

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

9:05 a.m.

No. 288540

Grand Traverse Circuit Court

LC No. 08-010586-FH

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

DAVIS, J.

Defendant was convicted by the trial court of possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). Defendant appeals as of right, arguing that the trial court erred in refusing to suppress evidence obtained by a warrantless search of his vehicle. We reverse. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was a student at Traverse City Central High School. On April 24, 2008, the Grand Rapids Silent Observer¹ anonymous tip hotline received an anonymous tip “regarding a VCSA² at Traverse City Central High School.” The tipster stated that he had previously been friends with a drug dealer at the school but that the tipster had given up drugs and now wished to report his former friend. The tipster described that friend’s trafficking as “the largest threat to the school,” but the tipster decided to provide the names and details of other “big dealers,” one of whom was stated as being defendant. The tipster provided extensive information about his former friend, and less-detailed information about the other alleged dealers. Defendant was simply described as a male caucasian junior who sells marijuana “from school, his truck, and East Bade [sic] Park in Traverse city.” The Silent Observer report was forwarded to the Traverse City Police Department.

A few days later, Officer Evan Warsecke, who served as Liaison Officer for the school, forwarded the report to Rick VanderMolen, assistant principal at the school. The only further investigation taken by Officer Warsecke was to verify the vehicles registered to the named

¹ <http://www.silentobserver.org>

² Presumably, this stands for “violation of the controlled substances act.”

dealers. However, at some point prior to the search of defendant's vehicle, a search of the principal suspect (the tipster's former friend) was conducted, and no contraband was found. VanderMolen testified that, other than a vague and undefined "concern" expressed by "a counselor from East Junior High" about "some behavior at the junior high," but "not talking about specifically marijuana," he had no other information about defendant or about defendant's involvement with marijuana. Officer Warsecke likewise testified that he had no information about defendant or about defendant's involvement with drugs other than the anonymous tip.

Nevertheless, more than a week after receiving the anonymous tip, VanderMolen decided to search defendant's vehicle. VanderMolen asked Officer Warsecke and some other school officials to accompany him as he searched defendant's vehicle. Defendant did not consent to the search, although defendant was present during the search. Officer Warsecke stood by while the assistant principal conducted the search. VanderMolen found marijuana in a bag behind a seat, whereupon defendant was arrested. Defendant moved to suppress that evidence as the fruit of an unconstitutional search. The trial court denied the motion, finding that the anonymous tip alone was sufficient to constitute reasonable suspicion, given the level of detail the tip contained.

Evidence obtained in violation of a suspect's rights under the Fourth Amendment of the United States Constitution is subject to suppression at trial. *People v Cartwright*, 454 Mich 550, 557-558; 563 NW2d 208 (1997). See also *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961) (incorporating the Fourth Amendment against the states under the Fourteenth Amendment). In reviewing a trial court's decision following a suppression hearing, this Court reviews the trial court's factual findings for clear error, but reviews the legal conclusions de novo. See *People v Daoud*, 462 Mich 621, 629-630; 614 NW2d 152 (2000).

The police may 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). However, school officials may search a student's person or property on school premises on the lesser standard of reasonable suspicion. See *New Jersey v TLO*, 469 US 325, 341-342; 105 S Ct 733; 83 L Ed 2d 720 (1985). Defendant suggested in the trial court that the presence of a police officer during the search might raise the applicable standard, but because that argument was not raised on appeal, we do not express any opinion thereon. In any event, it is unnecessary for us to do so in light of our conclusions in this matter.³

Reasonable suspicion requires "articulable reasons" and "a particularized and objective basis for suspecting the particular person . . . of criminal activity." *United States v Cortez*, 449 US 411, 417-418; 101 S Ct 690; 66 L Ed 2d 621 (1981). In "a case involving an *anonymous* tipster," whether reasonable suspicion exists "must be tested under the *totality of the circumstances* with a view to the question whether the tip carries with it *sufficient indicia of reliability* to support a *reasonable suspicion* of criminal activity." *People v Faucett*, 442 Mich 153, 169; 499 NW2d 764 (1993) (emphasis in original), citing *Alabama v White*, 496 US 325;

³ Where we part with the dissent for purposes of this analysis is the dissent's view, as reflected in footnote 2 of the dissenting opinion, that there is no distinction or difference between possession of marijuana and possession of a bomb or an assault weapon on school property.

110 S Ct 2412; 110 L Ed 2d 301 (1990). An anonymous tip *can* provide reasonable suspicion *if* it is considered along with a “totality of circumstances” that show the tip to be reliable. But alone, without any “indicia of reliability” or “means to test the informant’s knowledge or credibility” an anonymous tip is generally insufficient. *People v Horton*, 283 Mich App 105, 113-114; 767 NW2d 672 (2009), citing and quoting *Florida v J L*, 529 US 266, 271-272, 274; 120 S Ct 1375; 146 L Ed 2d 254 (2000).

Here, the anonymous tip was the only basis for the search. Both the assistant principal who conducted the search and the police officer who attended the search testified that the anonymous tip was the only basis for the search.⁴ Plaintiff points out that the tip provided considerable detail about one of the alleged dealers, but that particular dealer was searched and found not to have any contraband on his person. Plaintiff further argues that the tip is reliable because the tipster showed that he was well-intended and reliable by professing to be motivated by one of the alleged dealers selling to another friend and an ex-girlfriend, and also because the tipster took care to distinguish between a dealer and that dealer’s physically identical-looking brother. However, these were merely assertions *within* the anonymous tip and therefore are not corroborating circumstances. Furthermore, the anonymous tip contained little information concerning defendant. Although the tip sheet states that defendant was “seen” trafficking in marijuana, and specifies three locations, it does not indicate if the informant was the witness or was relaying information second hand.

Therefore, the anonymous tip was vague concerning defendant and could not be viewed with a “totality of the circumstances” because there were no other circumstances. Indeed, the only other possible circumstance weighed *against* the tip being reliable. “Some tips, completely lacking in indicia of reliability, would either warrant no police response or require further investigation” before governmental authorities may act against a suspect. *White, supra* at 329. (internal quotation marks and citation omitted). This is an example of such a tip. The tip alone did not provide a sufficient basis to form reasonable suspicion necessary for the search of

⁴ During VanderMolen’s cross-examination at defendant’s preliminary examination, the following exchange took place:

Q. Was there anything in particular that happened that day that you picked that day to conduct the search?

A. No.

Q. So it wasn’t based upon any activity or information that you had other than what was in the Silent Observer?

A. Yes.

* * *

Q. And you were searching his vehicle solely on the basis of the information which you had from the Silent Observer?

A. Yes.

VanderMolen also stated that he had “no idea” who had called in the anonymous tip or how reliable the information therein was. Officer Warsecke testified that the only information he passed on to VanderMolen about defendant was the contents of the anonymous tip.

defendant's vehicle, and the search was based on nothing more than the tip. The search was therefore unconstitutional, and the trial court should have suppressed the evidence as the fruit of an illegal search. See *Wong Sun v United States*, 371 US 471, 487-488; 83 S Ct 407; 9 L Ed 2d 441 (1963); *Cartwright, supra*.

Although it appears that the prosecution would not be able to proceed without the evidence that should have been suppressed, we decline to make that presumption conclusive. We express no view as to the resolution of any other aspect of, or issue in, this case. The trial court's order denying suppression of the evidence seized from defendant's vehicle is reversed, and the matter is remanded for further proceedings as the trial court deems appropriate. We do not retain jurisdiction.

/s/ Alton T. Davis

/s/ Michael J. Talbot