

YEAR 2004 CASE SUMMARIES

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Telephonic offer to sell drugs gave reasonable suspicion to detain passenger in vehicle described in the telephone conversation [In re D.P.M.] (04-3-28).

On August 12, 2004, the Corpus Christi-Edinburg Court of Appeals held that police who had set up a sting to buy drugs had reasonable suspicion to detain a passenger in the drug-transporting vehicle described by the seller to police in a telephone conversation.

04-3-28. In the Matter of D.P.M., UNPUBLISHED, No. 13-02-395-CV, 2004 WL 1797576, 2004 Tex.App.Lexis ____ (Tex.App.-Corpus Christi-Edinburg 8/12/04) Texas Juvenile Law (5th Ed. 2000).

Facts: The State charged appellant D.P.M., a juvenile, with possession of more than four ounces but less than five pounds of marijuana. The State petitioned for an adjudication that D.P.M. had engaged in delinquent conduct. Following denial of his motion to suppress, D.P.M. pleaded true to the charge. The trial court accepted an agreed disposition committing D.P.M. to the Texas Youth Commission. By one issue, D.P.M. challenges the trial court's denial of his motion to suppress.

JURISDICTION

Section 56.01(n) of the Texas Family Code provides a juvenile applicant the right to appeal under certain circumstances:

A child who enters a plea or agrees to a stipulation of evidence in a proceeding held under this title may not appeal an order of the juvenile court entered under Section 54.03, 54.04, or 54.05 if the court makes a disposition in accordance with the agreement between the state and the child regarding the disposition of the case, unless:

- (1) the court gives the child permission to appeal; or
- (2) the appeal is based on a matter raised by written motion filed before the proceeding in which the child entered the plea or agreed to the stipulation of evidence.

Tex. Fam.Code Ann. § 56.01(n) (Vernon Supp.2004). This appeal challenges the trial court's ruling on D.P.M.'s written motion to suppress, which was filed before D.P.M. pleaded true to the allegations. Accordingly, D.P.M. has the right to appeal his suppression issue. See *id.*; see also *In re D.A.R.*, 73 S.W.3d 505, 509 (Tex.App.-El Paso 2002, no pet.).

Ricky Redmon telephoned the Montgomery County Sheriff's Office, asking for help in a drug-related matter. According to Don Likens, [FN3] a member of the special investigations unit at the Montgomery County Sheriff's Office, Redmon had intercepted a telephone call at his house apparently intended for his son. Redmon, whose voice sounds much like his son's, allowed the caller to believe he was talking to his son. The caller said they had met recently at a party. "I have a kilo coming in," the caller reported. "How much money do you have?" Redmon replied that he had \$100. The caller told him to see if he could get more money and call him back. Redmon agreed. The caller gave Redmon a telephone number at which to reach him. Likens met Redmon at his house and discussed the telephone call. Redmon told Likens that his son was out of town. Redmon was very concerned. His son had been through "rehab," he told the officer. He was worried his son was using drugs again. Likens found Redmon credible.

FN3. Officer Likens was the only witness who testified at the hearing on D.P.M.'s motion to suppress.

At 4:00 p.m. that day, Likens and Redmon telephoned the caller. They recorded the conversation. Redmon told the caller he had sold his stereo equipment for \$450. He asked what that would get him. The caller told Redmon he could purchase a half pound for \$270. Given the price and the quantity, Likens concluded that the drug being offered for sale was marijuana.

Redmon agreed to the purchase. The caller told him to drive to a specific street in a wooded residential area and pull over to the side of the road. The caller would walk out to Redmon's car with the drugs. The exchange was scheduled for 5:00 p.m. The caller told

Redmon to call him back and let him know when Redmon was leaving for the meeting.

Likens investigated the proposed meeting place. He decided he wanted more control over the meeting. For safety reasons and ease of surveillance, he wanted the meeting to occur in a more open area. He suggested changing the location to a shopping center parking lot about a half mile away from the initial meeting site. He arranged for surveillance by multiple unmarked police units.

As planned, Redmon telephoned the caller at 5:00 p.m. He said he was in front of an Albertsons store in the shopping center parking lot. The caller said he was twenty to thirty minutes away. At 5:40 p.m., Redmon again telephoned. The caller told him that he was approximately five minutes away. The caller said he would meet Redmon in front of Brother's Pizza, next to Albertsons in the same shopping center. Redmon told the caller he would be waiting in a beige Lincoln. The caller said he would be arriving in a black Yukon.

After the meeting was arranged, Likens waited in the beige Lincoln. Within minutes, a surveillance unit contacted Likens by radio. A black Yukon had entered the parking lot. The Yukon traveled slowly through the parking lot. It pulled behind the Lincoln but did not stop.

A marked police unit stopped the Yukon. The unmarked surveillance units surrounded the vehicle. Officers ordered the driver and his passenger out of the vehicle and onto the ground. They handcuffed them "for officer safety and their safety." According to Likens, "There were a lot of people in the parking lot," and it was "merely a way to control the situation so it didn't escalate."

