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Criminal Procedure: Confessions, Searches, and Seizures

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CRIMINAL PROCEDURE: CONFESSIONS, SEARCHES, AND SEIZURES

*Benjamin S. Brown**
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I. INTRODUCTION

This article summarizes and analyzes cases decided by the U.S. Supreme Court and the Texas Court of Criminal Appeals during the Survey period, which spans from December 1, 2016, to November 30, 2017.

In Subpart II, this article will address confessions jurisprudence, which experienced no significant changes during the Survey period. Subpart III will then survey search and seizure jurisprudence, which shifted significantly. Most notably, the Court of Criminal Appeals applied long-standing Fourth Amendment principles to cell phone technology. The court also addressed the nuances of several warrant exceptions, the private-party-search doctrine, and consensual interactions with law enforcement. The U.S. Supreme Court altered the Fourth Amendment landscape, rejecting U.S. Court of Appeals for the Seventh Circuit case law that governed pre-trial detention claims.

II. CONFESSIONS

The law of confessions is governed by the Fifth Amendment, which institutes procedural safeguards that protect suspects who undergo custodial interrogation by law enforcement.¹ Custodial interrogation refers to “questioning initiated by law enforcement officers after a person has been . . . deprived of his freedom of action in any significant way.”² The U.S. Supreme Court opined in *Miranda v. Arizona* that, before initiating this type of questioning, law enforcement must admonish the suspect “that he has [the] right to remain silent, that any statement he . . . make[s] may be used . . . against him, and that he has [the] right to . . . an attorney.”³ The suspect may waive these rights, so long as his waiver is voluntary.⁴ But, “[i]f . . . he indicates in any manner” that he wishes to invoke

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1. U.S. CONST. amend. V; *Miranda v. Arizona*, 384 U.S. 436, 444 (1966).

2. *Miranda*, 384 U.S. at 444.

3. *Id.*

4. *Id.*

these rights, law enforcement must immediately end the interrogation.⁵ If law enforcement fails to properly warn a suspect or ignores his invocation of these rights, Texas Code of Criminal Procedure Article 38.22 provides that any subsequent evidence discovered during the questioning is inadmissible.⁶

Because neither the U.S. Supreme Court nor the Texas Court of Criminal Appeals decided any significant confessions cases during the Survey period, this Subpart will briefly survey Texas courts of appeals cases that applied well-settled Fifth Amendment jurisprudence to novel factual scenarios.

A. INVOKING THE RIGHT TO AN ATTORNEY

In *State v. Norris*, the Fourteenth Houston Court of Appeals evaluated how a suspect must invoke his right to an attorney.⁷ In this case, appellee, Eric Cornelius Norris, Jr., was being questioned regarding a murder.⁸ The detectives read Norris his *Miranda* rights and questioned him for over an hour.⁹ Norris then stated that he wanted to make a phone call, but he was interrupted by the detective, who refused to allow Norris to make a call until he was done asking questions.¹⁰ According to the trial court's transcript of the interrogation, Norris then stated: "Well, give me a lawyer or something" After this exchange, the interrogation continued, and Norris admitted to the murder.¹¹

Norris moved to suppress his confession, claiming that the continued questioning after he invoked his right to an attorney violated his *Miranda* rights.¹² The trial judge agreed, suppressing all statements made after Norris mentioned that he wanted an attorney.¹³ But the court of appeals reversed.¹⁴ Conducting its own examination of the recording of Norris's interview, the court of appeals determined that his actual statement was: "I just want to make a phone call and call my sister and see if she could . . . go get me a lawyer" ¹⁵ The court determined that Norris's statement was "forward-looking"—he was not claiming that he wanted counsel at that moment, but rather speculating that he may want counsel at some point in the future.¹⁶ The court held that this statement was not "unequivocal" or "unambiguous" such that the police would understand

5. *Id.* at 444–45.

6. *See* TEX. CODE CRIM. PROC. ANN. art. 38.22, §§ 2–3 (West 2018).

7. *See* *State v. Norris*, 541 S.W.3d 862, 865 –67 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd).

8. *Id.* at 864.

9. *Id.*

10. *Id.* at 865.

11. *Id.*

12. *Id.* at 866.

13. *Id.*

14. *Id.* at 867.

15. *Id.* at 866.

16. *Id.* at 867.

Norris wanted to consult an attorney at that time.¹⁷ The court also referenced Norris's statement just before this exchange, when he indicated he was "okay" speaking to the police.¹⁸ Thus, considering the totality of the circumstances, the court ruled that Norris did not sufficiently invoke his right to attorney, and his admission was admissible.¹⁹

B. SPONTANEOUS ADMISSIONS

In *Kennard v. State*, the First Houston Court of Appeals also clarified the interaction between *Miranda* warnings and spontaneous statements.²⁰ In this case, appellant, Jonathan Kennard was convicted of the murder of Lester Williams.²¹ Williams was shot to death in the parking lot of a nightclub in Harris County.²² When the police detained Kennard in connection with the murder, they issued *Miranda* warnings and asked if he was willing to talk.²³ He assented.²⁴ The officers then asked if Kennard understood his *Miranda* rights and truly wanted to waive them.²⁵ Kennard responded: "No, I really would like a lawyer but I don't know what's going on, my man, like, at all, I don't. I know I left at a certain time. So I only stayed in there for a few minutes."²⁶

Kennard moved to suppress the statements he made during and after this exchange, alleging that he had invoked his right to an attorney but the officers had continued questioning him in violation of *Miranda*.²⁷ The trial court denied his motion, and the court of appeals affirmed.²⁸ The court of appeals reasoned that Kennard's invocation of his right to an attorney and his admission that he was at the scene of the crime on the night of the murder were one, seamless statement.²⁹ Further, his admission was not "in response to . . . [a] question posed" by "the officers"—he made this statement "spontaneously."³⁰ Thus, this statement was not "the product of words or actions on the part of the police that they should have known were reasonably likely to elicit an incriminating response."³¹ The admission was therefore not a product of "interrogation," not entitled to *Miranda* protections, and admissible.³²

17. *Id.*

18. *Id.*

19. *Id.*

20. See *Kennard v. State*, No. 01-16-00984-CR, 2017 WL 5623583, at *4 (Tex. App.—Houston [1st Dist.] Nov. 21, 2017, no pet.) (mem. op., not designated for publication).

