

# Juvenile Law Case Summaries

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## ***Warrantless search of juvenile's home justified as an emergency [In re J.D.] (01-4-33).***

On October 10, 2001, the San Antonio Court of Appeals held that police officers were justified in conducting a warrantless search of a juvenile's home in the belief that they were dealing with a burglary in progress. Evidence seized was admissible even though there was no burglary.

01-4-33. In the Matter of J.D., \_\_\_ S.W.3d \_\_\_, No. 04-00-00689-CV, 2001 WL 1193899, 2001 Tex.App.Lexis \_\_\_\_ (Tex.App.-San Antonio 10/10/01) [Texas Juvenile Law (5th Edition 2000)].

Facts: J.D. appeals his conviction and sentence for aggravated assault and conspiracy to murder.

On the morning of May 17, 2000, J.D. and another juvenile were spotted by a neighbor in the vicinity of Ogden Elementary School and Irving Middle School. According to the neighbor, the juveniles were carrying a rifle in a backpack and attempting to hide the weapon in an alley. Concerned, the neighbor contacted the police and reported the incident.

An investigation led San Antonio police to a house on 3015 Perez Street-- J.D.'s house. Under the belief he was dealing with a burglary in process, Officer Gilberto Gallegos, accompanied by Officer Javier Hernandez, entered and searched the residence after knocking and announcing himself but without first obtaining a warrant. Almost immediately after entering the residence, Gallegos was confronted by J.D. pointing a .22 caliber rifle at him. Gallegos drew his weapon and a stand-off ensued with each shouting at the other to drop his weapon. J.D. eventually surrendered the rifle. After J.D. was secured and handcuffed in the living room, Gallegos asked some basic questions: "name, date of birth, where do you live." This is when the officers first learned J.D. lived at 3015 Perez Street.

As Hernandez was handcuffing J.D., he noticed a rifle leaning against the living room sofa. Hernandez asked J.D. if there were any other weapons in the house. J.D. said there was a cross-bow in a backpack. Hernandez searched the backpack that was on the sofa next to J.D. but only found a box of .22 caliber bullets. Hernandez asked J.D. where the cross-bow was and J.D. indicated that it was in a black back-pack in his bedroom. Hernandez located the black back-pack and found the cross-bow and what appeared to be homemade arrows. Hernandez also recovered a handful of loose bullets from J.D.'s pocket. When Hernandez asked J.D. what the bullets were for, J.D. said the bullets were for some kids at school who had been messing with him; that he was upset and mad because his girlfriend had broke up with him. Hernandez then asked if there was anyone else in the house and J.D. responded "no, only him." A witness, however, later told Hernandez he thought he saw two juveniles enter the house. Based on this information, Hernandez, assisted by Officer James Shirley, searched the house for the second juvenile, who was eventually found hiding in the bathroom armed with a handgun.

After the second juvenile was found and both were in custody, Detective Shirley Owen, a member of the San Antonio Police gang unit, briefly questioned the juveniles to determine if either were involved in gang activity. At some point, J.D.'s friend told Owen that he did not want to go to school and shoot anybody. J.D., however, told her he was tired of being humiliated and picked on by people at school. When Owen asked J.D. what the bullets were for, J.D. responded that they were going to use them to shoot at the school. Owen also asked J.D. why he wasn't in school and J.D. responded that he and his friend were on their way to school that morning when they decided to return to J.D.'s house to get more ammunition.

J.D. was charged with one count of aggravated assault with a deadly weapon against a public servant and two counts of conspiracy to commit capital murder. J.D. filed three motions to suppress his written and oral statements and all other illegally obtained evidence. A hearing was held and the trial court suppressed all of the oral statements J.D. made to Detective Owen except for one he made spontaneously while Owen was talking to the other juvenile. All other motions to suppress were denied. J.D. subsequently plead true to each of the counts and was sentenced by the trial court to a fifteen-year determinate sentence and committed to the Texas Youth Commission until his twenty-first birthday. J.D. appeals the trial court's denial of his motions to suppress.

Held: Affirmed.

#### Opinion Text: STANDARD OF REVIEW

We review a trial court's ruling on a motion to suppress for abuse of discretion. *Villarreal v. State*, 935 S.W.2d 134, 138 (Tex.Crim.App.1996). Under this standard, we view "the evidence in the light most favorable to the trial court's ruling," affording almost total deference to findings of historical fact supported by the record. *Guzman v. State*, 955 S.W.2d 85, 89 (Tex.Crim.App.1997). However, when the resolution of the factual issues does not turn upon an evaluation of credibility or demeanor, we review de novo the trial court's determination of the applicable law as well as its application of the law to the facts. *Id.*

#### WARRANTLESS SEARCH

In his first point of error, J.D. argues the trial court erred in denying his motion to suppress because the police entered his house without a warrant, probable cause, or exigent circumstances in violation of his rights under the Fourth Amendment to the United States Constitution and article I, section 9 of the Texas Constitution. He therefore maintains his written statement and other illegally obtained evidence should be excluded under article 38.23 of the Texas Code of Criminal Procedure. In response, the State argues the search was proper under the emergency doctrine. We agree with the State.

