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Criminal Procedure: Confessions, Searches and Seizures

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CRIMINAL PROCEDURE: CONFESSIONS, SEARCHES, AND SEIZURES

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I. INTRODUCTION

OVER the past year, the Supreme Court of the United States and the Texas Court of Criminal Appeals decided several cases concerning confessions, searches, and seizures.[1] Some cases clarified established law, while others took the respective courts' jurisprudence in new directions. In two parts, this article reviews the most significant cases decided during this survey period: (1) confessions and (2) searches and seizures. In each part, the article identifies the areas of confession and search-and-seizure law that the recently decided cases

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1. Unless context suggests otherwise, "Supreme Court" refers to the Supreme Court of the United States, "Court of Criminal Appeals" refers to the Texas Court of Criminal Appeals, and "State" refers generally to prosecuting entities of the State of Texas.

have implicated; discusses the respective courts' opinions in those cases; and analyzes the cases' significance to the law of Texas.

II. CONFESSIONS

The Fifth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment,[2] provides that "no person . . . shall be compelled in any criminal case to be a witness against himself."[3] This provision embodies a privilege against self-incrimination,[4] which, as the Supreme Court held in *Miranda v. Arizona*,[5] requires the authorities to inform suspects of their right to remain silent and their right to counsel prior to custodial interrogation.[6] A suspect may waive his privilege against self-incrimination and his right to counsel,[7] but any statement made after a waiver will be admissible at trial only if the government proves that the suspect waived his rights voluntarily, knowingly, and intelligently.[8] The Texas Code of Criminal Procedure contains provisions guaranteeing similar rights and prescribing the possibility of a waiver of these rights.[9] Another aspect of the privilege against self-incrimination is the freedom from prosecutors' remarks on a defendant's decision not to testify.[10]

The significant confession cases in 2011 involved issues concerning custody of juvenile suspects, waiver, and appropriate standards of appellate review for issues regarding a prosecutor's improper remarks on a defendant's failure to testify.

A. CUSTODY OF JUVENILES

When determining whether a juvenile subjected to police questioning is in custody for purposes of *Miranda*, the Supreme Court held in 2011 that a child's age properly informs the analysis. In *J.D.B. v. North Carolina*,[11] the Supreme Court granted certiorari to address whether the Supreme Court of North Carolina erred by failing to consider the age of the juvenile suspect when considering whether he was in custody.[12]

A uniformed police officer removed J.D.B., a thirteen-year-old middle-school student, from a social studies class and escorted him to a closed-

2. U.S. CONST. amend. XIV; *accord* Malloy v. Hogan, 378 U.S. 1, 8 (1964) (incorporating privilege against self-incrimination); Benton v. Maryland, 395 U.S. 784, 795–96 (1969) (incorporating protection against double jeopardy).

3. U.S. CONST. amend. V; *accord* J.D.B. v. North Carolina, 131 S. Ct. 2394, 2410 (2011) (Alito, J., dissenting) (noting the Fourteenth Amendment's application of the Fifth Amendment protections to the states).

4. New York v. Quarles, 467 U.S. 649, 657 (1984) (noting the Fifth Amendment's privilege against self-incrimination).

5. Miranda v. Arizona, 384 U.S. 436 (1966).

6. *Id.* at 467–70.

7. *See id.* at 475–76 (discussing the possibility of the waiver of these rights).

8. *Id.* at 444–45.

9. *See, e.g.*, TEX. CODE CRIM. PROC. ANN. arts. 38.21, 38.22, 38.23 (West 2006).

10. Griffin v. California, 380 U.S. 609, 614 (1965).

11. J.D.B. v. North Carolina, 131 S. Ct. 2394 (2011).

12. *Id.* at 2398–99.

door conference room in the school.[13] In the conference room, an investigator questioned J.D.B. about several break-ins around a neighborhood where J.D.B. had been seen hanging about.[14] J.D.B. was not informed of his *Miranda* rights or that he was free to leave.[15] After learning that he might be placed in juvenile detention, J.D.B. confessed to the break-ins and committed his statement to writing.[16]

Following the filing of two juvenile petitions, both charging J.D.B. with breaking and entering and larceny, J.D.B. filed motions to suppress his statements on the grounds that the police obtained them through a custodial interrogation at which the police failed to give *Miranda* warnings to J.D.B.[17] The trial court denied the motions, and J.D.B. was adjudicated delinquent.[18] On appeal, the Supreme Court of North Carolina affirmed the judgment, declining to consider J.D.B.'s age when concluding that J.D.B. was not in custody when he confessed.[19]

The Supreme Court reversed,[20] holding that a suspect's age is an objective circumstance affecting how the suspect would perceive his freedom to leave.[21] "That is, a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go."[22] The majority relied upon three primary rationales to support its holding. First, the majority cited Supreme Court opinions in other contexts acknowledging that children lack the maturity, responsibility, experience, perspective, judgment, and resolve of adults.[23] Second, the majority cited the common-law doctrine of reasonableness in a negligence action as an example of how the law treats children and adults differently.[24] And third, the majority used the facts of the case *sub judice* to demonstrate the absurdity of ignoring a school-child's age when analyzing what a reasonable person of average age would believe under the circumstances of being removed from a social studies class.[25]

J.D.B. is jurisprudentially significant not only because it offers guidance to lower courts' custody analyses, but also because it continues the Supreme Court's trend toward juvenile leniency.[26] However, the majority emphasized two qualifications to its holding. First, the juvenile's age

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13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* at 2400.
17. *Id.*
18. *Id.*
19. *Id.*
20. *Id.* at 2408.
21. *Id.* at 2402–03, 2406.
22. *Id.* at 2403.
23. *Id.* (citing Roper v. Simmons, 543 U.S. 551, 569 (2005); Eddings v. Oklahoma, 455 U.S. 104, 115–16 (1982); Bellotti v. Baird, 443 U.S. 622, 635 (1979) (plurality opinion)).
24. *J.D.B.*, 131 S. Ct. at 2404.
25. *Id.* at 2405.
26. *See* Michael J. Ritter, *Just (Juvenile Justice) Jargon: An Argument for Terminological Uniformity Between the Juvenile and Criminal Justice Systems*, 37 AM. J. CRIM. L. 221, 226–27 (2010) (discussing the Supreme Court's trend in the 1960s toward being "more protective of juveniles' rights and interests"); *see also J.D.B.*, 131 S. Ct. at 2405.

affects a custody analysis under *Miranda* only if "the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer."[27] Second, careful not to overstate the significance of a child's age, the majority cautioned, "[t]his is not to say that a child's age will be a determinative, or even a significant, factor in every case."[28] On a practical level, *J.D.B.*'s holding enables defense counsel to present evidence regarding a juvenile-client's age and surrounding circumstances that would make the juvenile-client's age apparent to a reasonable officer, as well as to argue that the juvenile-client's age is significant to a custody analysis.

