

Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

Act of switching of license plates considered a factor in determining reasonable suspicion for an investigative stop.[In the Matter of J.D.B.](07-1-3A)

On November 7, 2006, the Houston [14th Dist.] Court of Appeals held that when viewed in light of the totality of the circumstances, the existence of possible innocent explanations of a person's actions, does not necessarily deprive a police officer of the ability to also possess reasonable suspicion for an investigative stop.

¶ 07-1-3A. **In the Matter of J.D.B.**, Nos. 14-05-00659-CV & 14-05-00660-CV, 2006 Tex.App.Lexis 9601 [Tex.App.—Houston (14th Dist), 11/7/06].

Facts: The Baytown Police Department received a suspicious activity call from Lois Linder, a resident of a trailer park. She reported that two white males, driving a white pickup truck, were parked behind her neighbor's trailer and were in the process of removing the license plate of the truck and replacing it with a different one. Officer Currie was dispatched to investigate the incident. The dispatcher also instructed Officer Almendarez to join him as backup. En route, Currie passed a white truck with two white males, matching the descriptions of the truck and the occupants, coming from the area of the trailer park. Currie instructed Almendarez to follow the truck while he proceeded to the trailer park to ascertain whether the truck was still on the premises. Upon being told by Linder that the truck had just left the trailer park, Currie notified Almendarez. Officer Almendarez then stopped the truck.

J.D.B. was driving the truck. When Almendarez asked him for his driver's license and insurance, he said "what." The officer repeated his question and J.D.B. said he did not have any--he was simply going to get gas. Almendarez then asked J.D.B. to whom the truck belonged and J.D.B. again said "what." The officer repeated the question and J.D.B. said it was his friend's father's truck. When Almendarez asked for the identity of the friend, J.D.B. again said "what." At this point, Almendarez believed J.D.B. was being evasive in answering the questions and suspected he was driving the white truck seen by Linder. Officer Almendarez requested that J.D.B. exit the truck. Almendarez then handcuffed J.D.B. and stood with him at the back of the truck to wait for Officer Currie. The passenger remained in the truck.

Officer Currie joined Almendarez while a third officer brought Linder to the scene. Linder positively identified J.D.B., his passenger, and the truck as those she had seen in the trailer park. After running the plates, it was determined that the current plates were from a stolen vehicle, and the white truck was also stolen.

Held: Affirmed

Opinion: In his first issue, J.D.B. contends Officer Almendarez did not have reasonable suspicion to detain him. An investigative detention must be based on reasonable suspicion in order for the officer to lawfully seize a

person. *Davis v. State*, 947 S.W.2d 240, 244 (Tex. Crim. App. 1997). In other words, the officer must have a reasonable suspicion that the person detained actually is, has been, or soon will be engaged in criminal activity. *Woods v. State*, 956 S.W.2d 33, 35-38 (Tex. Crim. App. 1997). Reasonable suspicion exists when there is "something out of the ordinary occurring and some indication that the unusual activity is related to crime." *Viveros v. State*, 828 S.W.2d 2, 4 (Tex. Crim. App. 1992). The factual basis for stopping a vehicle need not arise from the officer's personal observation, but may be supplied by information acquired from another person. *Brother v. State*, 166 S.W.3d 255, 257 (Tex. Crim. App. 2005). "When police receive information from a private citizen whose only contact with the police is a result of having witnessed a criminal act committed by another, the credibility and reliability of the information is inherent." *Cornejo v. State*, 917 S.W.2d 480, 483 (Tex. App.--Houston [14th Dist.] 1996, pet. ref'd).

In evaluating the requirements of reasonable suspicion, law enforcement officers are permitted to make certain common-sense conclusions about human behavior. *United States v. Sokolow*, 490 U.S. 1, 8, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989). "Much as a 'bright line' rule would be desirable, in evaluating whether an investigative detention is unreasonable, common sense and ordinary human experience must govern over rigid criteria." *United States v. Sharpe*, 470 U.S. 675, 685, 105 S. Ct. 1568, 84 L. Ed. 2d 605 (1985). All fact situations are different, therefore, a fact specific, case by case analysis is required. *Klare v. State*, 76 S.W.3d 68, 73 (Tex. App.--Houston [14th Dist.] 2002, pet. ref'd).

