COURT OF APPEALS
DECISION
DATED AND FILED

July 21, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

No. 98-2422-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

BOBBY C. FELICELLI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County: MICHAEL S. FISHER, Judge. *Affirmed*.

Before Snyder, P.J., Nettesheim and Anderson, JJ.

PER CURIAM. Bobby C. Felicelli has appealed from a judgment convicting him of possession of marijuana with intent to deliver within 1000 feet of a school in violation of §§ 961.41(1m)(h)1 and 961.49(1), STATS. The sole issue raised on appeal is whether the trial court erred in denying Felicelli's motion

to suppress evidence seized during a search of his person and his school locker. We affirm the trial court's judgment.

James Ipsen, an assistant principal at the high school attended by Felicelli, testified at the suppression hearing. He testified that on March 19, 1997, he was told by an informant that Felicelli had brought an illegal substance into school which the informant thought was marijuana. According to the informant, Felicelli carried the marijuana either on his person or in his jacket. The informant was unnamed at the hearing and Ipsen was unsure how the informant got the information. However, Ipsen testified that he considered the informant to be very reliable because the person was an adult in the school building with whom Ipsen worked closely.

Ipsen testified that Felicelli was then summoned from his classroom and met with Ipsen and a police liaison officer in Ipsen's office. Ipsen directed Felicelli to empty his pockets and lift up his pants legs, which Felicelli did under protest. This search disclosed a telephone pager and more than $200 in cash. Ipsen testified that he then asked Felicelli to take him and the liaison officer to his school locker and open it so that it could be searched. After Felicelli opened the locker, Ipsen searched the coat hanging in it and found three bags of marijuana, which Felicelli identified as his.

The legality of the search of a student depends upon the reasonableness of the search under all of the circumstances. *See* ***State v. Angelia D.B.***, 211 Wis.2d 140, 151, 564 N.W.2d 682, 687 (1997). To be reasonable, the search must be justified at its inception and, as actually conducted, must be reasonably related in scope to the circumstances which justified the interference in the first place. *See* ***id.*** A search of a student by a school official will be 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 school rules. *See* ***id.*** at 161, 564 N.W.2d at 691. The search is permissible in scope when the measures adopted are reasonably related to the objectives of the search and are not excessively intrusive in light of the age and sex of the student and the nature of the infraction. *See* ***id.***

On review of a trial court order resolving a motion to suppress evidence, this court will uphold the trial court's findings of historical fact unless they are clearly erroneous. *See* ***State v. Harris***, 206 Wis.2d 243, 249-50, 557 N.W.2d 245, 248 (1996). However, the reasonableness of the search is a constitutional question of law which we review independently of the trial court. *See* ***Angelia D.B.***, 211 Wis.2d at 146, 564 N.W.2d at 685.

Felicelli contends that school officials lacked reasonable suspicion to search his clothing and locker. Citing cases dealing with anonymous informants, Felicelli contends that reasonable suspicion could not be found for the initial search of his person because the informant's veracity and source of information were unknown and the information provided by the informant was not corroborated. Absent a reasonable basis for the initial search, he contends that the search of his locker and the coat hanging inside of it was also impermissible.

We reject Felicelli's contentions. Assistant principal Ipsen testified at the suppression hearing that he had received information indicating that Felicelli had drugs on his person or in his coat. He testified that the information came from an adult in the school building with whom he worked closely. Based on his relationship and experience with this person, he considered the person very reliable.

Because Ipsen knew the informant and considered him or her to be very reliable, the information provided by the informant gave school officials reasonable grounds for believing that a search of Felicelli's person would reveal that Felicelli possessed marijuana, a violation of both the law and school rules. The cases relied on by Felicelli dealing with anonymous informants and the necessity of corroborating information provided by them are inapplicable. This informant was not an anonymous tipster whose identity and reliability were unknown to Ipsen, but was instead someone known by him to be reliable. The informant was akin to a citizen informant, whose credibility is presumed absent special circumstances suggesting otherwise. *See* ***State v. Kerr***, 181 Wis.2d 372, 381, 511 N.W.2d 586, 589 (1994). Because the record contains no evidence suggesting that the information provided by the informant was incredible or otherwise unreliable, no basis exists to conclude that Ipsen should not have relied on it. Consequently, the search of Felicelli's person was justified at its inception.[1]

The search of Felicelli's person was also reasonable in scope. He was merely asked to empty his pockets and lift his pants legs. Both of these requests were reasonably related to ascertaining whether he was carrying marijuana on his person and neither request was excessively intrusive.

[1] In his reply brief, Felicelli contends that the informant "was an anonymous informant to the trial court" and that the trial court therefore could not rely on the information provided by the informant absent a showing that it was founded on firsthand knowledge or was corroborated independently. We reject this argument because the issue is whether school officials had reasonable grounds for suspecting that Felicelli brought marijuana to school. *Cf.* ***State v. Angelia D.B.***, 211 Wis.2d 140, 161, 564 N.W.2d 682, 691 (1997) ("In applying this test, Dringoli [the school liaison officer] must have had reasonable grounds to suspect that Angelia D.B. possessed a knife in violation of the laws or school rules ...."). Whether an informant was known to a school official and considered reliable by him or her is properly considered in determining whether the official's suspicions were reasonable, regardless of whether the trial court is aware of the informant's identity.

As previously noted, the search of Felicelli's pockets produced a pager and what constituted a large amount of cash for a high school student to be carrying. Pagers are commonly used by individuals engaged in the sale of illegal drugs. *See* ***State v. Dye***, 215 Wis.2d 281, 291, 572 N.W.2d 524, 528-29 (Ct. App. 1997), *review denied,* 216 Wis.2d 613, 579 N.W.2d 45 (1998). An unexplained large amount of cash is also probative of drug dealing. *See* ***State v. Griffin***, 220 Wis.2d 371, 384, 584 N.W.2d 127, 132 (Ct. App.), *review denied,* 221 Wis.2d 654, 588 N.W.2d 631 (1998). Consequently, the pager and cash, in conjunction with the original information indicating that Felicelli was carrying marijuana on his person or in his coat, provided reasonable grounds for the search of his locker and the coat hanging in it. No basis therefore exists to disturb the evidence seized in that search.

Because we conclude that the search of Felicelli's clothing and locker was constitutionally permissible based upon reasonable suspicion, we need not address whether the locker search was also permissible based upon the school's publication of a written policy regarding locker searches.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.