
YEAR 2005 CASE SUMMARIES

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Search incident to taking a juvenile into custody on a felony warrant was lawful despite post-detention questioning of juvenile [In re R.E.A.] (05-1-02).

On December 2, 2004, the Austin Court of Appeals held that a police officer's discovery of marijuana on the person of a juvenile for whom there was an outstanding felony arrest warrant was lawful without regard to the lawfulness of the officer's question of the juvenile whether he had anything illegal on him.

05-1-02. In the Matter of R.E.A., UNPUBLISHED, 03-04-00028-CV, 2004 WL 2732163, 2004 Tex.App.Lexis ____ (Tex.App.—Austin 12/2/04) Texas Juvenile Law (6th Ed. 2004).

Facts: Following his arrest for possession of marihuana, R.E.A. filed a motion to suppress. The trial court granted in part and denied in part R.E.A.'s motion. R.E.A. appeals the trial court's denial of his motion and requests that the ruling be reversed and that the adjudication and disposition be vacated. See Tex. Fam.Code Ann. § 56.01(n)(2) (West 2004).

On August 12, 2003, Officer Jimenez of the Austin Police Department responded to a call that six people were smoking marihuana. Upon arrival at the scene, Jimenez recognized R.E.A. from previous encounters and recalled that a felony arrest warrant had been issued for him. The officer handcuffed R.E.A. and asked him to identify himself. Jimenez then ran a warrant check, confirmed there was a warrant for R.E.A.'s arrest, and arrested R.E.A.

After arresting him, Jimenez asked R.E.A. if he had "anything illegal on him." R.E.A. responded that he had a blunt of marihuana in his pocket. The officer retrieved the marihuana, and the State subsequently filed a petition alleging delinquent conduct for the offense of possession of marihuana.

R.E.A. filed a motion to suppress and a hearing was held. The trial court ruled R.E.A.'s oral statements inadmissible but declined to suppress the marihuana. Directly after the suppression hearing, the trial court, with the parties consent, adjudicated the case and found R.E.A. guilty of the charged offense. The trial court subsequently ordered R.E.A. to serve his detention at the Texas Youth Commission. R.E.A. now appeals the suppression order.

Held: Affirmed.

Opinion Text: STANDARD OF REVIEW

The standard of review on a motion to suppress is a bifurcated standard. *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex.Crim.App.2000). An appellate court must give "almost total deference to a trial court's determination of the historical facts that the record supports," especially when those fact findings are based on an evaluation of credibility and demeanor. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App.1997). The same level of deference should also be accorded a trial court's rulings on

mixed questions of law and fact if those decisions turn upon the credibility and demeanor of the witnesses. *Id.*; *Hayes v. State*, 132 S.W.3d 147, 151 (Tex.App.—Austin 2004, no pet.). However, appellate courts review de novo mixed questions of law and fact that do not turn on the credibility and demeanor of the witnesses. *Carmouche*, 10 S.W.3d at 327; *Guzman*, 955 S.W.2d at 89; *Hayes*, 132 S.W.3d at 151.

DISCUSSION

R.E.A. complains that the trial court erred in denying his motion to suppress the marihuana. R.E.A. argues that the seizure of the contraband violated the law because the marihuana was obtained as the result of an unlawful custodial interrogation.

In declining to suppress the marihuana, the trial court concluded that the seizure of marihuana arose from a search incident to a lawful arrest based on a valid felony arrest warrant. The Fourth Amendment to the United States Constitution and article I, section 9 of the Texas Constitution protect individuals against unreasonable searches of their persons, property, papers, and effects. U.S. Const. amend. IV; Tex. Const. art. I, § 9. However, upon lawful arrest, it is not unreasonable "for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." *Chimel v. California*, 395 U.S. 752, 763 (1969). When the police lawfully arrest a person pursuant to an arrest warrant, "[i]t is beyond dispute that a firearm or controlled substance found in a search incident to lawful arrest would not be suppressed." *Oles v. State*, 993 S.W.2d 103, 106 (Tex.Crim.App.1999). It is the fact that an arrest is lawful that establishes the authority of a police officer to conduct a search incident to that arrest. *United States v. Robinson*, 414 U.S. 218, 235 (1973).