B. WAIVER

The Court of Criminal Appeals further developed confession law in the waiver of *Miranda* and statutory rights regarding statements made during custodial interrogation. In *Leza v. State*,[29] the Court of Criminal Appeals overruled Armando Leza's challenges under the Fifth Amendment and article 38.22 of the Texas Code of Criminal Procedure to the admissibility of his video-recorded confession, which was obtained during a police interrogation where "[Leza] was not informed of the true object of the interrogation and was under the influence of heroin."[30]

The court held that neither circumstance rendered his waiver involuntary, unintelligent, or unknowing under *Miranda* or article 38.22.[31] The court rejected Leza's first argument—that the interrogating officers' failure to inform him that they were questioning him about a murder, rather than his outstanding traffic warrant, rendered his waiver involuntary under the Fifth Amendment.[32] It noted that the Supreme Court had already rejected this argument when it proposed that a suspect need not be aware of all possible subjects of questioning prior to waiving his Miranda rights.[33] The Leza court also noted that Leza was expressly informed that "anything" he said could be used against him.[34] Finally, the court reasoned that it must have been obvious to Leza immediately after he received his Miranda warnings that the police wanted to question him about the murder rather than the traffic warrant.[35]

The court then rejected Leza's second argument—that his being on heroin rendered his confession inadmissible under *Miranda*. First, the court noted that as a matter of law, his use of heroin could not render his waiver involuntary without official intimidation, coercion, or deception,

27. *J.D.B.*, 131 S. Ct. at 2406.
28. *Id.*
29. Leza v. State, 351 S.W.3d 344 (Tex. Crim. App. 2011).
30. *Id.* at 349.
31. *See id.* at 347 (finding Leza's arguments without merit).
32. *Id.* at 350.
33. *Id.* (citing Colorado v. Spring, 479 U.S. 564, 577 (1987)).
34. *Id.*
35. *Id.*

and Leza's voluntary heroin use implicated none of these.[36] Second, the court deferred to the trial court's findings, which were supported by the record, that despite Leza's testimony regarding his heroin use, Leza appeared to be awake, alert, and able to comprehend the warnings and questions asked.[37]

The court rejected Leza's arguments that these same two circumstances also resulted in a violation of article 38.22's requirements that the accused "knowingly, intelligently, and voluntarily waive[ ] the rights set out in the warning."[38] Its reasoning for rejecting the argument regarding the failure to expressly inform Leza of the purposes of the interrogation at the outset mirrored its reasoning for rejecting the argument under *Miranda*.[39] However, the court noted that a waiver under article 38.22 did not require police overreaching and that intoxication can be a factor in the involuntariness inquiry.[40] The court held that the trial record supported the conclusion that Leza's "heroin intoxication, if any, at the beginning of the interview when his statutory rights were read to him and the interrogation began, was not so acute as to overcome his capacity to resist reasonable, noncoercive tactics by the police to persuade him to waive his statutory rights."[41] Finally, citing *Barefield v. State* for the proposition that a waiver of statutory rights can be inferred from a suspect's conduct,[42] the court rejected Leza's final argument that his waiver of statutory rights needed to be express and video-recorded.[43]

Although *Leza* did not substantially change confession law in Texas, it did affirm important principles regarding the relevance of a suspect's intoxication before and during custodial interrogation. First, it reaffirmed that a suspect's voluntary intoxication will not render a waiver involuntary for Fifth Amendment purposes. But it can be significant to a trial judge's determination of whether his waiver is knowing and intelligent. Second, it restated that for purposes of article 38.22, intoxication is relevant to a trial court's voluntariness inquiry. If, however, the evidence presented to the trial judge supports the conclusion that the suspect retained his ability to resist reasonable and noncoercive tactics despite his alleged intoxication, the trial judge is within her discretion to conclude that the waiver was voluntary.

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36. *Id.*

37. *Id.* at 351.

38. Tex. Code Crim. Proc. Ann. art. 38.22 (West 2006); *accord Leza*, 351 S.W.3d at 352, 354 (overruling Leza's second issue regarding Article 38.22).

39. *Leza*, 351 S.W.3d at 352 (rejecting Leza's Article 38.22 argument based on its prior analysis under *Miranda*).

40. *Id.*

41. *Id.* at 352–53.

42. Barefield v. State, 784 S.W.2d 38, 41 (Tex. Crim. App. 1989); *accord Leza*, 351 S.W.3d at 353.

43. *Leza*, 351 S.W.3d at 353–54.

