Reasonable grounds for stop and frisk allowed where runaway gone for less than 24 hours. [In the Matter of J.C.](17-1-2)

On December 1, 2016, the Houston Court of Appeals (14th Dist.) held that where there is an issue as to whether a child is a runaway, whether he or she voluntarily absented himself from his home for a “substantial length of time,” is a fact issue to be determined on a case-by-case basis.

¶ 17-1-2. **In the Matter of J.C.,** MEMORANDUM, No. 14-15-00696-CV, 2016 WL 7018207 [Tex.App.—Houston (14th Dist.), 12/1/16].

**Facts:** The Riverside Drive-In was robbed at gunpoint on Friday, May 2, 2014. Mr. Matthew, the complainant and part-owner of the Riverside Drive-In, testified that the robber was a male, wearing a long-sleeved T-shirt, black pants or jeans, and his face was covered with a white cloth and a “red thing on the head.”1 Complainant also testified that the robber pointed a black gun at his head, directed him to the register, and handed him a grocery bag. Complainant gave the robber all the paper money in the register, about $260 to $270. The robbery took less than a minute and occurred around 8:45 in the evening. The Riverside Drive-In’s surveillance video confirmed this testimony.

On the same evening, an individual parked a truck in front of Mr. and Mrs. Macha’s house. Mr. Macha testified that the individual’s face was covered “with a kind of reddish hat and some kind of light-colored face mask.” The individual ran in the direction of the Riverside Drive-In located a third of a mile away. Thinking this behavior odd, Mr. Macha recorded the truck’s license plate number and provided it to the police. The police later confirmed that the plates were registered to appellant’s father.

Appellant, a 16-year-old juvenile at the time of the offense, lived in East Bernard with D.C., his legal guardian and paternal grandmother. Around 7:40 p.m., D.C. told appellant to walk the dogs and take the trash to their burn pit. D.C. generally allowed appellant to use a truck, which belonged to his father, to take the trash. Appellant left to complete his chores and returned in time to watch a 9:00 p.m. television show. The next morning, Saturday, May 3, 2014, D. C. noticed that both appellant and the truck were missing. Appellant did not have D.C.’s permission to leave home or take the truck.

D.C. tried contacting appellant, but he did not answer her calls. On Sunday, May 4, D.C. reported appellant as a missing runaway. Later on May 4, appellant contacted D.C. and told her he was with his girlfriend and on the river in New Braunfels. D.C. told appellant that he needed to come home with the truck. Appellant did not comply.

On May 5, Officer Bettice and Corporal Spence of the New Braunfels Police Department saw appellant sitting on the street curb wearing a white T-shirt wrapped around his head. Corporal Spence identified appellant and ran his name through dispatch. Corporal Spence learned that appellant was listed on the National Crime Information Center (NCIC) as a runaway child. The NCIC database described appellant as endangered because he was bipolar and off his medicine. Appellant was in possession of his father’s truck. After officers made contact with appellant, they attempted to contact an adult responsible for him. After about forty minutes, officers decided to transfer appellant to the Juvenile Probation Office. Pursuant to a pat-down, the officers seized a black BB gun from appellant and testified that it looked like a realistic handgun. Detective White testified that the BB gun could be a deadly weapon and cause serious bodily injury if it discharged into a person’s eye.

A jury found that appellant engaged in delinquent conduct by committing the offense of aggravated robbery. The trial court assessed appellant’s sentence at eleven years’ confinement in the Texas Juvenile Justice Department with the possibility of transfer to the Institutional Division of the Texas Department of Criminal Justice.

In his first point of error, appellant contends that the trial court erred in denying his motion to suppress the evidence, specifically appellant’s BB gun that police seized following the pat-down.

**Held:** Affirmed

**Memorandum Opinion:** We review a motion to suppress for abuse of discretion. Lollie v. State, 465 S.W.3d 312, 314 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (citing Lujan v. State, 331 S.W.3d 768, 771 (Tex. Crim. App. 2011) (per curiam)). In conducting this review, we employ a bifurcated standard. State v. Kerwick, 393 S.W.3d 270, 273 (Tex. Crim. App. 2013). We give almost total deference to the trial court’s determination of historical facts and mixed questions of law and fact that rely on credibility or demeanor. Id. We review de novo pure questions of law and mixed questions of law and fact that do not rely on the trial court’s credibility determinations. Martinez v. State, 348 S.W.3d 919, 923 (Tex. Crim. App. 2011). The scenario here is a mixed question of law and fact, the resolution of which turns on an evaluation of credibility and demeanor. The proper standard of review is therefore the first category, “almost total deference” to the trial ruling.