21. *Id.* at *1.

22. *Id.*

23. *Id.* at *4.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *Id.*

III. SEARCHES AND SEIZURES

The Fourth Amendment of the U.S. Constitution, closely mirrored by Article I, Section 9 of the Texas Constitution, protects individuals from unreasonable searches and seizures.³³ The U.S. Supreme Court has described this amendment as “sacred,” “inestimable,” and “carefully guarded,” for it codifies the right “to the possession and control of [one’s] own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.”³⁴ This constitutional provision has provided the basis for probable cause, reasonable suspicion, fruit of the poisonous tree, and many other prophylactic legal doctrines.

Though expansive, the Fourth Amendment is not limitless. An accused may only invoke its protections if he can demonstrate “an actual . . . expectation of privacy . . . that society is prepared to [deem] . . . ‘reasonable.’”³⁵ This amendment’s warrant requirement is also subject to a number of exceptions, such as exigent circumstances³⁶ and plain view.³⁷ And, as the legal landscape changes, the prophylactic doctrines supported by this amendment also change. So, U.S. Supreme Court and Texas Court of Criminal Appeals jurisprudence from the Survey period explores the outer bounds of the Fourth Amendment and its Texas corollary, determining whether novel circumstances and modern technologies may enjoy their protections.

A. CELL PHONES AND THE FOURTH AMENDMENT

The advent of cell phones has generated a new niche of search and seizure doctrine. Because these devices are so novel, they do not have a perfect legal analog (such as envelopes, landline phones, or email),³⁸ and therefore present many unanticipated privacy questions. Perhaps the most significant of these questions is whether, or to what extent, cell phone users have a reasonable expectation of privacy in the information that their devices transmit. The Texas Court of Criminal Appeals grappled with this issue in several recent cases.

1. *Love v. State*

In *Love v. State*, the Texas Court of Criminal Appeals determined that individuals do have a reasonable expectation of privacy in their text messages, even though these messages are conveyed to and stored by cell phone service providers.³⁹ This decision was issued soon after another landmark Texas ruling, *Ford v. State*, which established that individuals

33. U.S. CONST. amend. IV; see TEX. CONST. art. I, § 9.

34. *Terry v. Ohio*, 392 U.S. 1, 8–9 (1968); *Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891).

35. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

36. *Kentucky v. King*, 563 U.S. 452, 460 (2011).

37. *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971).

38. See *Love v. State*, 543 S.W.3d 835, 843–44 (Tex. Crim. App. 2016).

39. *Id.* at 845.

do not have a reasonable expectation of privacy in their cell site location information (CSLI).⁴⁰

In *Love*, the appellant, Albert Love, appealed his conviction for the murders of Keenan Hubert and Tynus Sneed.⁴¹ Love complained that the trial court abused its discretion by denying his motion to suppress his cell phone records, including his subscriber information, call logs, location information, and text messages.⁴² The State obtained these records via court order but without a search warrant.⁴³ Love argued that this constituted an unreasonable search and seizure in violation of the Fourth Amendment.⁴⁴

The crux of this case was whether Love maintained a reasonable expectation of privacy in these records, for this would determine whether they were protected by the Fourth Amendment's warrant requirement. The court began with the standard articulated by the U.S. Supreme Court in *Katz v. United States*: "What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection. But what he seeks to preserve as private, even in an area accessible to the public, . . . may be constitutionally protected."⁴⁵ This doctrine begets a two-step analysis, in which a court must determine (1) whether the person "exhibited an actual . . . expectation of privacy"; and (2) whether this expectation is "one that society" would "recognize as reasonable or justifiable."⁴⁶

The court then noted that information conveyed to third parties does not typically enjoy Fourth Amendment protections, since such disclosure defeats the first step of the reasonable expectation of privacy analysis.⁴⁷ And, in this case, Love had effectively disclosed his cell phone records to a third party by conveying them to Metro PCS, his internet service provider (ISP), and allowing the company to store these records on its servers.⁴⁸ The court also acknowledged precedent holding that the Fourth Amendment does not protect call logs⁴⁹ and CSLI⁵⁰ because they are invariably disclosed to service providers. Thus, the court held that the State did not need a search warrant to acquire these aspects of Love's cell phone records.⁵¹

40. *Ford v. State*, 477 S.W.3d 321, 330 (Tex. Crim. App. 2015).

41. *Love*, 543 S.W.3d at 838.

42. *Id.*

43. *Id.* at 839–40.

44. *Id.* at 840.

45. *See id.* (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967)).

46. *Id.* at 840–41.

47. *Id.* at 841.

48. *Id.*

49. *See id.* (citing *Smith v. Maryland*, 442 U.S. 735, 743–45 (1979)).

50. *See id.* (citing *Ford v. State*, 477 S.W.3d 321, 329–30 & nn.5–7 (Tex. Crim. App. 2015)).

51. *Id.* *But see* *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (decided after the Survey period) (holding that, under the Fourth Amendment, "an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI").

But the court determined that Love’s text messages demanded more protection. The U.S. Supreme Court has drawn a distinction between CSLI and the contents of cell phone communications,⁵² and the Texas Court of Criminal Appeals has held that the search and seizure of a cell phone requires a search warrant.⁵³ And though it may be argued that Love waived his expectation of privacy by conveying these messages to his service provider, the court determined that the disclosure itself was not enough—the purpose and nature of the disclosure were dispositive.⁵⁴ The court grounded its reasoning in *United States v. Warshak*, a U.S. Court of Appeals for the Sixth Circuit case holding that disclosure of email content to an ISP does not defeat the expectation of privacy.⁵⁵ The Sixth Circuit likened emails transmitted by ISP’s to envelopes delivered by the postal service.⁵⁶

The Court of Criminal Appeals extended this analogy to text messages, holding that the key distinction is “whether the information was voluntarily disclosed to the third party for a specific business-related purpose, such as routing information, or merely transmitted using the services of the third party service provider.”⁵⁷ Mere transmission, the court determined, does not defeat the expectation of privacy.⁵⁸ Thus, because the State did not demonstrate that Metro PCS had a “specific business-related purpose” for storing the contents of its customers’ text messages, Love’s messages were protected by the Fourth Amendment and the State was required to secure a search warrant before obtaining them.⁵⁹

2. *Hankston v. State*

In *Hankston v. State*, the appellant, Gareic Hankston, appealed his murder conviction.⁶⁰ Hankston argued on appeal that the trial court erroneously denied his motion to suppress his cell phone records—specifically, his call logs and CSLI.⁶¹ Because the Texas Court of Criminal Appeals initially decided in *Ford*⁶² and reaffirmed in *Love*⁶³ that call logs and CSLI that have been disclosed to third parties are not protected by the Fourth Amendment, the court declined to entertain this claim.⁶⁴ But, the court did consider Hankston’s novel claim that Article I, Section 9 of the Texas Constitution affords greater search and seizure protections than the Fourth Amendment and thus imposes a warrant requirement on the

52. *Id.* (citing *Smith v. Maryland*, 442 U.S. 735, 743 (1979)).