C. Appellate Review of Comments on a Defendant's Failure to Testify

Two cases from the Court of Criminal Appeals in 2011 have addressed the proper standard of review for a trial judge's ruling regarding a prosecutor's comments about a defendant's refusal to testify. In *Archie v. State*,[44] the Court of Criminal Appeals held that the Waco Court of Appeals unreasonably applied an abuse-of-discretion standard when it reversed a trial judge's decision to deny Trent Archie's motion for mistrial, which occurred after the prosecutor approached Archie during closing argument and directly asked him questions.[45] The Court of Criminal Appeals determined that the prosecutor's conduct during closing argument—posing questions to the defendant, taking steps toward him, and pointing at him—was improper because "the jury could only have construed this as an invitation . . . to consider [Archie]'s failure to testify."[46]

Reviewing the three *Mosley v. State* factors—the severity of the misconduct, the efficacy of the curative measures taken, and the certainty of conviction absent the misconduct[47]—the court concluded that the court of appeals erred in its analysis.[48] The misconduct was not severe because the questions posed to Archie "were embedded within other remarks that invited the jury to draw . . . *legitimate* inference[s] from" the evidence.[49] The court also noted several of the trial judge's curative measures, including sustaining defense counsel's objection, instructing the prosecutor not to ask Archie questions, instructing the jury to disregard the argument, and instructing the jury in the charge regarding a defendant's right to remain silent.[50] Finally, the court detailed the evidence supporting Archie's conviction and characterized it as compelling.[51]

Archie's significance is twofold. First, it provides an example of how a prosecutor's statements and conduct during closing argument can constitute an indirect comment on a defendant's failure to testify. Second, it describes the proper application of the *Mosley* factors in cases in which the prosecutor improperly comments on the defendant's privilege against self-incrimination. As to the first factor, the court emphasized that "the question is not *whether* the prosecutor's improper questions during his final argument had [adverse] consequences, but rather, the extent to which they did."[52] The court elaborated on the relationship of the first and second factors by requiring the consideration of whether the prosecutor's improper statements were "so indelible that the jury would simply

44. Archie v. State, 340 S.W.3d 734 (Tex. Crim. App. 2011).
45. *Id.* at 741.
46. *Id.* at 740.
47. Mosley v. State, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998); *accord Archie*, 340 S.W.3d at 740–41.
48. *Archie*, 340 S.W.3d at 741.
49. *Id.*
50. *Id.*
51. *Id.* at 742.
52. *Id.*

ignore the trial court's specific and timely instruction to disregard them."[53]

When a trial judge overrules a defendant's objection to a prosecutor's improper comment regarding a defendant's refusal to testify, appellate courts must consider whether the trial judge's constitutional error was harmful.[54] In *Snowden v. State*, the Court of Criminal Appeals considered what the proper harm analysis for constitutional errors was, such as a prosecutor's improper remark on a defendant's failure to testify.[55] During closing argument of the guilt-innocence phase of Rion Snowden's trial, the prosecutor referred to Snowden's lack of remorse after he committed the offense and his lack of remorse at trial.[56] The trial judge overruled defense counsel's objection, and the Dallas Court of Appeals reversed on direct appeal, considering the *Harris v. State* factors and concluding that Snowden was harmed.[57]

The Court of Criminal Appeals reversed the court of appeals, disposed of some of the *Harris* factors, recast other *Harris* factors as a list of nonexclusive considerations for harm, and concluded that the trial judge's error did not harm Snowden. Specifically, the court disagreed that the first factor (the source of the trial court's error) and the last factor (whether declaring the error harmless would encourage repetition of the prosecutorial misconduct) were relevant to a proper harm analysis.[58] The court then determined that the remaining *Harris* factors—the nature of the error, whether the State emphasized the result of the error, the likely implications of the error, and the weight the jury likely would have assigned to it—could be relevant to a harm analysis insofar as the factors logically applied to the particular constitutional error.[59]

The Court of Criminal Appeals conceded in *Snowden* that the trial judge erred in overruling Snowden's objection because the prosecutor's remark commented on Snowden's failure to testify by highlighting Snowden's failure to take the stand and express remorse.[60] It disagreed with the court of appeal's assessment of the error as including a large portion of the closing argument because the improper remark was an isolated reference to Snowden's failure to show remorse at trial.[61]

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53. *Id.*

54. Snowden v. State, 353 S.W.3d 815, 818 (Tex. Crim. App. 2011).

55. *Id.* at 817–18.

56. *Id.* at 817.

57. Harris v. State, 790 S.W.2d 568, 587 (Tex. Crim. App. 1989); *accord Snowden*, 353 S.W.3d at 817–18; *see also* Snowden v. State, No. 05-09-00652-CR, 2010 WL 2927472, at *6–7 (Tex. App.—Dallas July 28, 2010, pet. granted) (not designated for publication) (stating the *Harris* factors as follows: "[T]he court should examine" (1) "the source of the error," (2) "the nature of the error," (3) "whether or to what extent it was emphasized by the State," (4) "its probable collateral implications," (5) "the weight a juror would probably place upon the error," and (6) "whether declaring the error harmless would encourage the State to repeat it with impunity."), *rev'd*, 353 S.W.3d 815 (Tex. Crim. App. 2011).

58. *Snowden*, 353 S.W.3d at 821–22.

59. *Id.* at 822.

60. *Id.* at 823–24.

61. *Id.* at 824.

The court focused on whether the error "move[d] the jury from a state of non-persuasion to a state of persuasion on any material issue in the case" and was "reasonably likely to have caused such prejudice as to distract the jury or divert it from its proper fact-finding role," and then concluded that the error was not harmful.[62] The court reasoned that (1) the illegitimate reference to Snowden's lack of remorse at trial was isolated and never repeated or emphasized, (2) a jury believing that Snowden lacked remorse at the time of the offense likely would not be substantially prejudiced by a statement that Snowden lacked remorse at trial, and (3) the case essentially turned on the credibility of the complainant and whether she had a motive to testify falsely to retaliate against Snowden.[63] The court ultimately was "persuaded to a level of confidence beyond a reasonable doubt that it made no contribution to the jury's determination that [Snowden] was guilty."[64]

Snowden is important because, like *Archie*, it provides an example of an improper comment on a defendant's failure to testify and clarifies an appellate standard of review. Unlike *Archie*, however, *Snowden* is a significant change in the harm analysis for constitutional error that extends beyond the Fifth Amendment context. It also provides an analytical model for similar cases in which an appellant argues that a trial judge's constitutional error was harmful.

III. SEARCHES & SEIZURES

The Fourth Amendment to the U.S. Constitution, made applicable to the states through the Fourteenth Amendment, provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[65]

In 2011, the Supreme Court and the Court of Criminal Appeals decided several cases involving police–citizen encounters, traffic stops, blood draws, consent to search, exigent circumstances, and the exclusionary rule.