Likens spoke with the driver and owner of the Yukon, who consented to a search of the vehicle. Likens asked D.P.M., the passenger, his name and if he knew why he was in the parking lot. D.P.M. responded he "had no idea" why he was there.

Officers took the driver and D.P.M. to a patrol vehicle. Others began searching the Yukon. They found three clear plastic bags containing 11.67 ounces of marijuana in the console between the front seats. [FN4]

FN4. Likens later linked D.P.M. to the cell phone used to make and receive the Redmon calls.

Likens testified to the foregoing facts at the suppression hearing. He said he had probable cause to make an arrest based on D.P.M.'s arrival at the place identified in the phone call, in the vehicle described in the phone call, at the time stated in the phone call.

Held: Affirmed.

Opinion Text: MOTION TO SUPPRESS

D.P.M. contends that the trial court should have granted his motion to suppress because his rights were violated when the authorities stopped the vehicle in which he was riding without adequate cause or reasonable suspicion. He asserts that detention of the vehicle and its passengers violated his right to be free from unreasonable seizure. He argues that the search that followed is the only source of evidence leading to his adjudication.

A. Standard of Review

We review the trial court's ruling on a motion to suppress in a juvenile proceeding under an abuse-of-discretion standard. See *In re R.J.H.*, 79 S.W.3d 1, 6 (Tex.2002); see also *In re D.G.*, 96 S.W.3d 465, 467 (Tex.App.-Austin 2002, no pet.). We defer to the trial court's findings of historical fact. *R.J.H.*, 79 S.W.3d at 6. We review de novo the trial court's application of law to those facts. *Id.* Specifically, we review de novo questions of reasonable suspicion and probable cause. See *Guzman v. State*, 955 S.W.2d 85, 88-89 (Tex.Crim.App.1997). Absent findings of fact, we view the record in the light most favorable to the trial court's ruling. *R.J.H.*, 79 S.W.3d at 6.

B. Applicable Law

An officer may conduct a brief investigative detention, or Terry stop, on reasonable suspicion to believe that an individual is involved in criminal activity. *Terry v. Ohio*, 392 U.S.1, 21 (1968); *Balentine v. State*, 71 S.W.3d 763, 767 (Tex.Crim.App.2002). We examine the reasonableness of a temporary detention in terms of the totality of the circumstances. Specific, articulable facts, taken together with reasonable inferences from those facts, justify a temporary detention when the circumstances lead the detaining officer to conclude that the person detained actually is, has been, or soon will be engaged in criminal activity. *Balentine*, 71 S.W.3d at 768 (citing *Woods v. State*, 956 S.W.2d 33, 38 (Tex.Crim.App.1997)). Reasonable suspicion is dependent on both the content of the information possessed by the officer and the degree of reliability of the information. See *Bilyeu v. State*, 136 S.W.3d 691, at *5 (Tex.App.-Texarkana 2004, no pet. h.). In determining whether reasonable suspicion existed, we look to the facts available to the officer at the moment of detention. See *Terry*, 392 U.S. at 21-22; see also *Davis v. State*, 947 S.W.2d 240, 243 (Tex.Crim.App.1997).

C. Analysis

As part of his initial investigation, Likens relied on information provided by Redmon. Likens found Redmon credible. We conclude it was reasonable for Likens to find Redmon's information trustworthy, particularly given Redmon's status as a known citizen and independent source. See, e.g., *Hawes v. State*, 125 S.W.3d 535, 539-40 (Tex.App.-Houston [1st Dist.] 2002, no pet.) (contrasting reliability of information from known and unknown informants); *State v. Garcia*, 25 S.W.3d 908, 913 (Tex.App.-Houston [14th Dist.] 2000, no pet.) (contrasting reliability of information provided by unnamed informants, paid informants, and identified citizens). Moreover, by participating in and directing the recorded telephone calls with D.P.M., Likens corroborated the information he received from Redmon regarding the proposed drug transaction. See *Reesing v. State*, No. 03-03-471-CR, 2004 Tex.App. LEXIS 5090, at *6 (Tex.App.-Austin June 10, 2004, no pet. h.) (finding that corroboration of information related by informant may increase reliability of information); see also *Hawes*, 125 S.W.3d at 540 (finding that known informant provided indicia of reliability, which, combined with officer's corroboration of identification details, created reasonable suspicion). Further, D.P.M. arrived at the designated location at the appointed time in a black Yukon, all of which matched the details the caller arranged with Redmon. Based on the totality of the circumstances, we conclude that Likens articulated specific facts that led him to conclude that the occupants of the car, including D.P.M., were or would soon be engaged in criminal activity.

We conclude that the totality of the circumstances gave Likens reasonable suspicion to stop and detain the occupants of the black Yukon. *Woods*, 956 S.W.2d at 38. We hold that the trial court did not abuse its discretion in denying D.P.M.'s motion to suppress. Accordingly, we overrule D.P.M.'s sole issue on appeal.

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