COURT OF APPEALS
DECISION
DATED AND FILED

September 4, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP260 **Cir. Ct. No. 2013JV30**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN THE INTEREST OF CHASE A. T., A PERSON UNDER THE AGE OF 17:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

CHASE A. T.,

RESPONDENT-APPELLANT.

APPEAL from an order of the circuit court for Portage County: THOMAS T. FLUGAUR, Judge. *Affirmed.*

¶1 BLANCHARD, P.J.[1] Chase T. appeals the circuit court's denial of his motion to suppress evidence obtained from him by an assistant principal, in the

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

presence of a school liaison police officer, at the public junior high school that Chase T. attended. This occurred after a student tipster linked Chase T. to the smell of marijuana smoke in a school bathroom during a class period. The search consisted of the assistant principal's request that Chase T. empty his pockets.

¶2 Chase T. argues that the circuit court erred in dismissing his motion to suppress because the search was not based on reasonable grounds at its inception and also because it was excessive in scope. I conclude that the assistant principal had reasonable grounds to suspect that Chase T. had engaged in or was engaging in illegal activity, evidence of which might be discovered in the search. I also conclude that the scope of the search was reasonably related to the objective of the search and not excessively intrusive. Accordingly, I affirm.

BACKGROUND

¶3 The relevant facts are taken from an evidentiary hearing on Chase T.'s motion to suppress, at which the assistant principal and the officer testified.

¶4 The assistant principal testified in substance as follows. One school day afternoon, a student told the assistant principal that one of the school bathrooms "smelled like marijuana smoke" and that another student, "Chase," had walked out of the bathroom immediately before the tipster smelled the smoke. The tipster said that this had occurred during a class period. He reported it during a passing time between class periods, reportedly about five to ten minutes after the incident.

¶5 The assistant principal assumed that the "Chase" that the tipster reported seeing leaving the bathroom was Chase T. because the assistant principal

was familiar with Chase T. from other interactions, including some involving truancy.[2]

¶6 After the tipster provided this information, the assistant principal went to the identified bathroom. He did not detect any odor of marijuana. The assistant principal did not estimate the lapse of time between the tipster reporting the tip and the assistant principal entering the bathroom, but he said that he believed that "too many minutes" had passed for the smell to have lingered.

¶7 After visiting the bathroom, the assistant principal located Chase T. in a school hallway. He asked Chase T. to come with him to his office and Chase T. complied. On the way to his office, the assistant principal asked the school liaison police officer to accompany them, which the officer did.

¶8 The assistant principal testified that he reviewed video images from a security camera that had recorded the area of the bathroom and in doing so observed that Chase T. had exited the bathroom at a time that corroborated the tip. The assistant principal initially gave testimony that could be interpreted as intending to convey that he saw these images promptly after he received the tip. However, the assistant principal later testified that, while his memory was not entirely clear, he probably had not reviewed the security camera images until after he "pulled Chase" into his office.

¶9 Once the three arrived in the assistant principal's office, the assistant principal asked Chase T. to "[p]lease empty your pockets." Chase T. did so,

[2] There was no testimony as to whether there were other students named Chase enrolled in the school at the time.

producing a tinfoil pipe, a lighter, eye drops, a small bag of marijuana, and "I think[,] something to blow smoke into to get rid of the smell."

¶10 The junior high school participates in a crime stoppers program under which students "oftentimes" receive $50 if they report illegal activities in school, "such as drugs or alcohol or weapons," to administrators. After a student offers a tip, an assistant principal investigates, and as part that process decides whether the tip qualifies for a reward. However, the record does not reflect any allegation, or any finding of the circuit court, as to whether the tipster here requested or received payment for the information that he provided.

¶11 Following the hearing, the circuit court denied Chase T.'s motion to suppress. Using a shorthand reference to reasonable inferences raised by the testimony summarized above, the circuit court found that the tipster had "identified Chase as smoking marijuana in the bathroom." As to the assistant principal's attempts to corroborate the tip, the circuit court initially stated that the assistant principal reviewed the security camera images prior to the search. However, the circuit court later noted that "there was some question by [the assistant principal] as to whether he reviewed [the security camera images] before or … after" conducting the search. The court then explained that, while the timing of his viewing the images "has some importance, I don't think that it in and of itself is determinative." The court also found that Chase T. had "been in some difficulty with the Assistant Principal in the past" and that the assistant principal had "previous truancy dealings with Chase."

¶12 Based on these findings, the court concluded that the assistant principal had conducted a search that was justified at its inception and reasonably related to its objective. Following the denial of the motion to suppress, Chase T.

pled no contest to possession of a controlled substance. Chase T. now appeals the court's suppression decision.

STANDARD OF REVIEW

¶13 A circuit court's findings of fact will be upheld unless they are clearly erroneous. ***State v. Angelia D.B.***, 211 Wis. 2d 140, 146, 564 N.W.2d 682 (1997). However, the application of those facts to the constitutional standard governing the reasonableness of a search is a question of law reviewed de novo. ***Id.***

DISCUSSION

¶14 Chase T. argues that the search was unlawful because the assistant principal did not have reasonable grounds to believe that Chase T. had engaged in or was engaging in illegal activity and because the scope of the search was unreasonable.[3] He does not challenge, as an unlawful seizure or temporary detention, the assistant principal's request that he come to the office.