A. Police–Citizen Encounters

"Law enforcement and citizens engage in three distinct types of interactions: (1) consensual encounters; (2) investigatory detentions; and (3) arrests. Consensual police–citizen encounters do not implicate Fourth Amendment protections."[66] Two cases decided by the Court of Criminal

62. *Id.* at 825.
63. *Id.* at 824–25.
64. *Id.* at 825.
65. U.S. Const. amend. IV; *accord* Maryland v. Pringle, 540 U.S. 366, 369 (2003) (citing Mapp v. Ohio, 367 U.S. 643, 655 (1961)).
66. State v. Woodard, 341 S.W.3d 404, 410–11 (Tex. Crim. App. 2011).

Appeals this past year held that Fourth Amendment protections were not implicated.

In *State v. Castleberry*,[67] Cory Castleberry and his friend were spotted behind a closed business in a high crime area around 3 a.m. when a police officer approached and asked them for identification and why they were there.[68] Castleberry reached for his waistband, and the officer told Castleberry to put his hands above his head.[69] Castleberry reached a second time for his waistband, and the officer took control of Castleberry's right hand and instructed him to put his hands behind his back.[70] Castleberry reached a third time for his waistband, grabbed a "baggie" of cocaine, and threw it on the ground.[71] The officer then arrested Castleberry.[72]

The State charged Castleberry with possession of cocaine.[73] During his trial, Castleberry moved to suppress the evidence, arguing that reaching for his waistband the first time did not create reasonable suspicion that would permit the officer to detain him.[74] The trial judge agreed and suppressed the evidence.[75] The Dallas Court of Appeals affirmed the trial judge's ruling.[76]

But the Court of Criminal Appeals reversed, holding that the initial interaction between the officer and Castleberry was a consensual encounter.[77] The court's reasoning proceeded in three parts. First, it noted that "an officer is just as free as anyone to question, and request identification from, a fellow citizen."[78] Second, the uncontested facts that there was "'quite a bit' of foot traffic" in the area and that the area was sufficiently lit so that a flashlight was not needed to walk supported the fact "that a reasonable person in Castleberry's shoes would have felt free to terminate the encounter, making it consensual."[79] And third, the officer reasonably believed under the circumstances that he was in danger because Castleberry could have been reaching for a weapon in his waistband.[80] Consequently, the officer was permitted to conduct a limited pat down of Castleberry.[81] Alternatively, the court would have held that no seizure occurred because Castleberry refused to yield to the officer's force or show of authority.[82]

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67. State v. Castleberry, 332 S.W.3d 460 (Tex. Crim. App. 2011).
68. *Id.* at 462.
69. *Id.* at 463.
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.* at 462.
74. *Id.* at 462, 465.
75. *Id.* at 463.
76. *Id.* at 465.
77. *Id.* at 469.
78. *Id.* at 468.
79. *Id.*
80. *Id.*
81. *See id.*
82. *Id.*

In *State v. Woodard*, a police officer had responded to an anonymous tip about a single-car accident when the officer found David Woodard walking six to eight blocks away.[83] The officer approached Woodard and asked if he was involved in the accident.[84] Woodard responded affirmatively, and he admitted that he was "drunk and should not have been driving."[85] The officer then asked Woodard to perform field sobriety tests, and the officer concluded that Woodard was intoxicated based on the results.[86] The officer arrested Woodard, and the State charged him with driving while intoxicated.[87] The trial judge granted Woodard's motion to suppress.[88] On direct appeal, the ruling was reversed.[89]

The Court of Criminal Appeals affirmed the Fort Worth Court of Appeals, concluding that the initial interaction between Woodard and the officer was a consensual encounter—not a seizure.[90] Citing the general proposition that police conduct is presumed proper, the court rejected Woodard's argument that the court of appeals improperly placed the burden on him to prove that the initial interaction was not a consensual encounter.[91] The court thereby determined that the absence of details surrounding the officer's interaction with Woodard (such as "whether he was in uniform, exhibited a weapon, activated the patrol car's siren and lights; whether he requested or demanded information; whether he used a conversational tone or touched Woodard; whether other officers were present") was to Woodard's detriment.[92] It also noted that the record did not support the trial judge's conclusion "that a reasonable person in Woodard's shoes would not have felt free to leave" when the officer approached him.[93]

Woodard also argued that, under article 14.01(b) of the Texas Code of Criminal Procedure, the officer was not permitted to conduct a warrantless arrest because the DWI offense did not occur in the officer's presence or within his view.[94] The court rejected his argument and reasoned that Woodard "voluntarily confirmed his involvement in the accident and then confessed to driving while intoxicated."[95] The "totality of the information" available to the officer was sufficient to support the officer's probable cause to arrest Woodard.[96]

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83. State v. Woodard, 341 S.W.3d 404, 407 (Tex. Crim. App. 2011).
84. *Id.*
85. *Id.* at 408.
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.* at 409.
90. *See id.* at 414.
91. *Id.* at 413.
92. *Id.*
93. *Id.*
94. Tex. Code Crim. Proc. Ann. art. 14.01(b) (West 2005); *accord Woodard*, 341 S.W.3d at 414 ("With the error now remedied, Woodard's complaint that Officer Warner lacked personal knowledge, or reasonably trustworthy information, that Woodard committed the offense of DWI, as required by Article 14.01(b), becomes an academic exercise.").
95. *Woodard*, 341 S.W.3d at 414.
96. *See id.*

In *Castleberry* and *Woodard*, the Court of Criminal Appeals disagreed with the trial judges' respective conclusions that the police's questionings of the defendants were not consensual encounters. While not new directions in Texas's consenual-encounters law these cases stress the importance of trial judges properly applying the law regarding consensual encounters. *Woodard*'s holding that it is the defendant's burden to overcome the presumption of proper police conduct also emphasizes the necessity of producing evidence about the details surrounding the interaction to support that an officer detained the defendant without reasonable suspicion.