53. *Id.* (citing *State v. Granville*, 423 S.W.3d 399, 417 (Tex. Crim. App. 2014)).

54. *Id.* at 843.

55. *Id.* at 842.

56. *See id.* (citing *United States v. Warshak*, 631 F.3d 266, 285 (6th Cir. 2010)).

57. *Id.* at 843.

58. *Id.*

59. *Id.* at 844.

60. *Hankston v. State*, 517 S.W.3d 112, 112 (Tex. Crim. App. 2017).

61. *Id.* at 112.

62. *See id.* at 120 (citing *Ford v. State*, 477 S.W.3d 321, 330 (Tex. Crim. App. 2015)).

63. *See id.* (citing *Love v. State*, 543 S.W.3d 835, 841 (Tex. Crim. App. Dec. 7, 2016)).

64. *Id.* at 113.

acquisition of call logs and CSLI.⁶⁵

To support this claim, Hankston cited heavily to *Richardson v. State*.⁶⁶ In that case, the Court of Criminal Appeals examined “whether the . . . use of a pen register by law enforcement . . . required probable cause.”⁶⁷ The court recognized that Article I, Section 9 and the Fourth Amendment offer substantially similar protections and serve essentially the same purpose: to protect individuals from unreasonable government searches and seizures.⁶⁸ The court also acknowledged *Smith v. Maryland* and *United States v. Miller*, two U.S. Supreme Court cases holding that the installation of a pen register did not constitute a “search” for Fourth Amendment purposes.⁶⁹ However, the Court of Criminal Appeals declined to follow this precedent and held that the Texas Constitution independently recognizes a privacy interest in the numbers an individual dials from their telephone.⁷⁰ Thus, a pen register did constitute a “search” within the meaning of Article I, Section 9.⁷¹

But the Texas Court of Criminal Appeals declined to follow the *Richardson* court in *Hankston*. The court first recognized that the Fourth Amendment and Article I, Section 9 contain nearly identical language and ostensibly serve the same purpose.⁷² The court then noted that, although it was not required to apply U.S. Supreme Court interpretations of the Fourth Amendment to the Texas Constitution, it could elect to do so, and in fact had only deviated from the Supreme Court on a handful of occasions.⁷³ Finally, the court emphasized that it had, in two prior cases, addressed similar issues and determined that the Fourth Amendment and Article I, Section 9 offered the same search and seizure protections.⁷⁴ The court admonished that it would “stretch judicial credibility to the breaking point . . . to hold that what ‘makes more sense’ for purposes of the Fourth Amendment does not also ‘make more sense’ under our [Texas] . . . constitutional analog.”⁷⁵ For these reasons, the court held that Article I, Section 9, like the Fourth Amendment, does not recognize a privacy interest in call logs or CSLI.⁷⁶

65. *See id.*

66. *See id.* at 116 (citing *Richardson v. State*, 865 S.W.2d 944 (Tex. Crim. App. 1993)).

67. *Id.* at 117.

68. *Id.*

69. *Id.* at 117–18 (citing *Smith v. Maryland*, 442 U.S. 735 (1979); *U.S. v. Miller*, 425 U.S. 435 (1976)).

70. *Id.* at 118.

71. *Id.*

72. *See id.* at 116.

73. *Id.* at 116–17.

74. *See id.* at 119 (citing *Johnson v. State*, 912 S.W.2d 227 (Tex. Crim. App. 1995); *Crittenden v. State*, 899 S.W.2d 668 (Tex. Crim. App. 1995)).

75. *Id.* (quoting *Crittenden*, 899 S.W.2d at 673).

76. *See id.* at 122. *But see* *Carpenter v. United States*, 138 S. Ct. 2206, 2217 (2018) (decided after the Survey period) (holding that, under the Fourth Amendment, “an individual maintains a legitimate expectation of privacy in the record of his physical movements as captured through CSLI”).

B. EXCEPTIONS TO THE WARRANT REQUIREMENT

The U.S. Supreme Court has historically emphasized the importance of “adher[ing] to judicial processes”⁷⁷ and interposing “the deliberate, impartial judgment of a judicial officer . . . between the citizen and the police.”⁷⁸ The Court has thus interpreted the Fourth Amendment to require a warrant, approved by a judge or magistrate, to authorize all searches that do not fall within “a few specifically established and well-delineated exceptions.”⁷⁹ During the Survey period, the Texas Court of Criminal Appeals issued several opinions exploring the nuances of these often-litigated exceptions.

1. Search Incident to Arrest

The “search incident to arrest” exception to the warrant requirement allows police officers to search an arrestee in conjunction with a lawful arrest.⁸⁰ The purpose of this doctrine is to allow officers to seize weapons or other dangerous items that could be used to resist or escape law enforcement, and to seize and preserve evidence.⁸¹ However, this exception only applies to searches that are “‘substantially contemporaneous’ with the arrest and . . . confined to the area within the immediate control of the arrestee.”⁸² This doctrine will not justify a search that is attenuated from the arrest or otherwise conducted when no exigent circumstances exist.⁸³

The Texas Court of Criminal Appeals considered this exception in *State v. Sanchez*.⁸⁴ In *Sanchez*, a police officer found appellee, Reinaldo Sanchez, asleep in the driver’s seat of his car, parked in a grassy area by a bar.⁸⁵ The officer discovered that Sanchez had several outstanding traffic warrants and subsequently arrested him.⁸⁶ Upon a search of Sanchez’s personal effects, the officer discovered cocaine.⁸⁷ The officer then searched Sanchez’s car and found more cocaine in the passenger seat.⁸⁸

Sanchez filed a motion to suppress, which was granted as to the cocaine found in his car.⁸⁹ The trial court found that “[t]he officer did not have probable cause to believe that the vehicle contained evidence of a crime before the search of the Defendant’s vehicle,” and that “[t]here existed no reason to believe that evidence of the traffic violations for which there was a warrant authorizing the Defendant’s arrest by the police officer[]

77. *United States v. Jeffers*, 342 U.S. 48, 51 (1951).