#### Applicable Law

The Fourth Amendment does prohibit police officers from making an immediate warrantless search when they reasonably believe a person is in need of immediate aid. *Brimage v. State*, 918 S.W.2d 466, 500-501 (Tex.Crim.App.) (op. on reh'g), cert. denied, 519 U.S. 838 (1996). The "emergency doctrine" applies the "exigent circumstances" exception to the Fourth Amendment's warrant requirement to render a warrantless entry and search reasonable if the officers "need to act immediately to protect or preserve life or to prevent serious injury." *Bray v. State*, 597 S.W.2d 763, 764 (Tex.Crim.App.1980). The State bears the burden of justifying the search under the emergency doctrine. See *Amores v. State*, 816 S.W.2d 407, 413 (Tex.Crim.App.1991). To justify the search of a residence under the emergency doctrine, the State must show 1) that the officers had probable cause to search the residence, and 2) that obtaining a search warrant was impracticable because the officers reasonably believed there was an immediate need to act in order to protect or preserve life or to prevent serious bodily injury. See *Crane v. State*, 786 S.W.2d 338, 346 (Tex.Crim.App.1990). We use an objective standard in assessing the reasonableness of the officer's belief and consider "the facts and circumstances known to the police at the time of the search." *Colburn v. State*, 966 S.W.2d 511, 519 (Tex.Crim.App.1998).

#### Discussion

The parties do not dispute the facts and circumstances surrounding the police's search of J.D.'s home. We therefore review de novo the trial court's denial of J.D.'s motion to suppress on this ground. At the suppression hearing, Officer Gallegos testified that at 8 a.m. he responded to an earlier police dispatch call that two juveniles had been spotted in the vicinity of the Ogden Elementary School carrying a rifle. While investigating the call, Gallegos spoke with two witnesses. The first witness, Priscilla Quintanilla, was the person who first reported seeing the juveniles with a rifle in a nearby alley. The second witness, James Gonzalez, approached Gallegos as he was searching the alley. Gonzalez said he saw two juveniles go into the yard on the other side of ) the alley behind his house. Gonzalez thought the juveniles had gone into the house located on the same property.

Based on this information, Gallegos, now joined by Hernandez, entered the back yard of 3015 Perez Street and proceeded towards the house. As they moved towards the house, they heard loud noises coming from within the house—what sounded like running and an object hitting the wall. Concerned, the officers proceeded to the front door. Gallegos immediately noticed the front door had been tampered with—the screen on the front door had been torn, a window was broken, and the front door was slightly ajar. At this point, the officers believed they were dealing with a

burglary and that the two juveniles with the rifle were possibly involved. Hernandez returned to the back of the house in the event the burglars tried to escape through the back door. Gallegos remained at the front door. With his metal night stick, Gallegos pounded on the door, yelling loudly "Police, come out." No one responded.

We conclude these facts were sufficient to establish Gallegos had probable cause to believe a crime had been committed and the two juveniles seen carrying a rifle were connected with a burglary. See *Castillo v. State*, 818 S.W.2d 803, 805 n. 4 (Tex.Crim.App.1991) (defining probable cause). Thus, the police had sufficient probable cause to search J.D.'s home. The pertinent issue therefore is whether exigent circumstances existed to justify Gallegos' decision to enter and search J.D.'s home without first obtaining a warrant.

Officer Gallegos testified his decision to enter the house without a warrant was based on his belief a burglary had been committed or was in progress and his fear that there may have been someone home when the burglars broke in. He therefore reasoned it was his duty to "check the house to see if anybody had been in there for their safety." J.D. contends that based on these facts, it was unreasonable for Gallegos to "suspect, let alone believe ... that anyone inside the house was in danger." We disagree.

The facts of this case closely parallel *United States v. Johnson*, a Sixth Circuit case cited with approval by the Texas Court of Criminal Appeals in *Brimage*. See *Brimage*, 918 S.W.2d at 501 (citing *United States v. Johnson*, 9 F.3d 506 (6th Cir.1993)), cert. denied, 512 U.S. 1212 (1994). *Johnson* involved "a warrantless search by police responding to a report of a burglary," which was held to be "justified on exigent circumstances grounds." *Brimage*, 918 S.W.2d at 501. Like the present case, the police in *Johnson* "observed, upon arrival at the scene of the reported crime, broken windows and individuals moving around inside the residence who failed to identify themselves ." *Id.* *Johnson* only differs from the present case in that the police there were responding to a burglary reported by the defendant's neighbor, who had seen the individuals crawl through the window of the defendant's residence. Although no one here actually observed the juveniles break into the house, the two armed juveniles had been seen entering the yard of 3015 Perez Street and Gallegos had probable cause to believe a burglary was in progress at this same address. Taking into account all the information known to Gallegos at the time he searched J.D.'s home, a reasonable police officer could have concluded an emergency existed and there was a reasonable possibility someone inside the house was in danger or in need of assistance. We therefore overrule J.D.'s first point of error.

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