R.E.A. does not contest the constitutionality of searching a person incident to arrest. Instead, he contends that the seizure of marihuana from his person resulted from an illegal search and seizure performed directly in response to statements obtained during an unlawful custodial interrogation. Because the trial court suppressed R.E.A.'s statement informing Jimenez that there was marihuana in his pocket [FN1] and because there is no harm resulting from the suppression of the oral statement, we do not reach the issue of whether the officer's question of whether R.E.A. had "anything illegal on him" amounted to an unlawful custodial interrogation.

FN1. In his brief, R.E.A. points to a discrepancy between the district judge's order granting the suppression of his oral statement and the juvenile referee's findings of fact and conclusions of law, which include a finding that "Officer Jimenez' questioning of the respondent is justified as part of a search incident to taking the respondent into custody...." R.E.A. contends that permitting a referee to contradict a district judge's order violates the separation of powers and is analogous to the constitutional prohibition against federal magistrates overturning a direct order of a federal district judge. See *United States v. Johnston*, 258 F.3d 361, 369 (5th Cir.2001). Because the juvenile referee explicitly stated at the suppression hearing that the statements were inadmissible and because we have conducted our analysis of R.E.A.'s appeal based on the district judge's order, we decline to reach the issue of whether the juvenile referee exceeded his authority when he entered his findings of fact and conclusions of law.

The State maintains that even without R.E.A.'s statements directing the officer to the contraband, the officer would have discovered the marihuana anyway. R.E.A. contends that this position amounts to a reliance on the inevitable discovery doctrine, which the Court of Criminal Appeals has expressly stated is not recognized by the Texas statutory exclusionary rule embodied in article 38.23 of the Texas Code of Criminal Procedure. *Roquemore v. State*, 60 S.W.3d 862, 871 n. 12 (Tex.Crim.App.2001); *State v. Daugherty*, 931 S.W.2d 268, 273 (Tex.Crim.App.1996); see also Tex.Code Crim. Proc. Ann. art. 38.23 (West 2004). [FN2] Because Article 38.23 does not contain an inevitable discovery exception, R.E.A. argues, the marihuana should also have been suppressed.

FN2. Article 38.23 states, in relevant part:

No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case.

Tex.Code Crim. Proc. Ann. art. 38.23 (West 2004).

The inevitable discovery doctrine is an exception to the federal exclusionary rule. See *Nix v. Williams*, 467 U.S. 431, 443-44 (1984). Evidence obtained illegally is nevertheless admissible if the prosecution can establish that the same evidence would have inevitably been discovered by lawful means. *Id.* Inevitable discovery is triggered when the contraband discovered was not on the person and was hidden elsewhere. See *Roquemore*, 60 S.W.3d at 869-71. Further, inevitable discovery assumes that there was an illegal violation by the police that is causally linked to the ultimate recovery of the evidence. *Id.* (stolen property recovered by police after arrested juvenile escorted them to the site was inadmissible because police violated Texas Family Code by not transporting arrested juvenile to juvenile processing center "without first being taken to any other place"); *Ramirez v. State*, 105 S.W.3d 730, 745 (Tex.App. —Austin 2003, no pet.) (warrantless search of cooler containing marihuana based solely on defendant's statements was suppressed because State "failed to establish that a reasonable officer would have felt it necessary to search the cooler or the garage premises without a warrant").

Inevitable discovery is not implicated in this case. Unlike in the *Roquemore* and *Ramirez* cases, the contraband was on R.E.A.'s person. Further, Jimenez testified that it is standard procedure by the Austin Police Department to search all suspects legally in police custody. R.E.A. was about to be searched by the officer as a routine and lawful search incident to arrest. The record therefore establishes that the custodial question of whether R.E.A. "had anything illegal on him" and R.E.A.'s affirmative response were ultimately irrelevant to the lawful search incident to arrest. R.E.A.'s sole point of error is overruled.

CONCLUSION

We reject R.E.A.'s argument that the trial court abused its discretion in denying R.E.A.'s motion to suppress the marihuana. The search of R.E.A. by Officer Jimenez was conducted in accordance with the law. We affirm the trial court's order and its adjudication and disposition.