78. *Wong Son v. United States*, 371 U.S. 471, 481–82 (1963).

79. *Katz v. United States*, 389 U.S. 347, 357 (1967).

80. *State v. Granville*, 423 S.W.3d 399, 410 (Tex. Crim. App. 2014).

81. *Id.*

82. *Id.*

83. *Id.*

84. *See State v. Sanchez*, 538 S.W.3d 545, 548–551 (Tex. Crim. App. 2017).

85. *Id.* at 546.

86. *Id.*

87. *Id.* at 546–47.

88. *Id.* at 547.

89. *Id.*

might be found in the vehicle.”⁹⁰ The State appealed this decision, arguing that the search of Sanchez’s car “was a valid search incident to arrest.”⁹¹ However, the Corpus Christi Court of Appeals affirmed, holding that the “offense of arrest” was dispositive.⁹² Sanchez was initially arrested for traffic offenses, and because the officer could not reasonably believe that he would find evidence of these offenses in Sanchez’s vehicle, his search of the vehicle was not justified.⁹³

But the Court of Criminal Appeals reversed.⁹⁴ The court first emphasized that the search of a vehicle incident to arrest is authorized only in two situations: “(1) when the arrestee is unsecured and the area of the vehicle is within his immediate control, or (2) ‘when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.’”⁹⁵ Noting that only the second scenario was relevant in this case, the court looked to the U.S. Supreme Court’s ruling in *Thornton v. United States* for guidance.⁹⁶ In that case, the defendant was initially stopped for invalid license tags, but after the police officer searched his personal effects and discovered illegal drugs, the defendant was arrested for drug possession.⁹⁷ The officer then searched the defendant’s car and found a handgun.⁹⁸ Justice Scalia’s concurrence, adopted by the Court in *Arizona v. Gant*,⁹⁹ found that the search of the vehicle incident to arrest was valid because the defendant “was lawfully arrested for a drug offense,” and the officer could have reasonably believed that evidence of this offense would be found in the defendant’s car.¹⁰⁰ It was irrelevant to the search that the defendant had originally been stopped for faulty license tags.¹⁰¹

The Texas Court of Criminal Appeals interpreted this decision to mean that the formalities of the arrest are not dispositive of a “search-incident-to-arrest” issue.¹⁰² It does not matter, the court held, which offense was discovered first or which actions formed the basis for the offense of arrest, so long as law enforcement developed probable cause to believe the defendant committed the relevant crime before the search occurred.¹⁰³ Thus, Sanchez’s initial arrest for traffic violations was not fatal to the search of his vehicle.¹⁰⁴ The officer developed probable cause for a drug offense upon searching Sanchez’s personal effects, and, because the of-

90. *Id.*

91. *Id.*

92. *Id.* at 547–48 (citing *State v. Sanchez*, 501 S.W.3d 165, 170–71 (Tex. App.—Corpus Christi 2016), *rev’d*, 538 S.W.3d 545 (Tex. Crim. App. 2017)).

93. *Id.* at 548.

94. *See id.* at 551.

95. *Id.* at 548 (quoting *Arizona v. Gant*, 556 U.S. 332, 335 (2009)).

96. *See id.* (citing *Thornton v. United States*, 541 U.S. 615, 615, 618 (2004)).

97. *Id.*

98. *Id.*

99. *Id.* (citing *Arizona v. Gant*, 556 U.S. 332, 335 (2009)).

100. *Id.*

101. *See id.*

102. *See id.* at 549.

103. *See id.*

104. *Id.* at 551.

ficer could have reasonably believed that further evidence of a drug crime was in the vehicle, the subsequent search was justified.¹⁰⁵

2. *Exigent Circumstances and Plain View*

In *Ricks v. State*, the Texas Court of Criminal Appeals elaborated upon two significant warrant exceptions: exigent circumstances and plain view.¹⁰⁶ The exigent circumstances exception validates a warrantless search when law enforcement has probable cause and one of three categories of exigent circumstances exists: “1) providing aid or assistance to persons whom law enforcement reasonably believes are in need of assistance; 2) protecting police officers from persons whom they reasonably believe to be present, armed, and dangerous; and 3) preventing the destruction of evidence or contraband.”¹⁰⁷ This exception often interacts with the plain view exception, for “the police may seize any evidence that is in plain view during the course of their legitimate emergency activities.”¹⁰⁸ An object falls within the plain view exception when the officer is lawfully present in a place where the object may be seen, the incriminating nature of the object is apparent, and the officer has “the right to access the object.”¹⁰⁹

In *Ricks*, the appellant, Cedric Allen Ricks, stabbed his girlfriend, Roxann Sanchez, and her son, Anthony Figueroa, to death in their apartment.¹¹⁰ Ricks also attacked Sanchez’s eldest son, Marcus Figueroa, but he survived.¹¹¹ Sanchez’s infant son, Isaiah, was unharmed.¹¹² Ricks then fled the scene and called his cousin, Tamara Butts, to confess his crimes.¹¹³ Butts alerted the police, who dispatched several officers to the apartment.¹¹⁴ Officer Baxley arrived first, and as he waited for backup, Marcus called 911 from inside the apartment and reported that his mother and brother had been murdered.¹¹⁵ Baxley was instructed to call Marcus to the apartment’s landing, and the two waited in front of the apartment until backup arrived.¹¹⁶ Officers Bowen, Crowell, and Scott then arrived at the scene and entered the apartment to look for suspects and secure the area.¹¹⁷ The officers found the bodies of Roxann Sanchez and Anthony Figueroa and the murder weapon, and they observed large amounts of blood, all in plain view.¹¹⁸ Several hours later, Bedford Police

105. *Id.*

106. *See Ricks v. State*, No. AP-77,040, 2017 WL 4401589, at *8–11 (Tex. Crim. App. Oct. 4, 2017, not designated for publication).

107. *Gutierrez v. State*, 221 S.W.3d 680, 685 (Tex. Crim. App. 2007).

