

## Year 2004 Case Summaries

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[2004 Case Summaries](#)

[2003 Case Summaries](#)

[2002 Case Summaries](#)

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)

### ***Police officer's weapons frisk during a daytime curfew stop was justified by self-protection [In re K.E.] (04-2-22).***

On April 28, 2004, the San Antonio Court of Appeals held that a police officer was justified in conducting a weapons frisk of a juvenile during a daytime curfew stop because of the clothing worn by the juvenile.

04-2-22. In the Matter of K.E., UNPUBLISHED, No. 04-03-00504-CV, 2004 WL 892112, 2004 Tex.App.Lexis \_\_\_\_ (Tex.App.-San Antonio 4/28/04) Texas Juvenile Law (5th Ed. 2000).

Facts: K.E. appeals the trial court's order of adjudication. The sole issue presented on appeal is whether the trial court erred in denying K.E.'s motion to suppress.

A trial court's ruling on a motion to suppress is reviewed under an abuse of discretion standard. *Balentine v. State*, 71 S.W.3d 763, 768 (Tex.Crim.App.2002). In this review, we give almost total deference to the trial court's determination of historical facts and review the court's application of the law to the facts de novo. Id. Since the trial court did not make explicit findings of historical facts in this case, we review the evidence in a light most favorable to the trial court's ruling and assume that the trial court made implicit findings of fact supported in the record. Id. When the suppression issue is consensually re-litigated by the parties during the trial on the merits, our review is not limited to the evidence introduced at the suppression hearing. See *Rachal v. State*, 917 S.W.2d 799, 809 (Tex.Crim.App.1996). Instead, consideration of the relevant trial testimony is appropriate in our review. Id.

"An officer may conduct a brief investigative detention, or Terry stop, when he has a reasonable suspicion to believe that an individual is involved in criminal activity." *Balentine*, 71 S.W.3d at 768. "The reasonableness of a temporary detention must be examined in terms of the totality of the circumstances and will be justified when the detaining officer has specific, articulable facts, which, taken together with rational inferences from those facts, lead him to conclude that the person detained actually is, has been, or soon will be engaged in criminal activity." Id. "Law enforcement personnel may conduct a limited search for weapons of a suspect's outer clothing, even in the absence of probable cause, where an officer reasonably believes that the suspect is armed and dangerous to the officer or others in the area." Id. "Such a 'weapons frisk' will be justified only where the officer can point to specific and articulable facts which reasonably led him to conclude that the suspect might possess a weapon." Id. "The officer need not be absolutely certain that an individual is armed; the issue is whether a reasonably prudent person would justifiably believe that he or others were in danger." Id.

Around 1:00 p.m. on a school day, Officer Peter Ovalle was on patrol in a high crime area. Officer Ovalle pulled beside K.E. and another male and asked them if they were of the age to be in school. K.E. told the officer that he was sixteen. Based on this response, Officer Ovalle believed K.E. was in violation of the curfew established by city ordinance. Officer Ovalle stated that the normal procedure is to write a curfew violation notice and transport the juvenile either back to school or to their guardian. After Officer Ovalle determined that K.E. was underage and in violation of curfew, Officer Ovalle conducted a pat-down search. Officer Ovalle stated that he conducted the pat-down search because it was fairly warm but K.E. was wearing a heavy, bomber-type jacket. This testimony was disputed at trial by K.E.'s mother, who stated that K.E. was wearing a light jacket. Officer Ovalle stated that he felt uneasy because weapons could easily be concealed in the jacket. Officer Ovalle decided to conduct a pat-down search because he knew he "was going to have more contact with him as far as writing him a curfew violation." As he was conducting the frisk, K.E. placed his left hand in his jacket. At Officer Ovalle's request, K.E. removed his hand from his jacket. As he removed his hand, K.E. dropped a folded piece of paper. Officer Ovalle believed K.E. was discarding some type of contraband or paraphernalia. Based on his experience, Officer Ovalle handcuffed K.E. because he believed K.E. might attempt to run away while Officer Ovalle retrieved the item K.E. had dropped. The paper contained two rocks of crack cocaine.

Deferring to the trial court's implied findings of historical facts, Officer Ovalle was justified in detaining K.E. based on his belief that K.E. was in violation of a curfew. In addition, because the stop occurred in a high crime area and K.E. was wearing a jacket that led Officer Ovalle to question whether K.E. was in possession of a weapon, Officer Ovalle was justified in conducting a limited search for weapons. Although handcuffing suspects during a temporary detention is not usual, Officer Ovalle testified that he needed to restrain K.E. while he retrieved the item K.E. had dropped, which Officer Ovalle believed was some type of contraband or paraphernalia. Under the circumstances, the use of handcuffs was reasonable for Officer Ovalle's safety and to further the status quo while he retrieved the item. See *Rhodes v. State*, 945 S.W.2d 115, 117 (Tex.Crim.App.1997) (upholding use of handcuffs during temporary detention); *In re A.T.*, No. 04-99-00218-CV, 2000 WL 1918880, at \*2-3 (Tex.App.-San Antonio Dec. 20, 2000, no pet.) (same) (not designated for publication). Because Officer Ovalle was justified in stopping K.E. and conducting a pat-down search for weapons, the trial court did not abuse its discretion in denying K.E.'s motion to suppress.

The trial court's judgment is affirmed.

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[2003 Case Summaries](#)

[2002 Case Summaries](#)

[2001 Case Summaries](#)

[2000 Case Summaries](#)

[1999 Case Summaries](#)