B. Traffic Stops

Although consensual police–citizen encounters do not invoke Fourth Amendment protection, stopping and detaining an individual who is driving an automobile will ordinarily require an officer to use force or make a showing of authority.[97] Thus, a traffic stop usually requires probable cause or reasonable suspicion to be considered a reasonable seizure.[98] The following discusses several cases from this past year involving traffic stops.

1. Reasonable Suspicion

Two of the Court of Criminal Appeal's reasonable-suspicion-for-traffic-stop cases from the past year involved the police's reliance on informants to detain suspects. In *Derichsweiler v. State*,[99] the trial court concluded that the police had reasonable suspicion to detain Mark Derichsweiler based on an informant's tip.[100] Derichsweiler pulled up next to a vehicle in a McDonald's drive-thru lane and grinned at the occupants for up to a minute.[101] After the car pulled out of the drive-thru lane, Derichsweiler continued to grin and stare at them for about fifteen to twenty seconds.[102] He then circled the McDonald's and once again grinned and stared at them.[103] The passengers of the car called 911, identified themselves, and gave the dispatcher their contact information.[104] They continued to describe Derichsweiler's behavior to the dispatcher as he pulled into a Wal-Mart parking lot and continued the same behavior, but toward other cars' passengers.[105] Three police units responded and circled Derichsweiler's

97. *See* Brendlin v. California, 551 U.S. 249, 255 (2007) ("The law is settled that in Fourth Amendment terms a traffic stop entails a seizure of the driver 'even though the purpose of the stop is limited and the resulting detention quite brief.'" (quoting Delaware v. Prouse, 440 U.S. 648, 653 (1979))).

98. *See id.* at 255–56; *Prouse*, 440 U.S. at 650, 663.

99. Derichsweiler v. State, 348 S.W.3d 906 (Tex. Crim. App. 2011), *cert. denied*, 132 S. Ct. 150 (2011).

100. *Id.* at 912.

101. *Id.* at 909.

102. *Id.*

103. *Id.*

104. *Id.* at 910.

105. *Id.*

car in the Wal-Mart parking lot.[106]

When an officer approached Derichsweiler's car, Derichsweiler rolled down his window and the officer smelled a "strong odor" of alcohol coming from inside the vehicle.[107] The officer "began a DWI investigation that culminated in [Derichsweiler's] prosecution."[108] Derichsweiler moved to suppress the evidence based on the officer's lack of reasonable suspicion to detain him.[109] The trial judge denied the motion, but the Fort Worth Court of Appeals reversed.[110]

The Court of Criminal Appeals held that the officers had reasonable suspicion to detain Derichsweiler.[111] Noting that there was no dispute as to the reliability of the informants, the court concluded that the court of appeals erred by suggesting that the facts "giv[ing] rise to a reasonable suspicion must show that the detainee has committed, is committing, or is about to commit, a particular and distinctively identifiable penal offense."[112] It reasoned that "pinpoint[ing] a particular penal infraction" is not a necessary component of reasonable suspicion because investigative detentions are much less invasive "than . . . full-blown custodial arrest[s]."[113] The court further stated that the information procured by the informants satisfied the standard that Derichsweiler's behavior was related to criminal activity; Derichsweiler's behavior reasonably suggested that he "was looking to criminally exploit some vulnerability."[114]

Conversely, in *Martinez v. State*, the Court of Criminal Appeals held that the officer lacked reasonable suspicion to stop John Martinez's vehicle based on an informant's tip.[115] The police responded to an anonymous tip that a male driving a blue Ford pickup truck stopped and put two bicycles that had been left at an intersection in the back of his truck.[116] An officer spotted Martinez's green Ford truck almost a mile away from where the bikes were stolen.[117] The officer followed Martinez "for four blocks without observing any traffic violations" before stopping Martinez.[118] As the officer approached Martinez's truck, he observed two bicycles in the bed.[119] Martinez eventually was prosecuted for "driving while intoxicated . . . and possession of marijuana."[120] The trial judge denied his motions to suppress, and the San Antonio Court of Appeals

106. *Id.* at 910, n.7.
107. *Id.* at 910–11.
108. *Id.* at 911.
109. *Id.* at 909.
110. *Id.* at 912.
111. *Id.* at 917.
112. *Id.* at 916.
113. *Id.*
114. *Id.* at 917.
115. Martinez v. State, 348 S.W.3d 919, 922, 926 (Tex. Crim. App. 2011).
116. *Id.* at 922.
117. *Id.*
118. *Id.*
119. *Id.*
120. *Id.* at 921.

affirmed his conviction.[121]

The Court of Criminal Appeals reversed.[122] It found it to be significant that the informant, unlike the *Derichsweiler* informants, was anonymous and gave no identification information to dispatch.[123] Moreover, the court noted that the anonymous caller failed to "report contextual[izing] factors that [would] reasonably connect[ ] the [reported] unusual" behavior to criminal activity.[124] The court also explained that the arresting officer "had very little information, corroborated or otherwise, to connect" the unusual behavior to criminal activity, and to connect Martinez to the reported unusual behavior.[125] Lastly, the court compared the facts in Martinez's case to the facts of *Derichsweiler* and determined that the officer "had significantly less, and less reliable, information."[126]

The court's analyses in *Derichsweiler* and *Martinez* illuminates the line between reasonable suspicion and the lack of reasonable suspicion. The court admitted that *Derichsweiler* was indeed "a close call" and that the facts of the case almost fell below what was required to establish reasonable suspicion.[127] *Martinez* demonstrates that a reasonable-suspicion inquiry can be quite fact intensive. Important to the court's holding in *Martinez* were the attenuations between the suspicious acts reported by the anonymous caller to the criminal activity and between Martinez to the reported suspicious acts. *Derichsweiler* is also distinguished from *Martinez* by the lack of a reasonable explanation for Derichsweiler's odd behavior, whereas Martinez's behavior was reasonably explainable absent additional information suggesting that it was indeed criminal (e.g., information suggesting that the bicycles did not belong to Martinez).