108. *Mincey v. Arizona*, 437 U.S. 385, 393 (1978).

109. *Keehn v. State*, 279 S.W.3d 330, 334 (Tex. Crim. App. 2009).

110. *Ricks*, 2017 WL 4401589, at *1.

111. *See id.* at *2.

112. *Id.*

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.*

118. *Id.*

Detective Joey Gauger and Crime Scene Technician Brittany Grice arrived at the apartment.¹¹⁹ They collected the items the officers had previously seen in plain view, along with several other items that were not observed in plain view, including bandage wrappers, a wallet, a photograph, and paperwork.¹²⁰ Both searches were conducted without a warrant.¹²¹

At trial, Ricks moved to suppress all evidence found in the apartment.¹²² The trial court granted his motion as to the items collected by Gauger and Grice that were not in plain view, but denied as to all other evidence.¹²³ On appeal, Ricks argued that all evidence discovered pursuant to the warrantless searches should be suppressed because, once the first responding officers completed their sweep of the apartment, the exigent circumstances had been extinguished.¹²⁴ He claimed that all subsequent searches of the apartment required a warrant.¹²⁵

The Court of Criminal Appeals first asserted that exigent circumstances justified the initial entry.¹²⁶ The first responding officers found Marcus, who was badly wounded and needed medical assistance.¹²⁷ The officers could also hear the baby, Isaiah, crying in the apartment, and they were not sure whether Ricks had left the area.¹²⁸ The court also held that, although the exigent circumstances had dissipated when the subsequent, warrantless searches were conducted, these searches were justified.¹²⁹ The court expanded upon the exigent circumstances exception, asserting that “the right to be present is not necessarily limited to just the officer or officers who actually dealt with the exigency that permitted the initial entry, but may extend to officers who have a different function from the original entrants.”¹³⁰ The court emphasized that it would “make[] no sense” to require subsequent officers to obtain a warrant to complete the work of the initial responding officers.¹³¹ The court also noted that, when an officer observes evidence in plain view, this observation destroys the owner’s privacy interest in that object.¹³² Law enforcement may, as a result, seize that object without a warrant, even during the course of a later search.¹³³ Thus, all searches in *Ricks* were justified by the exigent circumstances and plain view exceptions, to the extent that

119. *Id.* at *4.

120. *Id.*

121. *See id.* at *8.

122. *Id.* at *5.

123. *Id.*

124. *Id.* at *10.

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* (quoting *Johnson v. State*, 161 S.W.3d 176, 183 (Tex. App.—Texarkana 2005), *aff’d on other grounds*, 226 S.W.3d 439, 445 (Tex. Crim. App. 2007)).

132. *Id.* (citing *Texas v. Brown*, 460 U.S. 730, 739 (1983)).

133. *Id.*

the later searches did not exceed the scope of the initial sweep.¹³⁴

C. ARTICLE 38.23 AND THE GOOD-FAITH EXCEPTION

Texas Code of Criminal Procedure Article 38.23 (Article 38.23) proscribes the admission of illegally-obtained evidence.¹³⁵ However, the statute provides a “good faith” exception that allows such evidence to be admitted when it “was obtained by a law enforcement officer acting in objective good faith reliance upon a warrant issued by a neutral magistrate based on probable cause.”¹³⁶ Article 38.23 also “‘mirrors’ the federal exclusionary rule,”¹³⁷ and the Texas Court of Criminal Appeals often borrows from federal case law when analyzing exclusionary issues.¹³⁸ However, the court will only graft federal principles into Texas law if these principles are “‘consistent with’ the statutory language.”¹³⁹

The Texas Court of Criminal Appeals examined the interaction between the good-faith exception and the fruit of the poisonous tree doctrine in *McClintock v. State*.¹⁴⁰ In this case, law enforcement took a drug-sniffing dog to the door of McClintock’s residence.¹⁴¹ The dog detected drugs, and the police used this alert as the basis for a search warrant.¹⁴² The search yielded a felony amount of marijuana.¹⁴³ McClintock filed a motion to suppress, arguing that the use of the drug-sniffing dog constituted an illegal search and that, without the dog’s alert, there was not sufficient probable cause to support a warrant.¹⁴⁴ The trial court denied, holding that the drug-dog sniff did not constitute a search.¹⁴⁵ But, “[w]hile the case was . . . on appeal, the United States Supreme Court decided *Florida v. Jardines*,” holding that the use of a drug-sniffing dog in the curtilage of a residence does constitute a search.¹⁴⁶

Consequently, in *McClintock*, the State emphasized on appeal that *Jardines* had not yet been decided at the time of the search.¹⁴⁷ The officers thus relied on legal precedent holding that a drug-dog sniff on the curtilage of a residence was not a search, and therefore acted in good faith when they used this evidence to obtain a warrant.¹⁴⁸ But the First

134. *Id.* at *11.

135. *See* TEX. CODE CRIM. PROC. ANN. art. 38.23(a) (West 2018) (“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.”).

136. *Id.* art. 38.23(b).

137. *McClintock v. State*, 541 S.W.3d 63, 66 (Tex. Crim. App. 2017) (citing *Miles v. State*, 241 S.W.3d 28, 32 (Tex. Crim. App. 2007)).

138. *See id.* at 68.

139. *Id.*

140. *See id.* at 69–70.

141. *Id.* at 65.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.* (citing *Florida v. Jardines*, 569 U.S. 1 (2013)).