¶15 While public school officials conducting searches of students in the school setting are subject to the Fourth Amendment's prohibition against unreasonable searches and seizures, the warrant and probable cause requirements do not apply. ***Angelia D.B.***, 211 Wis. 2d at 149. "In the school setting, the student's expectations of privacy … must be balanced against the interest of school officials in maintaining a safe and orderly learning environment." ***Id.*** at

[3] The State does not argue that the assistant principal's request that Chase T. empty his pockets was not a search for purposes of the Fourth Amendment, nor that Chase T. consented to the search.

150. "To determine the reasonableness of a search of a student, … first, the action must be 'justified at its inception'; and second, the search, as actually conducted, must be 'reasonably related in scope to the circumstances which justified the interference in the first place.'" ***Id.*** at 151 (quoting ***New Jersey v. T.L.O.***, 469 U.S. 325, 341 (1985)).

¶16 A search of a student in a school is "'justified at its inception' 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. The purpose of this reasonable-grounds-for-suspicion standard in the school context is to allow school officials to enforce "swift and informal disciplinary procedures" so that they may "maintain order" in their schools. ***Id.*** at 340-41.

¶17 Turning to the scope issue, the search is permissible in its scope "when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the student's age and sex and the nature of the [suspected] infraction." ***Id.*** at 342.

I. Justified at Inception

¶18 Chase T. argues that the search was not justified at its inception because it was not based on reasonable grounds to suspect that he had engaged in or was engaging in illegal activity. More specifically, Chase T. argues that the assistant principal could not reasonably act in reliance on the tip because the tipster was not reliable, the content of the tip was too vague, and the assistant principal did not sufficiently corroborate it.

¶19 These arguments are aimed at the following standards, as explained by our supreme court:

> When police have relied, at least in part, on information from an informant, we balance two factors to determine whether officers acted reasonably in reliance on that information. The first is the quality of the information, which depends upon the reliability of the source. The second is the quantity or content of the information. There is an inversely proportional relationship between the quality and the quantity of information required to reach the threshold of reasonable suspicion.
>
> In other words, if an informant is more reliable, there does not need to be as much detail in the tip or police corroboration in order for police to rely on that information to conduct an investigatory stop. On the other hand, if an informant has limited reliability—for example, an entirely anonymous informant—the tip must contain more significant details or future predictions along with police corroboration. The relevant question is whether the tip contained "sufficient indicia of reliability," along with other information known to police, to support reasonable suspicion for an investigatory stop.

See ***State v. Miller***, 2012 WI 61, ¶¶31-32, 341 Wis. 2d 307, 815 N.W.2d 349 (citations, quoted sources, and footnotes omitted).

¶20 I first address the reliability issue. As Chase T. acknowledges, in the school context, tips provided by students are generally considered to be reliable. *See* ***Angelia D.B.***, 211 Wis. 2d at 161-62. In ***Angelia D.B.***, the supreme court addressed the reasonableness of a search conducted pursuant to a tip from a student that he had observed another student in possession of a knife. ***Id.*** at 161. The supreme court cited with approval cases from other jurisdictions holding that information provided by student informants should ordinarily be accepted at face value, in the absence of signs that an informant is untrustworthy. ***Id.*** at 161-62.

¶21 Chase T. argues that the tip here was unreliable for two reasons. First, the tipster was presumably motivated by the reward program. Second, the vagueness of the information supplied and the nature of the tip were such that the tipster could not be held responsible for false allegations. Given these factors, Chase T. argues, the tipster's "reliability was no more than that of an entirely anonymous informant, who provides information in exchange for money or other benefits."

¶22 Neither of these arguments is persuasive. Chase T. fails to explain how the mere existence of the reward program renders the tipster here unreliable. There was no testimony that the tipster asked for or received a reward. Moreover, the assistant principal testified that whether a student will be compensated under the program is determined *after* investigation into a student-informant's report. This reduces, at least to a degree, the incentive for students to make false accusations.

¶23 As to Chase T.'s assertion that the tipster could not be held responsible if he had given false information, this is undermined by Chase T.'s acknowledgment that the identity of this tipster "was presumably known to" the assistant principal. As to the vagueness of the information supplied, while the allegation of the smell of smoke was admittedly ephemeral, the identification of "Chase" as the particular student who left the bathroom prior to the tipster having smelled marijuana smoke was not "so vague it could not have been disproved later" in a manner that would preclude holding the tipster responsible if the information falsely implicated Chase T.

¶24 Chase T. next argues that the "quantity or content" of the information the tipster provided was low. This is true, according to Chase T.,

because: (1) the tipster did not report seeing Chase T. in possession of or smoking marijuana; (2) "there is no evidence that the [tipster] knew how to recognize the smell of marijuana smoke;" (3) the tipster did not provide "any evidence that 'Chase' was Chase T."; and (4) the tipster did not report that "Chase" was the only student who used the bathroom around the time the tipster smelled marijuana smoke.