2. *Vehicle Checkpoints*

This past year, the Court of Criminal Appeals also upheld the constitutionality of a vehicle checkpoint in *Lujan v. State*.[128] Gerardo Lujan and his passenger were stopped and detained at a vehicle checkpoint for failure to present a license.[129] The officers at the checkpoint determined that Lujan's passenger had outstanding warrants for his arrest.[130] The officers placed Lujan's passenger in the back seat of a patrol car and informed Lujan of the arrest.[131] One officer informed Lujan that he was going to pat him down for safety reasons.[132] After finding over $1,500 in cash and noticing that Lujan behaved very nervously, the officer obtained

121. *Id.*
122. *Id.* at 926.
123. *Id.* at 924.
124. *Id.* at 925.
125. *Id.*
126. *Id.* at 926.
127. *Derichsweiler*, 348 S.W.3d at 917.
128. Lujan v. State, 331 S.W.3d 768, 773 (Tex. Crim. App. 2011).
129. *Id.* at 770.
130. *Id.*
131. *Id.*
132. *Id.*

Lujan's consent to search the vehicle and discovered several bags of drugs.[133] After the trial judge denied his motion to suppress, Lujan pleaded guilty to possession of cocaine.[134] The El Paso Court of Appeals reversed Lujan's conviction because the trial judge failed to grant his motion to suppress.[135]

The Court of Criminal Appeals reversed the court of appeals,[136] holding that, contrary to Lujan's contention and the court of appeal's conclusion, the record supported the trial judge's implied finding that the primary purpose of the vehicle checkpoint was to verify drivers' licenses and vehicle registrations rather than to detect evidence of ordinary criminal wrongdoing.[137] The court reviewed the record and noted the significance of the officers' testimony.[138] One officer testified that the purpose of the checkpoint was to target unlicensed drivers and uninsured motorists.[139] He denied having intent to check drivers' immigration statuses.[140] Another officer testified that licensed and insured motorists were waived through the checkpoint, but that the officers were checking for any violations they came across.[141] Because the trial court denied Lujan's motion without any findings, the court concluded that the record supported an implied finding that it resolved evidentiary inconsistencies in the State's favor.[142] After concluding that the primary purpose of the checkpoint was lawful, the court held that the officers lawfully acted on information that arose at the stop.[143]

Lujan does not represent a significant change in the Court of Criminal Appeal's application of reasonable suspicion standards set forth by the Supreme Court. However, it demonstrates the level of deference given to the trial judge when he makes no findings of fact or conclusions of law. Even when the testimony of the State's witnesses conflict, trial judges do not abuse their discretion by denying a motion to suppress based on an improper vehicle checkpoint so long as some evidence supports the conclusion that the primary purpose of the checkpoint was not generally to detect ordinary criminal wrongdoing.

C. Blood Draws

The Fourth Amendment's reasonableness requirement for searches and seizures may necessitate more specific inquiries in special contexts. When a suspect is compelled to submit to a blood draw, for example, the legality of the blood draw is determined by the two inquiries set out in

133. *Id.*
134. *Id.* at 771.
135. *Id.*
136. *Id.* at 773.
137. *Id.* at 772–73.
138. *Id.*
139. *Id.* at 772.
140. *Id.*
141. *Id.* at 772.
142. *Id.*
143. *Id.* at 773.

Schmerber v. California: (1) whether the test chosen was reasonable and (2) whether the test was performed in a reasonable manner.[144] In *State v. Johnston*, the Court of Criminal Appeals upheld the reasonability of a blood draw from Christi Johnston, a DWI suspect, to test her blood-alcohol content even though the police did not: (1) inquire into her medical history, (2) comply with statutory procedures for conducting the blood draw, (3) utilize a medical professional for the blood draw, or (4) conduct the blood draw in a medical environment.[145]

After outlining the two *Schmerber* inquiries, the court rejected Johnston's argument under the first inquiry—that the venipuncture blood draw was unreasonable because the police failed to inquire into her medical history.[146] Under *Schmerber*, such tests are presumptively reasonable because, when used on the general population, they generally do not "create an unjustified risk, trauma, or pain."[147] Rather, Johnston bore the burden of showing that the venipuncture blood draw was unreasonable and presenting evidence that she "suffer[ed] from a medical condition that would have made another means of testing preferable."[148]

Considering the second inquiry, the court rejected Johnston's arguments that provisions of "the Transportation Code provide[d] the minimum requirements . . . for blood draws in assessing the reasonableness of how the draw was performed under the Fourth Amendment."[149] The reasonableness of a blood draw was purely a matter of Fourth Amendment law, not statutory law.[150] It also rejected Johnston's argument that, to be reasonable, the search must have been conducted by a medical professional in a hospital or clinical setting.[151] First, compared with other jurisdictions' determinations of who may conduct an investigative blood draw, the police officer who conducted Johnston's blood draw had sufficient EMT training and experience.[152] Second, while noting that a blood draw in a medical environment is ideal, a blood draw in a police station does not necessarily fail the requirement that the blood draw be conducted in a safe place.[153]

Finally, the court disagreed with the Fort Worth Court of Appeal's finding that other circumstances suggested that the blood draw was unreasonable: Johnston was alone in the police station with two officers and the police department "did not have a use-of-force protocol for . . . blood draws."[154] The court stated that the court of appeals erred by failing "to

144. Schmerber v. State, 384 U.S. 757, 777 (1966); *accord* State v. Johnston, 336 S.W.3d 649, 658 (Tex. Crim. App. 2011), *cert. denied*, 132 S. Ct. 212 (2011).
145. *Johnston*, 336 S.W.3d at 659–64.
146. *Id.* at 657–60.
147. *Id.* at 659.
148. *Id.* at 660.
149. *Id.*
150. *Id.* at 661.
151. *Id.* at 661–63.
152. *Id.* at 662.
153. *Id.*
154. *Id.* at 663.

give [due] deference to the trial judge's finding that the officers 'followed medically accepted procedures in drawing the blood,'" and, moreover, there was no evidence in the record that the procedures "subjected Johnston to any additional risk of infection and pain."[155] When reviewing the court of appeal's consideration of the police's use of force, the Court of Criminal Appeals held "that the reasonable use of physical force to obtain a blood sample is permissible."[156]

Johnston is an important case because of its extension of *Schmerber* to significantly different circumstances. In *Schmerber*, blood was drawn from the defendant by a physician at a hospital,[157] whereas in *Johnston* blood was drawn by a police officer at a police station. Thus, *Johnston* counsels that a blood draw conducted outside of a medical facility and by a police officer can be reasonable under the Fourth Amendment. The important considerations for reasonableness when a police officer conducts a blood draw are whether the officer has sufficient training and whether the officer is conducting the blood draw in accordance with acceptable medical procedures in a safe place and in a safe manner.