147. *Id.*

148. *Id.*

Houston Court of Appeals disagreed, holding that Article 38.23's good-faith exception requires that the evidence is obtained pursuant to a warrant that is "based on probable cause."¹⁴⁹ Per the fruit of the poisonous tree doctrine, the drug-dog sniff could not be included in the probable cause calculus because it constituted an illegal search.¹⁵⁰ Further, the court held that the other evidence, excluding the drug-dog sniff, did not constitute probable cause, and thus the warrant was invalid.¹⁵¹

The Court of Criminal Appeals set out to determine if the Texas Legislature, in drafting Article 38.23, intended "the good-faith exception . . . [to] apply only to . . . the illegal acquisition of evidence" based upon a warrant supported by probable cause, or if the exception may also protect searches predicated upon warrants that are themselves tainted by police misconduct.¹⁵² Because the U.S. Supreme Court had not yet addressed this issue, the court surveyed case law from an array of federal circuits to guide its decision.¹⁵³ The court found the U.S. Court of Appeals for the Fifth Circuit's opinion in *United States v. Massi* to be particularly persuasive.¹⁵⁴ In *Massi*, the Fifth Circuit held that the good-faith exception to the federal exclusionary rule may apply to a tainted warrant if two criteria are satisfied:

- (1) [T]he prior law enforcement conduct that uncovered evidence used in the affidavit for the warrant [is] "close enough to the line of validity" that an objectively reasonable officer preparing the affidavit or executing the warrant would believe that the information supporting the warrant[] was not tainted by unconstitutional conduct, and (2) the resulting search warrant [is] sought and executed by a law enforcement officer in good faith¹⁵⁵

The Texas Court of Criminal Appeals found this articulation of the rule to be an "acceptable synthesis of the federal case law."¹⁵⁶ Further, the court determined that the language of Article 38.23 was broad enough to integrate this rule into Texas law.¹⁵⁷ The court reasoned that, because Article 38.23 accommodates the federal fruit of the poisonous tree doctrine, the statute should accordingly recognize the application of its good-faith exception to this doctrine.¹⁵⁸

Applying this newly-minted rule to the facts at hand, the court determined that the good-faith exception rescued the validity of the search warrant.¹⁵⁹ The court emphasized that, before *Jardines*, a drug-dog sniff in the curtilage of a residence was ostensibly legal because drug dogs only

149. *Id.* at 66.

150. *Id.*

151. *Id.*

152. *Id.* at 67.

153. *See id.* at 68–72.

154. *See id.* at 72.

155. *Id.* (quoting *United States v. Massi*, 761 F.3d 512, 528 (5th Cir. 2014)).

156. *Id.*

157. *Id.*

158. *Id.* at 72–73.

159. *Id.* at 74.

detect contraband, and individuals do not retain a privacy interest in these items.¹⁶⁰ Further, even after *Jardines*, the law on this topic remains muddled, as it is unclear what exactly constitutes the “curtilage” of a residence.¹⁶¹ Thus, at the time the officers executed the drug-dog sniff, this conduct was “close enough to the line of validity” such “that an objectively reasonable officer . . . would . . . believe” his conduct was legal.¹⁶²

D. THE PRIVATE-PARTY-SEARCH DOCTRINE

The private-party-search doctrine emanates from the fact that the Fourth Amendment applies only to the government—not to private actors.¹⁶³ The U.S. Supreme Court has held that this amendment “was not intended to be a limitation upon” private citizens, even when those citizens wrongfully seize another’s property.¹⁶⁴ But a private-party search may, in limited circumstances, frustrate the owner’s privacy interests in such a way that a subsequent, warrantless search by the government does not offend the Fourth Amendment.¹⁶⁵ But the subsequent government search must be limited to the scope of the initial, private-party search—if the government “change[s] the nature of the search” or conducts an “additional search,” then a warrant is required.¹⁶⁶

In *State v. Rodriguez*, the Texas Court of Criminal Appeals declined to extend the private-party-search doctrine to the search of a residence.¹⁶⁷ In this case, appellee, Mikenzie Renee Rodriguez, was a student at Howard Payne University who rented a dorm room on campus.¹⁶⁸ When resident assistants (RA’s) performed a routine search of her room, they found marijuana, pills, and a pipe.¹⁶⁹ The RA’s laid these items on the floor, took pictures of them, and then contacted their resident director, Nancy Pryor, who called the Howard Payne Police.¹⁷⁰ Officer Pacatte responded, and Pryor took him to Rodriguez’s room.¹⁷¹ Pacatte then called Brownwood Detective Joe Aaron Taylor to the scene, and the two officers confiscated the contraband without a warrant.¹⁷²

Rodriguez filed a motion to suppress, and the trial court granted, finding that the warrantless search of the dorm room did not fall into a warrant exception and violated the Fourth Amendment.¹⁷³ On appeal, the State contended that, under the private-party-search doctrine, the of-

160. *Id.*

161. *Id.*

162. *Id.*

163. *See State v. Rodriguez*, 521 S.W.3d 1, 10–11 (Tex. Crim. App. 2017).

164. *Burdeau v. McDowell*, 256 U.S. 465, 475 (1921).

165. *See United States v. Jacobsen*, 466 U.S. 109, 115–16 (1984).

166. *Id.* at 116 (quoting *Walter v. U.S.*, 447 U.S. 649, 663–64 (1980)).

167. *See Rodriguez*, 521 S.W.3d at 13.

168. *Id.* at 5.

169. *Id.* at 5–6.

170. *Id.* at 6.

171. *Id.*

172. *Id.*

173. *Id.* at 7.

ficers' conduct did not constitute a search because Rodriguez's privacy interests had already been extinguished by the private-party search conducted by the RA's.¹⁷⁴ But the Eastland Court of Appeals ruled for Rodriguez, holding that the dorm room was her residence, the officer's entry constituted a search, and the appellee enjoyed the protections of the Fourth Amendment in her dorm room, regardless of the university's "supervisory powers."¹⁷⁵

The Texas Court of Criminal Appeals first established that "a dorm room is "a home away from home" and thus a residence protected by the Fourth Amendment.¹⁷⁶ The court then addressed the private-party-search doctrine by reviewing how this principle applies in other cases.¹⁷⁷ For example, the court noted that this doctrine may permit law enforcement to acquire a suspect's medical records after a hospital has drawn their blood.¹⁷⁸ However, this doctrine would not allow the government to conduct a second blood draw simply because a private actor had executed the first one.¹⁷⁹ The court also recounted the facts of *United States v. Jacobsen*, a U.S. Supreme Court case in which Federal Express employees opened a box, unwrapped its contents, and discovered cocaine.¹⁸⁰ The employees contacted the U.S. Drug Enforcement Administration (DEA), and when an agent arrived, he could plainly see the cocaine without further manipulating the box.¹⁸¹ The Court held that the agent did not infringe upon the owner's privacy interests by inspecting the box because the owner's reasonable expectation of privacy had already been extinguished by the private-party search.¹⁸² The Court also asserted that there is no legal interest in privately possessing cocaine, and thus the chemical tests conducted by the DEA did not reveal an "arguably private fact" that exceeded the scope of the initial private-party search.¹⁸³

However, the Court in *Jacobsen* asserted, and the Texas Court of Criminal Appeals in *Rodriguez* agreed, that the private-party-search doctrine is limited in its applicability.¹⁸⁴ The *Jacobsen* majority cautioned that it would not "sanction warrantless searches of closed or covered containers or packages whenever probable cause exists as a result of a prior private search."¹⁸⁵ Extrapolating from this, the court reasoned that a residence is essentially a locked container that imbues its owner with "a reasonable expectation of privacy."¹⁸⁶ And, while a private-party search may detract

174. *Id.*

175. *Id.* at 7–8.