¶25 Chase T.'s argument regarding the quantity and content of the tip fails to the extent that it is premised on his assertion that the tipster's "reliability was no more than that of an entirely anonymous informant," and, thus, the "quantity or content" of the tip had to be particularly detailed. As already explained, the tipster was a reliable source, and therefore the quantity and content of the tip was not required to be significant.

¶26 Moreover, findings of the circuit court defeat Chase T.'s arguments regarding the content of the tip. The circuit court either implicitly or explicitly found the following facts: the tipster smelled marijuana smoke in an identified bathroom and simultaneously saw only one person, a student named "Chase," in the area of this bathroom. The assistant principal believed that "Chase" was Chase T., based on previous problems with Chase T., including truancy issues. If Chase T. means to argue that these factual findings are erroneous, he does not develop that argument, and the record supports these factual findings.

¶27 It is true that the tipster did not report seeing "Chase" possessing or using marijuana, but the inference of marijuana use was reasonable on these facts. It is also a reasonable inference that at least some junior high school students are familiar with the reasonably distinctive smell of burning marijuana. The allegation suggested truancy (smoking in the bathroom during class time) and

therefore it was a reasonable inference for the assistant principal to suspect that a "Chase" smoking in the bathroom during class time might well be Chase T., who had a truancy history.

¶28 Regarding this last point, school officials may consider "previous incidents and behavior as part of a reasonable basis to believe that an immediate search is necessary," where a school official has had "repeated contacts with the student." ***L.L. v. Circuit Court of Washington Cty.***, 90 Wis. 2d 585, 602, 280 N.W.2d 343 (Ct. App. 1979).

¶29 Turning to Chase T.'s argument regarding corroboration, Chase T. argues that the assistant principal could not reasonably rely on the tip without first taking more extensive steps to corroborate it. Specifically, Chase T. points to the fact that the assistant principal did not smell marijuana smoke when he entered the bathroom, and asserts that the assistant principal did not view the security camera images of Chase T. in the bathroom area until after the assistant principal had searched Chase T.[4]

¶30 As with Chase T.'s argument regarding the quantity or content of the tip, this argument fails because, again, the tipster was a reliable source of information. *See* ***Miller***, 341 Wis. 2d 307, ¶32 ("if an informant is more reliable, there does not need to be as much detail in the tip or police corroboration in order for police to rely on that information ….").

[4] As explained above, the record is unclear regarding the circuit court's finding of fact on the issue of when the assistant principal viewed the security camera images. For purposes of this appeal, I assume without deciding that the only finding supported by the record is that the assistant principal did not view those images until after he conducted the search.

¶31 Moreover, this argument is undermined by cases holding that uncorroborated tips may be sufficient to establish reasonable grounds for a search in a school. To highlight one example, in ***Angelia D.B.***, the supreme court addressed the reasonableness of a search of a student's person based solely on a tip from one student that another student named "Angelia," later determined to be Angelia D.B., was in possession of a knife on school grounds. 211 Wis. 2d at 144, 161-62. The court determined that this search "was justified at its inception" because the officer who conducted the search "had reasonable grounds to suspect that Angelia D.B. possessed a knife" based on information "that a student had observed her in possession of a knife." ***Id.*** at 161-62.

¶32 For these reasons, I conclude that the assistant principal had reasonable grounds to suspect that Chase T. had engaged in marijuana use and was in the possession of marijuana, drug paraphernalia, or other related evidence, and, thus, the search was justified at its inception.

II. Reasonable in its Scope

¶33 Turning to the second issue, I conclude that the scope of the search was reasonably related to the objective of the search and not excessively intrusive. *See* ***T.L.O.***, 469 U.S. at 342.

¶34 Chase T. argues that the scope of the search was unreasonable because the assistant principal conducted "an intrusive personal search that was not justified by the nature of the suspected rule violation." In particular, Chase T. asserts that asking him to empty his pockets was "excessively intrusive" because the "possession of marijuana does not threaten the safety of the school."

¶35 This argument misses the mark. The fact that the assistant principal had a reason to believe that Chase T. possessed a controlled substance, rather than a weapon, or that he possessed marijuana, rather than, say, heroin, does not necessarily mean that a search of his person was unreasonable in scope. The test is whether "the measures adopted are *reasonably related to the objectives of the search* and *not excessively intrusive* in light of the age and sex of the student and the nature of the infraction." ***T.L.O.***, 469 U.S. at 342 (emphasis added). Here, the assistant principal had reasonable grounds to suspect that Chase T. possessed a controlled substance or related evidence that could be in one of his pockets, and, thus, ordering Chase T. to empty his pockets was "reasonably related to the objectives of the search." The search was also not "excessively intrusive," as it was limited to having Chase T. empty his own pockets and did not involve any physical contact whatsoever, much less especially intrusive contact, with any part of Chase T.'s body, clothing, or belongings by the assistant principal or the liaison officer who was present.

CONCLUSION

¶36 The search was legal because it was supported by reasonable grounds at its inception and was reasonably related in its scope to the discovery of illegal drug use and not excessively intrusive. I therefore affirm the circuit court's denial of the motion to suppress.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.