STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED October 29, 1999
v	No. 215591 Wayne Circuit Court
KEVIN L. JOHNSON, Defendant-Appellee.	LC No. 98-008447

Before: Neff, P.J., and Murphy and J. B. Sullivan*, JJ.

PER CURIAM.

The prosecution appeals as of right from an order dismissing a charge of carrying a concealed weapon, MCL 750.227; MSA 28.424, which was entered after the trial court granted defendant's motion to suppress evidence of a handgun found in defendant's book bag. We reverse.

The case concerns the propriety of a teacher's search and seizure of defendant's property during school hours on school grounds. At the evidentiary hearing on defendant's motion to suppress, the teacher explained that he searched defendant's book bag because he suspected that it contained pop or food, in violation of the school's prohibition against bringing food or drink into class. According to the teacher, he became suspicious because another student, other than defendant, "kept going into the bag but not taking anything out of the bag." The trial court concluded that the prosecution failed to establish that the teacher had reasonable cause to search defendant's book bag.

This Court reviews a trial court's ultimate decision with regard to a motion to suppress evidence de novo, but reviews the underlying findings of fact made by the trial court in deciding the motion for clear error. *People v Goforth*, 222 Mich App 306, 310; 564 NW2d 526 (1997). The trial court's factual findings are clearly erroneous if, after review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *People v Launsburry*, 217 Mich App 358, 362; 551 NW2d 460 (1996). The prosecution has the burden to show that the evidence was legally obtained by a lawful search and seizure. See *People v Wade*, 157 Mich App 481, 485; 403 NW2d 578 (1987).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

A person's right to be secure from unreasonable searches and seizures is guaranteed by both the state and federal constitutions. See *People v Smith*, 420 Mich 1, 18-19; 360 NW2d 841 (1984), quoting Const 1963, art 1, § 11 and US Const, Am IV. Evidence secured by a search and seizure in violation of the Fourth Amendment of the Federal constitution is, through the operation of the due process clause of the Fourteenth Amendment, inadmissible in a state court. *Mapp v Ohio*, 367 US 643; 81 S Ct 1684; 6 L Ed 2d 1081 (1961). The Fourth Amendment applies to searches conducted by school authorities, but the special needs of the school environment require an assessment of the legality of such searches against a standard less exacting than that of probable cause. See *New Jersey v TLO*, 469 US 325, 341-342; 105 S Ct 733; 83 L Ed 2d 720 (1985); *People v Ward*, 62 Mich App 46, 50-51; 233 NW2d 180 (1975). As stated by this Court in *Ward*:

> School officials stand in a unique position with respect to their students. They possess many of the powers and responsibilities of parents to enable them to control conduct in their schools. See *Ginsberg v New York*, 390 US 629, 639; 88 S Ct 1274; 20 L Ed 2d 195 (1968). At times, the powers and responsibilities regarding discipline and the maintenance of an educational atmosphere may conflict with fundamental constitutional safeguards. A student cannot be subjected to unreasonable searches and seizures. On the other hand, the public interest in maintaining an effective system of education and the more immediate interest of a school official in protecting the well-being of the students entrusted to his supervision against the omnipresent dangers of drug abuse must be considered. In striking a balance, we adopt a "reasonable suspicion" standard." [*Id.* at 50-51.]

As such, evidence seized as a result of a warrantless search by school authorities will be admitted provided that it is supported by a "reasonable suspicion" that the search will uncover evidence of an infraction of school disciplinary rules or a violation of the law. *TLO, supra* at 342; see also *Ward, supra* at 51.

A "reasonable suspicion" entails something more than an inchoate or unparticularized suspicion or "hunch." *People v LoCicero (After Remand)*, 453 Mich 496, 502; 556 NW2d 498 (1996). Reasonable suspicion is based on the totality of the circumstances and requires "articulable reasons" and "a particularized and objective basis for suspecting the particular person . . . of criminal activity." *United States v Cortez*, 449 US 411, 417-18; 101 S Ct 690; 66 L Ed 2d 621 (1981). The requirement of reasonable suspicion is not a requirement of absolute certainty, but of "sufficient probability." *TLO, supra* at 346.

The prosecution argues that this case is analogous to *People v Webb*, 96 Mich App 493; 292 NW2d 239 (1980). In *Webb*, the defendant was a party in a juvenile court dispositional hearing involving his daughter, who had been adjudicated a court ward. At one point during the hearing, the defendant became hostile and angry and left the courtroom, making sure that he took his briefcase with him. A juvenile court neglect hearing coordinator, whose duties included keeping order in the courtroom by seeking help in case anyone became unruly, watched defendant and became suspicious. *Id*. at 494. The coordinator was informed that the defendant had a

history of carrying a concealed weapon and she subsequently searched his briefcase without his consent, finding an envelope that contained something that felt like a gun. The defendant's daughter's attorney opened the envelope and found a gun inside, and the defendant was ultimately arrested. *Id*. at 495. This Court held that, in light of the defendant's behavior during the hearing and his history of carrying a concealed weapon, the coordinator's suspicion that the defendant was carrying a concealed weapon on that particular occasion was reasonable. *Id*. at 496.

Unlike the facts in *Webb*, the teacher in this case had not received any specific reports about the student's conduct as it related to bringing food or drink into the school, and there is no evidence that defendant or the other student had a history of bringing food or drink into the school. However, the actions of the student on which the teacher relied may of themselves have given rise to a reasonable suspicion that the book bag contained pop, in violation of the school's directive. The prosecution additionally contends that the teacher's suspicion was reasonable given his past experience with students bringing food or pop into class. When reasonable suspicion is alleged to have been based upon inferences drawn from an official's past experience, the official is obliged to articulate how the behavior observed suggested, in light of his knowledge, experience and training, an inference of suspected misconduct. *LoCicero (After Remand)*, *supra* at 505-506.

The teacher testified that the student "kept going into the bag but not taking anything out of the bag, and so that's what made me - - prompted that suspicion." When questioned further regarding his past experience, the testimonial exchange was as follows:

> *Q*. And have you been teaching a long time at that school, or had you up to that time?
>
> *A*. Since 95.
>
> *Q*. And did you have occasion to observe behavior like that in the past?
>
> *A*. All the time.
>
> *Q*. On those occasions did you ever find that the student after making those kinds of gestures did in fact either have some pop or beverage or food in a bag next to them?
>
> *A*. Yes.

Although this testimony could have been more expansive to provide a meaningful correlation between the frequency of the behavior observed and the frequency that food or drink was found, we nevertheless hold that the teacher's testimony does support a finding of reasonable suspicion. It is clear from his testimony that on at least one occasion when he observed similar behavior on the part of a student, the teacher discovered food or drink in that student's bag. Thus, the teacher had more than a mere "hunch" that the book bag contained a pop. *Id.* at 502, 505.

We conclude that the teacher provided an adequate articulation of the nature of his past experiences with the behavior observed. We therefore hold that the teacher's search of defendant's book bag, a search that in fact turned up a handgun, was supported by reasonable suspicion.

Reversed.

/s/ Janet T. Neff
/s/ William B. Murphy
/s/ Joseph B. Sullivan