176. *Id.* at 9.

177. *See id.* at 10–11.

178. *Id.* at 12.

179. *Id.*

180. *Id.* at 11–12 (citing *United States v. Jacobsen*, 466 U.S. 109 (1984)).

181. *Id.* at 11–12.

182. *Id.* at 12.

183. *Id.* (quoting *Jacobsen*, 466 U.S. at 123).

184. *Id.* at 12–13.

185. *Id.* (quoting *Jacobsen*, 466 U.S. at 120 n.17).

186. *Id.* at 13.

from this expectation, it cannot vitiate it altogether.¹⁸⁷ As Justice Scalia mused in *O'Connor v. Ortega*: “A man enjoys Fourth Amendment protection in his home, for example, even though his wife and children have the run of the place—and indeed, even though his landlord has the right to conduct unannounced inspections at any time.”¹⁸⁸ Thus, even though Rodriguez agreed via her housing contract that the university may conduct surprise inspections of her “home,” this did not constitute a waiver of her Fourth Amendment rights.¹⁸⁹ Further, the RAs’ search did not frustrate her privacy interests, and the police officers were required to obtain a warrant before searching her belongings.¹⁹⁰

E. CONSENSUAL ENCOUNTERS, ARRESTS, AND DETENTIONS

The Fourth Amendment protects individuals from the unreasonable seizure of their “persons, houses, papers, and effects.”¹⁹¹ The “seizure of a person” can take many forms, including a temporary investigative detention, arrest, or imprisonment, as distinguished from a consensual encounter with the police, which does not trigger Fourth Amendment protections.¹⁹² Thus, a crucial issue in search and seizure jurisprudence is whether a seizure actually took place. If it is determined that a seizure was indeed executed, then a court must evaluate whether this seizure was “reasonable” within the meaning of the Fourth Amendment.¹⁹³ Both the U.S. Supreme Court and the Texas Court of Criminal Appeals have recently clarified their jurisprudence in this area.

1. *Consensual Interaction with the Police*

In *Shimko v. State*, the Texas Court of Criminal Appeals elaborated upon the difference between a consensual encounter and an investigative detention.¹⁹⁴ In this case, appellant, Joseph Timothy Shimko, drove to the parking lot of Little Woodrow’s, a bar, to pick up his friend, Scott Williamson.¹⁹⁵ Williamson was too drunk to drive and had called Shimko to ask for a ride home.¹⁹⁶ When Shimko entered the parking lot, he observed Williamson alongside a police officer, Deputy Ford.¹⁹⁷ Ford had noticed that Williamson was struggling to keep his balance, and was accompanying him to ensure his safety.¹⁹⁸ Deputy Ford observed Shimko

187. *See id.* at 14 (“[T]he existence of a housing agreement that allows routine inspections . . . does not render the Fourth Amendment inapplicable.”).

188. *Id.* (quoting *O'Connor v. Ortega*, 480 U.S. 709, 730 (1987) (Scalia, J., concurring)).

189. *See id.* at 14–15.

190. *See id.*

191. U.S. CONST. amend. IV.

192. *See Crain v. State*, 315 S.W.3d 43, 49–50 (Tex. Crim. App. 2010).

193. *See* U.S. CONST. amend. IV (proscribing only “unreasonable searches and seizures”).

194. *See Shimko v. State*, No. PD-1639-15, 2017 WL 604065, at *3–4 (Tex. Crim. App. Feb. 15, 2017).

195. *Id.* at *1.

196. *Id.*

197. *Id.*

198. *Id.*

drive by several times, and Williamson indicated to Ford that Shimko's vehicle was his ride home.¹⁹⁹ The officer then raised his hand and waved so that Shimko would stop.²⁰⁰ When Shimko rolled down his window and spoke to Deputy Ford, Ford smelled alcohol.²⁰¹ Officers Ford and Turner then arrested Shimko for driving while intoxicated.²⁰²

Shimko moved to suppress all evidence gathered by the officers after Ford stopped his vehicle.²⁰³ The trial court denied, holding that Shimko's interaction with Ford was a consensual encounter that did not trigger Fourth Amendment protections.²⁰⁴ On appeal, Shimko argued that his encounter with Ford constituted an investigative detention because Ford used his authority to compel Shimko to stop his vehicle.²⁰⁵ But the Austin Court of Appeals determined that the record did not support this position, and thus Shimko had failed to satisfy his burden to prove that the encounter was not consensual.²⁰⁶

The Court of Criminal Appeals began by stating that the purpose of the Fourth Amendment is not to entirely preclude interactions between citizens and the police, but rather to "prevent arbitrary and oppressive interference . . . with the privacy and personal security of individuals."²⁰⁷ Thus, a defendant, when moving to suppress evidence, carries the burden to rebut the presumption of lawful police conduct.²⁰⁸ He must first prove that a seizure, rather than a consensual encounter, occurred, and further prove that this seizure was unreasonable.²⁰⁹ The court explained that a consensual encounter does not invoke Fourth Amendment protections because the citizen is free to terminate the interaction at any time.²¹⁰ The court then noted that "there are no '*per se* rules'" when determining if the interaction between a citizen and police officer is consensual.²¹¹ This analysis asks whether, given the totality of the circumstances, a reasonable person in the citizen's shoes would believe he was free to leave.²¹²

The court did, however, recognize several benchmarks that could guide its analysis.²¹³ The court acknowledged that a seizure only occurs "when the implication arises that an officer's authority cannot be ignored, avoided, or ended."²¹⁴ Examples of the assertion of authority include the officer displaying a weapon, physically touching a citizen, using command

199. *Id.*

200. *Id.*

201. *Id.* at *2.

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.* at *3.

206. *Id.*

207. *Id.* at *4 (quoting *United States v. Martinez-Fuerte*, 428 U.S. 543, 544 (1976)).