D. CONSENT

Voluntary consent is one exception to the general rule that a warrantless entry onto private property is presumptively unreasonable.[158] In *Limon v. State*,[159] the Court of Criminal Appeals held that a minor who answers the door to a private residence may consent to a warrantless entry into a private home.[160] In *Limon*, the police responded to a call to investigate "shots fired."[161] The investigation led one officer to a home where a boy, who was thirteen or fourteen years old, opened the door.[162] The boy gave the officer permission to enter the home where Dennis Limon was later arrested.[163] Limon filed a motion to suppress, arguing that the officer's entry into the home constituted an unreasonable search.[164] The trial judge denied the motion, and on direct appeal, the Corpus Christi Court of Appeals held that the trial judge erred in denying Limon's motion.[165]

The Court of Criminal Appeals reversed the court of appeals,[166] noting that consent to search may be given by anyone with actual or apparent authority to consent and holding that the boy who answered the door had

155. *Id.*
156. *Id.*
157. *Schmerber*, 384 U.S. at 758.
158. Valtierra v. State, 310 S.W.3d 442, 448 (Tex. Crim. App. 2010).
159. Limon v. State, 340 S.W.3d 753 (Tex. Crim. App. 2011).
160. *Id.* at 758–59.
161. *Id.* at 755.
162. *Id.* at 756.
163. *Id.*
164. *Id.* at 755.
165. *Id.*
166. *Id.* at 759.

apparent authority to consent to police entry into the home.[167] The court's reasoning for agreeing with the trial judge's ruling was five fold.[168] First, the trial judge could have believed that because the boy answered the door by himself, as opposed to having an adult present, he had a greater level of authority to permit the officer to enter.[169] Second, the trial judge "reasonably could have inferred from [the officer]'s testimony that [the boy] appeared to be at least a teenager of significant maturity."[170] Third, the boy consented to the officer's entry rather than a full search of the home.[171] Fourth, a teenager would be expected to have authority to permit an officer to enter to perform a public-safety function.[172] And finally, that the boy answered the door at 2 a.m. suggested that he was a resident rather than a guest.[173] Based on this reasoning, the court concluded the boy clearly had apparent authority to consent to the officer's entry of the home.[174]

Limon is an important case because it clarifies the law on whether a minor may consent to a police officer's entry into a private residence. However, the court conceded that whether the boy had apparent authority to consent would be a closer call if, instead of requesting mere entry, the officer had requested consent to search the entire home.[175]

In *State v. Weaver*,[176] the Court of Criminal Appeals provided an example where the police exceeded the scope of consent to search. Several police officers visited Roy Weaver's welding shop to look for a person wanted in another county.[177] Weaver gave the officers consent to search for that person, but Weaver refused the officers' request for consent to search his van.[178] One officer then retrieved his drug dog, which responded to Weaver's passenger door.[179] The police found methamphetamine inside Weaver's van.[180] Weaver thereafter was arrested and charged with possession of methamphetamine.[181] The trial judge suppressed the evidence, concluding that the officers exceeded the scope of consent to search.[182] The Beaumont Court of Appeals affirmed.[183]

The Court of Criminal Appeals affirmed the court of appeals,[184] agree-

167. *Id.* at 756, 758.
168. *Id.* at 757–58.
169. *Id.* at 758.
170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.*
176. State v. Weaver, 349 S.W.3d 521, 532 (Tex. Crim. App. 2011).
177. *Id.* at 523.
178. *Id.* at 523–24.
179. *Id.* at 524.
180. *Id.*
181. *Id.*
182. *Id.*
183. *Id.*
184. *Id.* at 532.

ing that the police exceeded the scope of consent to search a business premises for the wanted person.[185] The court first laid the legal background for its analysis, explaining that a commercial property owner may limit or delimit the scope of his consent to search.[186] It then determined that the record supported an implied finding that the van was not in an area open to the public and the conclusion that the officers lacked continued consent to be on the premises when they used the drug dog.[187] Regarding the officer's use of a drug dog, the court reasoned that a reasonable person would have understood from Weaver's refusal of consent to search his van that the officers were no longer welcome on the premises.[188] Furthermore, the trial judge could have found that consent to search for the wanted person had been completed when the police officers used the drug dog.[189]

Weaver provides a noteworthy contrast to two recent Court of Criminal Appeals cases. First, *Weaver* contrasts with the court's holding in *Valtierra v. State* that officers did not exceed the scope of consent to search an apartment for a missing person because an apparent resident impliedly consented to a broader scope of search by failing to object to the officers' further actions.[190] Like the facts of *Weaver*, the officers in *Valtierra* found the property owners in possession of methamphetamine.[191] The *Weaver* court discussed and, in two ways, distinguished *Valtierra*.[192] The officers in *Weaver* had determined that the person they were looking for was not on the premises when they found methamphetamine in Weaver's van, but the *Valtierra* officers had not made a similar determination when they found the methamphetamine in the apartment.[193] Moreover, Weaver's express objection to a further search of his van foreclosed the possibility of implied consent, which was not foreclosed by the facts of *Valtierra*.[194]

Second, *Weaver* limited the scope of the court's holding in *State v. Elias*.[195] The court in *Elias* remanded the case because the trial judge had made specific findings of fact but failed to make a finding on a potentially dispositive fact issue.[196] The *Elias* court declined to apply the *State v. Ross* presumption,[197] to imply fact findings supported by the record because the better presumptions, when a trial judge has made findings of fact,

185. *Id.*
186. *Id.* at 526–27.
187. *Id.* at 530.
188. *Id.* at 530–31.
189. *Id.* at 531–32.
190. Valtierra v. State, 310 S.W.3d 442, 449, 451–52 (Tex. Crim. App. 2010).
191. *Id.* at 445.
192. *Weaver*, 349 S.W.3d at 531.
193. *See id.*
194. *See id.*
195. State v. Elias, 339 S.W.3d 667 (Tex. Crim. App. 2011).
196. *Id.* at 676, 679.
197. State v. Ross, 32 S.W.3d 853 (Tex. Crim. App. 2000).