To determine whether the police had reasonable suspicion to stop and detain J.D.B., we look at the facts the officers knew at the time. J.D.B. contends the officers' only information was a description of "a white pickup truck containing two white males." However, this statement ignores the officers' knowledge of other specific facts as shown by their testimonies. When Linder initially reported "suspicious activity" around her neighbor's trailer, she informed the police that the white pickup truck did not belong to her neighbors. She further reported that she had never seen the men before and that they did not live in the trailer park, yet they were removing the license plates from the truck and replacing them with different plates.

As Officer Currie neared the trailer park, he observed a white pickup truck with two white males traveling west, away from the trailer park. While Almendarez followed the truck, Currie learned from Linder that the truck had just left "heading westbound on Massey Thompkins." We find, under the facts and circumstances of this case, that the police had reasonable suspicion to detain J.D.B. to maintain the status quo while they conducted a more thorough investigation. n1

n1 J.D.B. argues the lack of testimony regarding suspicious time of day, level of criminal activity in the area, or suspects being "known criminals" negates reasonable suspicion. J.D.B. cites *Klare v. State* as support. 76 S.W.3d at 76-77. However, *Klare* states these are only factors, and "courts generally require an additional fact or facts *particular to the suspect's behavior* to justify a suspicion of criminal activity." *Id.* at 75 (emphasis added). To prove the point, *Klare* cites to cases where courts have determined what suspect behavior constitutes the additional fact needed to justify stopping the vehicle. *Id.* (citing *Walker v. State*, 555 S.W.2d 454 (Tex. Crim. App. 1977) (occupants of vehicle matched description of police radio broadcast)).

J.D.B. contends that the activity of changing license plates on a vehicle may be consistent with innocent activity. However, while vehicle owners are required to replace their license plates from time to time, they rarely have a legitimate need to replace the plates with "different" plates, i.e., plates containing a different license plate number. Moreover, the activity is made more suspicious in that it was conducted in the cover of a trailer park where J.D.B. did not live. Further, the existence of possible innocent explanations does not deprive a police officer of the ability to also possess reasonable suspicion. n2 *Woods*, 956 S.W.2d at 37. When a detention is based upon the conduct of the suspect, the conduct itself need not be unlawful or in some sense

inconsistent with innocence. *Id. at 38* (citing *Sokolow, 490 U.S. at 7*). The Texas Court of Criminal Appeals has recognized there may be instances when a person's conduct appears purely innocent, yet when viewed in light of the totality of the circumstances these same actions give rise to reasonable suspicion. *Id.* In fact, the court stated an investigative detention serves "to resolve that very ambiguity and establish whether the activity is in fact legal or illegal." *Id. at 37*. The detention allows the officer to determine quickly whether to hold the suspect for charges or allow him to go about his business. *Id.* Accordingly, J.D.B.'s first issue is overruled.

n2 In *Woods*, the Texas Court of Criminal Appeals specifically rejects the "as consistent with innocent activity as with criminal activity" construct for determining reasonable suspicion. 956 *S.W.2d at 38*. The court overruled the cases holding "when the facts are as consistent with innocent activity as with criminal activity, a detention based on those facts is unlawful," and adopted the "totality of the circumstances" approach as outlined here. *Id. at 34-38*.

Issue Omitted.

Conclusion: In this consolidated appeal, J.D.B. contends his probation should not have been revoked because his conviction on the charge of unauthorized use of a motor vehicle was predicated on evidence unlawfully admitted when his motion to suppress was denied. Because we have affirmed the trial court's denial of the motions to suppress, we find the trial court's judgment and commitment not to be erroneous and overrule J.D.B.'s contention.

The judgment of the trial court is affirmed in each cause.