208. *Id.* at *3.

209. *See id.*

210. *Id.*

211. *Id.*

212. *Id.* at *5.

213. *See id.* at *4.

214. *Id.*

words or an intimidating tone of voice, flashing lights, or blocking a citizen's vehicle.²¹⁵ But the court emphasized that these indicators are not dispositive and must be interpreted in light of the "time, place, and attendant circumstances."²¹⁶

Turning to the facts of this case, the court decided that Deputy Ford never asserted his authority such that a seizure occurred.²¹⁷ Although Ford did wave at Shimko to persuade him to stop, the court concluded the record was devoid of any evidence that Shimko was not free to ignore the officer and drive away.²¹⁸ And, although a traffic stop is typically a seizure, this did not constitute a traffic stop because the officer did not compel Shimko to stop—Shimko engaged with the officer of his own accord.²¹⁹ Further, the court clarified that it had not and would not establish a bright-line rule that a seizure occurs any time a police officer halts a vehicle.²²⁰ The court opined that such a rule would unnecessarily burden the police and impinge upon the consensual encounters that are often so crucial to law enforcement investigations.²²¹

2. *Pre-Trial Detention*

The U.S. Supreme Court has long held that a claim challenging pre-trial detention is governed by the Fourth Amendment.²²² The Court has determined that this amendment "was tailored explicitly for the criminal justice system, and its balance between individual and public interests always has been thought to define the 'process that is due' for seizures of person or property . . . including the detention of suspects pending trial."²²³ However, there has been some debate about whether a pre-trial detention claim may also be brought under the auspices of Fifth Amendment due process.²²⁴ While a majority of federal circuits have rejected this proposition, the U.S. Court of Appeals for the Seventh Circuit has embraced it, holding that, once a person has been detained, "the Fourth Amendment falls out of the picture."²²⁵ But the U.S. Supreme Court recently overruled this line of Seventh Circuit cases, opining that pre-trial detention is solely a Fourth Amendment issue.²²⁶

215. *Id.*

216. *Id.*

217. *See id.* at *6–7.

218. *Id.* at *6.

219. *Id.* at *5.

220. *See id.* at *5–7.

221. *See id.* at *7.

222. *See, e.g.,* *Albright v. Oliver*, 510 U.S. 266, 274 (1994) ("The Framers considered the matter of pretrial deprivations of liberty and drafted the Fourth Amendment to address it."); *Gerstein v. Pugh*, 420 U.S. 103, 111 (1975) ("Both the standards and procedures for arrest and detention have been derived from the Fourth Amendment and its common-law antecedents.").

223. *Gerstein*, 420 U.S. at 121 n.27.

224. *See, e.g.,* *Manuel v. City of Joliet*, 137 S. Ct. 911, 918–19 (2017).

225. *Llovett v. City of Chicago*, 761 F.3d 759, 763 (7th Cir. 2014) *abrogated by Manuel*, 137 S. Ct. 911 (2017).

226. *Manuel*, 137 S. Ct. at 918–19.

In *Manuel v. City of Joliet*, petitioner Elijah Manuel was pulled over by the police for failure to signal.²²⁷ The officers forcibly removed Manuel from the car and assaulted him as he was lying on the ground.²²⁸ They then searched Manuel's personal effects and confiscated a vitamin bottle containing pills.²²⁹ The pills tested negative for any controlled substance, but the officers arrested Manuel nonetheless.²³⁰ An evidence technician also tested the pills, which once again yielded no trace of contraband, but the technician lied in his report, claiming that the pills tested positive for ecstasy.²³¹ This report was used to charge Manuel with unlawful possession of a controlled substance.²³² Manuel was then brought before a county judge who, relying solely upon the officer's untruthful criminal complaint, determined there was probable cause to detain Manuel pending trial.²³³ The police laboratory eventually tested the pills once again, discovered they were innocuous, and the charges were dismissed—but by the time Manuel was released, he had spent forty-eight days in jail.²³⁴

Manuel brought a 42 U.S.C. § 1983 lawsuit against the City of Joliet and several police officers, complaining that they violated his Fourth Amendment rights by arresting and detaining him without probable cause.²³⁵ But the district court dismissed Manuel's suit, holding that the Fourth Amendment could not accommodate a claim of unlawful pre-trial detention.²³⁶ The court reasoned that, once the "legal process" had begun, only the Due Process Clause could provide the basis for relief.²³⁷ The U.S. Court of Appeals for the Seventh Circuit affirmed.²³⁸

The U.S. Supreme Court first asserted that the Fourth Amendment protects against unreasonable seizures, including the "seizure" of a person via detention or arrest.²³⁹ The Court also noted that this amendment prevents law enforcement from detaining citizens without reasonable suspicion or probable cause.²⁴⁰ Thus, the detention of which Manuel complained was the very type of injustice that the Fourth Amendment proscribes.²⁴¹ The timing of the legal process, the Court held, is irrelevant, and cannot vitiate a suspect's Fourth Amendment claim, nor transform his claim into one of due process.²⁴²

227. *Id.* at 915.

228. *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *Id.*

234. *Id.* at 915–16.

235. *Id.* at 916.

236. *Id.*

237. *Id.*

238. *Id.*

239. *Id.* at 917.

240. *See id.*

241. *See id.* ("Manuel's claim fits the Fourth Amendment, and the Fourth Amendment fits Manuel's claim, as hand in glove.")

242. *Id.* at 917–18.

IV. CONCLUSION

The most significant change in search and seizure doctrine during the Survey period was the application of Fourth Amendment principles to cell phone technology. Courts in Texas and across the country are still exploring this nascent area of the law, crafting jurisprudence that reconciles antiquated legal principles with rapidly-changing technologies.²⁴³ The Texas Court of Criminal Appeals also curtailed the private-party-search doctrine, expanded several exceptions to the warrant requirement, and reinforced the difference between consensual encounters with the police and “seizures” that trigger Fourth Amendment protections. The U.S. Supreme Court also reaffirmed the applicability of the Fourth Amendment to claims of illegal detention. Confessions jurisprudence, however, exhibited no notable changes.

243. *See, e.g.*, *Hankston v. State*, 517 S.W.3d 112 (Tex. Crim. App. 2017); *Love v. State*, 543 S.W.3d 835 (Tex. Crim App. 2016).