection to students in the state of Washington.

[5] Although, Washington recognizes lower expectations of privacy for students, the *York* court did not go so far as to adopt a "special need" for a public schools exception to the Fourth Amendment. 163 Wn.2d at 314. The *York* court noted:

> [W]e have not created a general special needs exception or adopted a strict scrutiny type analysis that would allow the State to depart from the warrant requirement [of article I, section 7] whenever it could articulate a special need beyond the normal need for law enforcement. *In the context of randomly drug testing student athletes*, we see no reason to invent such a broad exception to the warrant requirement as such an alleged exception cannot be found in the common law.

163 Wn.2d at 314 (emphasis added). The court further noted, "[W]e have a long history of striking down exploratory searches not based on at least reasonable suspicion." *York*, 163 Wn.2d at 314 (holding unconstitutional random drug testing).

student athletes in *York*, Kane searched PCC's backpack based on individualized suspicion created by her own actions and spontaneous statements. *York*, 163 Wn.2d at 300.

Because of the unique nature of the school environment, our Supreme Court has generally recognized lower expectations of privacy for students as compared to citizens at large. *State v. McKinnon*, 88 Wn.2d 75, 81, 558 P.2d 781 (1977). Division One of our court, for example, (1) has noted that both our State Supreme Court and the United States Supreme Court employ the same "reasonable grounds," not "probable cause," standard in the context of school searches; and (2) concluded that article 1, section 7 affords students no greater protections from searches by school officials than is guaranteed by the Fourth Amendment. *State v. Brooks*, 43 Wn. App. 560, 567-68, 718 P.2d 837 (1986).[6] In addition, the Washington Legislature has expressly authorized a principal's search of a student's possessions on "reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules."[7] RCW 28A.600.230.

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[6] The *York* court observed, "*Brooks* did not involve drug testing and was decided before *Acton*. Nor are we bound to the Court of Appeals' broad language." *York*, 163 Wn.2d at 310 (referring to *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995)).

[7] RCW 28A.600.230 provides:

> (1) A school principal, vice principal, or principal's designee may search a student, the student's possessions, and the student's locker, if the principal, vice principal, or principal's designee has *reasonable grounds to suspect that the search will yield evidence of the student's violation of the law or school rules.* A search is mandatory if there are reasonable grounds to suspect a student has illegally possessed a firearm in violation of RCW 9.41.280.
> (2) Except as provided in subsection (3) of this section, the scope of the search is proper if the search is conducted as follows:
> (a) The methods used are reasonably related to the objectives of the search; and
> (b) Is not excessively intrusive in light of the age and sex of the student and the nature of the suspected infraction.
> (3) A principal or vice principal or anyone acting under their direction may not subject a student to a strip search or body cavity search as those terms are defined

This statute is consistent with the United States Supreme Court's holding that school authorities may conduct a warrantless search of a student without probable cause if the search is *reasonable* under all the circumstances. *New Jersey v. T.L.O.*, 469 U.S. 325, 341, 105 S. Ct. 733, 83 L. Ed. 2d 720 (1985). A search is reasonable if it is justified at its inception and reasonably related in scope to the circumstances that justified the interference in the first place. *T.L.O.*, 469 U.S. at 341. A search is justified at its inception only when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school. *T.L.O.*, 469 U.S. at 342. Examining the scope of searches permitted in the school context, the Supreme Court more recently has held that a school official reasonably searched a 13-year-old student's backpack after receiving reports from several other students that the student had been distributing prescription medication at the school. *Safford Unified Sch. Dist. No. 1 v. Redding*, __U.S.__, 129 S. Ct. 2633, 2641, 174 L. Ed. 2d 354 (2009).

Similarly, in *McKinnon*, our State Supreme Court recognized that searches within the school setting do not carry the same privacy protections afforded under law enforcement search standards:

> In Washington, students must attend school through the age of 14 and in most cases through the age of 17. . . . Certificated school personnel are given the authority and indeed have the duty to maintain good order and discipline in the schools. . . . This duty to maintain order and discipline is not founded upon arbitrary grounds. The school's function is to educate children, both intellectually and socially, to prepare them to properly function in our evermore complex adult world. Because of the number of students brought together during a school day, the educational function can only be accomplished by maintaining order and discipline in the school. Further, certificated school personnel must maintain

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in RCW 10.79.070.
(emphasis added).

> schoolroom decorum in order to protect other students' rights to be secure and to be left alone.
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> The high school principal is not a law enforcement officer. His job does not concern the discovery and prevention of crime. His duty as the chief administrator of the high school includes a primary duty of maintaining order and discipline in the school. *In carrying out this duty, he should not be held to the same probable cause standard as law enforcement officers.* Although a student's right to be free from intrusion is not to be lightly disregarded, for us to hold school officials to the standard of probable cause required of law enforcement officials would create an unreasonable burden upon these school officials. Maintaining discipline in schools oftentimes requires immediate action and cannot await the procurement of a search warrant based on probable cause. We hold that the search of a student's person is reasonable and does not violate his Fourth Amendment rights, if the school official has reasonable grounds to believe the search is necessary in the aid of maintaining school discipline and order.

McKinnon, 88 Wn.2d at 80-81 (emphasis added) (citations omitted).

Washington courts examine the following six factors to determine whether school officials had reasonable grounds for a search: the student's (1) age, (2) history, and (3) school record, (4) the "prevalence and seriousness of the problem in the school to which the search was directed," (5) "the exigency to make the search without delay," and (6) "the probative value and reliability of the information used as a justification for the search." *State v. B.A.S.*, 103 Wn. App. 549, 554, 13 P.3d 244 (2000) (first enunciated in *McKinnon*, 88 Wn.2d at 81) (reaffirmed post *T.L.O.* in *Brooks*, 43 Wn. App. at 567-68).

PCC argues that her initial violations of school policy and the law—an unexcused tardy and forgery—were insufficiently serious and insufficiently exigent to justify Kane's search of her backpack, especially in light of Kane's acknowledgment that he does not generally search a student's backpack based on a forged note. PCC cites *B.A.S.*, in which Division One reversed a

student's conviction for possession of marijuana found when school official searched a student who was in the school parking lot in violation of the school's closed campus policy and inexcusably absent from class. *B.A.S.*, 103 Wn. App. at 554. Division One held that "[t]here must be a nexus between the item sought and the infraction under investigation," explaining that the search lacked reasonable grounds because of the lack of evidence connecting the closed campus policy violation to a likelihood that the student would return to campus with contraband. *B.A.S.*, 103 Wn. App. at 554.

PCC's circumstances are similar to BAS's in that both students were in violation of school policy and both were truant. But Kane had additional reasons to search PCC's backpack—her forgery of her mother's signature on a false excused absence note, her impromptu denial of methamphetamine possession, her volunteered disclosure that her mother suspected she (PCC) used methamphetamine, her impulsive denial that she used methamphetamine, and her statement that her mother would be unwilling to write a legitimate note excusing her (PCC's) absence. These facts combined to create the principal's reasonable suspicion that PCC had carried contraband in her backpack to school. As our Supreme Court forthrightly acknowledged in *McKinnon*, "Drug use and abuse by secondary students are not unknown, and eyes should not be closed to the practices." *McKinnon*, 88 Wn.2d at 82. Delaying a search for drugs brought into school by a student risks distribution or destruction of the contraband. We hold that the

school principal acted reasonably in searching PCC's backpack and that the trial court did not err in denying her motion to suppress the evidence found inside.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Penoyar, C.J.

Worswick, J.