Juvenile adjudication hearings proceed under Chapter 38 of the Code of Criminal Procedure and the Texas Rules of Evidence applicable to criminal cases. Tex. Fam. Code Ann. § 54.03(d) (West 2014). Evidence obtained by an officer in violation of the Constitution or laws of the State of Texas is inadmissible at trial. Tex. Crim. Proc. Code art. 38.23 (West 2015).

A child may be taken into custody by a law-enforcement officer if there is probable cause to believe that the child has engaged in conduct indicating a need for supervision. Tex. Fam. Code Ann. § 52.01(a)(3)(B) (West 2014).2 Conduct indicating a need for supervision includes the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time. Tex. Fam. Code Ann. § 51.03(b)(3) (West 2014). Probable cause “ripens at the moment facts and circumstances within the officer’s knowledge ... are sufficient to warrant a prudent man in believing the suspect has committed or is committing an offense.” Johnson v. State, 171 S.W.3d 643, 649 (Tex. App.—Houston [14th Dist.] 2005, pet. ref’d) (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)).

In its ruling on appellant’s motion to suppress, the trial court stated: “I find the stop proper. I find that they had information that this young man was a runaway. I do find that their taking the ... air pistol into custody, was lawful.” Appellant asserts that the police officers had no probable cause to take appellant into custody, and therefore no authority to conduct the pat-down, because based on their knowledge appellant was not absent from his home for a substantial length of time. See Tex. Fam. Code Ann. § 51.03(b)(2) (West 2014).

We have found no cases construing the term “substantial length of time” in the context of Section 51.03(b)(2) of the Texas Family Code. However, the Penal Code contains the same term. Compare Tex. Penal Code § 25.06(a)(2) (West 2015) (“[A runaway child] is voluntarily absent from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without the intent to return.”) with Tex. Fam. Code Ann. § 51.03(b)(2) (West 2014) (defining conduct indicating a need for supervision as “the voluntary absence of a child from the child’s home without the consent of the child’s parent or guardian for a substantial length of time or without intent to return”). We find the cases construing the term in the Penal Code instructive. The cases support the conclusion that the term could include a juvenile’s absence for less than 24 hours. See Barrow v. State, 973 S.W.2d 764, 768 (Tex. App.—Amarillo 1998, no pet.) (5 hours); accord Urbanski v. State, 993 S.W.2d 789, 794–95 (Tex. App.—Dallas 1999, no pet.) (17 hours).

We adopt the reasoning as set forth in Urbanski to determine what period of absence is “substantial.” The court in Urbanski reasoned that because the legislature did not assign a fixed number to the meaning of “substantial length of time,” it left the issue to the fact finder to determine on a case-by-case basis. 993 S.W.2d at 794–95. To make this determination, the Urbanski court considered these factors: the child’s duration of absence; time of day; the intent of the child in returning; authorization to leave; child’s age; child’s motive for running away; the child’s activity during the absence; the child’s distance from home; and the number, age, maturity, and experience of the persons, if any, accompanying or assisting the child during the absence.

Here, the police officers who seized appellant testified during the suppression hearing that they were made aware that appellant: was age 16; left his grandmother’s home without her permission; took the truck without permission; was absent for at least one night; was located roughly 150 miles away from home; and, during his absence, was “off his meds and using drugs,” and covered his face and head with a shirt or towel on a hot day. The police officers also knew appellant was in the NCIC runaway database.

**Conclusion:** Considering the evidence, we hold that the trial court would not have abused its discretion in finding that appellant was missing for a substantial length of time and that the police officers had probable cause to take appellant into custody under Section 52.01 of the Texas Family Code. The pat-down was therefore lawful and the BB gun was admissible. The trial court did not abuse its discretion in denying appellant’s motion to suppress the BB gun.