

Review of Recent Juvenile Cases (2007)

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

Handcuffing of suspect during temporary investigative detention was reasonable under the circumstances and did not amount to an arrest.[In the Matter of J.D.B.](07-1-3B)

On November 7, 2006, the Houston [14th Dist.] Court of Appeals held that an investigative detention continued and an arrest did not occur even after officer handcuffed respondent.

¶ 07-1-3B. **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 second issue, J.D.B. contends the officers had no probable cause for an arrest. Specifically, J.D.B. alleges that he was arrested when Almendarez handcuffed him--well before the police discovered that the truck was, in fact, stolen. However, handcuffing is not always the equivalent of an arrest. *Rhodes v. State*,

945 S.W.2d 115, 118 (Tex. Crim. App. 1997). Handcuffing a suspect during a temporary investigative detention can be reasonable under the circumstances and not amount to an arrest. *Id.* When facts demonstrate reasonable suspicion escalating to probable cause for an arrest, handcuffing a suspect for further investigation can be justified. *Mays v. State*, 726 S.W.2d 937, 944 (Tex. Crim. App. 1986). The officer's testimony and other facts and circumstances of the detention are factors to be considered in determining whether an arrest has taken place. *Amores v. State*, 816 S.W.2d 407, 412 (Tex. Crim. App. 1991).

Upon questioning J.D.B., Officer Almendarez believed he had the correct truck as described by Linder. With no other officer present, and having two detainees, Almendarez removed J.D.B. from the truck and handcuffed him. We find Officer Almendarez's actions to be a prudent response to the circumstances that were presented to him. n3

N3 "A police officer may briefly stop a suspicious individual in order to determine his identity or to maintain his status quo momentarily while obtaining more information." *Mays*, 726 S.W.2d at 944. (quoting *Gearing v. State*, 685 S.W.2d 326, 327-28 (Tex. Crim. App. 1985)). In *Mays*, a single police officer who responded to a citizen's phone call of a possible burglary, handcuffed and detained two men. Other police officers arrived, and the initial officer on the scene questioned the citizen-informant. 726 S.W.2d at 944. After the citizen positively identified the detainees, officers escorted the two handcuffed men to patrol cars. *Id.* at 943. They were asked for identification and their licenses were run for outstanding warrants. *Id.* When the officers determined the car the suspects arrived in was stolen, they arrested the detainees. *Id.* at 944. The detention lasted about fifteen minutes from the initial handcuffing until the detainees were arrested. *Id.* The Texas Court of Criminal Appeals found the investigative detention to be from the initial detention by the officer, through the handcuffing and continuing after the placement of the detainees at the patrol cars. *Id.* The court stated the evasiveness and misinformation given by the detainees warranted the continuing detention. *Id.* The court concluded the facts "clearly demonstrate reasonable suspicion rapidly escalating to probable cause to arrest." *Id.*

Viewing the evidence in a light most favorable to the trial court's ruling, while reviewing de novo the lower court's application of the relevant *Fourth Amendment* standards, we find the investigative detention continued and an arrest did not occur after Officer Almendarez handcuffed J.D.B. We also find the investigative detention continued through the identification by Linder, and the running of the license plates by the officers. Accordingly, J.D.B.'s issue is overruled.

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.