> [are] that the explicit findings of fact that the trial court *did* enter are those it deemed 'essential' to its ruling, and that it made no finding of fact whatsoever with respect to other fact or credibility issues because it regarded them (however erroneously) as peripheral or non-essential to its ultimate legal holding.[198]

The *Weaver* majority's response in footnote thirty-four of its opinion to the dissenting opinions appears to have narrowed *Elias*'s remand requirement to cases in which there is a disputed fact issue.[199]

E. Exigent Circumstances

When the police lack express or implied consent to search, they may nevertheless conduct a warrantless search of a home if they have both probable cause and exigent circumstances to justify bypassing the warrant requirement.[200] In 2011, the Supreme Court decided *Kentucky v. King*, which rejected an assertion of police-created exigent circumstances.[201] The case concerned a sting operation to buy crack cocaine outside of an apartment complex.[202] One officer observed the drug dealer retreat back to an apartment building and radioed other officers to move in on him.[203] When the officers arrived at the location where the drug dealer had retreated, there were two apartment doors.[204] The officers smelled marijuana smoke emanating from behind one of the doors.[205] They knocked and announced, "This is the police."[206] There was no response to the officers, but the officers heard movement of people and things inside the apartment.[207] One officer testified that this led them to believe the drug-related evidence was about to be destroyed.[208] The police announced that they were going to enter and then kicked in the door.[209] The officers found marijuana and cocaine in plain view in Hollis King's apartment.[210] The officers later looked in the other apartment and found the drug dealer for whom they initially searched.[211]

King was charged with drug trafficking and moved to suppress the evidence from the warrantless search, but the trial judge denied the motion.[212] The intermediate court of appeals affirmed the ruling, but the Supreme Court of Kentucky reversed.[213] The supreme court attempted

198. *Elias*, 339 S.W.3d at 675–76.
199. *Weaver*, 349 S.W.3d at 528 n.34.
200. Kentucky v. King, 131 S. Ct. 1849, 1856 (2011).
201. *Id.* at 1862–63.
202. *Id.* at 1854.
203. *Id.*
204. *Id.*
205. *Id.*
206. *Id.*
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.*
211. *Id.* at 1855.
212. *Id.*
213. *Id.*

to determine whether the police impermissibly created the exigency by announcing a two-part test: first, the police cannot create exigent circumstances in bad faith to avoid the warrant requirement; and second, in the absence of bad faith, the "police may not rely on exigent circumstances if 'it [is] reasonably foreseeable that the police's investigative tactics would create exigent circumstances.'"[214] The supreme court concluded that the search was impermissible under the second part.[215]

The Supreme Court of the United States reversed and announced a different test for claims of police-created exigencies: "the exigent circumstances rule justifies a warrantless search when the conduct of the police preceding the exigency is reasonable in the same sense."[216] If the police create an exigency without "engaging in or threatening to engage in conduct that violates Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable."[217] As analogous support, the Court cited the plain-view doctrine (that officers may seize evidence in plain view if "they have not violated the Fourth Amendment in arriving at the spot from wh[ere] the observation of evidence is made") and the consensual encounters doctrine (that "officers may seek consensual encounters if they are lawfully present in the area where the consenual encounter occurs").[218]

The Court also disapproved of several variations of the police-created exigency doctrine that had developed in federal circuits and state courts, including considerations of bad faith, reasonable foreseeability, probable cause and time to secure a warrant, and standard or good investigative tactics.[219] Assuming, without deciding, that exigent circumstances indeed existed, and applying its interpretation of the police-created exigency doctrine, the Court then determined that no evidence showed that the officers either violated the Fourth Amendment or threatened to do so before entering King's apartment.[220]

The impact of *King*'s holding on Texas case law has already been disputed. In *Turrubiate v. State*, a panel of justices on the San Antonio Court of Appeals disagreed on whether *King* affects the analysis for determining whether exigent circumstances existed to justify a warrantless entry into the suspect's home.[221] In *Turrubiate*, a Child Protective Services investigator visited the apartment of Marcos Turrubiate's girlfriend to respond to a report that marijuana was being used inside the home.[222] Turrubiate opened the door, told the investigator that his girlfriend was

214. *Id.*
215. *Id.*
216. *Id.* at 1858, 1863.
217. *Id.* at 1858.
218. *Id.*
219. *Id.* at 1858–61.
220. *Id.* at 1863.
221. Turrubiate v. State, 365 S.W.3d 780, at *6 n.2 (Tex. App.—San Antonio Feb. 15, 2012, pet. granted).
222. *Id.* at 789–90.

not home, and then closed the door.[223] After smelling marijuana, the investigator called the police to accompany him back to the apartment.[224] An officer hid outside of the view of the peephole while the investigator knocked again on the apartment door.[225] Turrubiate again answered, and the officer jumped in front of the door and put his arm on the door to prevent Turrubiate from closing it.[226] The officer pointed a taser gun at Turrubiate to ensure compliance.[227] Once inside the apartment, the officer found marijuana in Turrubiate's backpack.[228]

Despite Turrubiate's motion to suppress, the trial judge admitted the evidence at trial.[229] The court of appeals reversed, holding that even if the officer had probable cause, he lacked exigent circumstances to enter Turrubiate's apartment without a warrant.[230] The court cited five factors relevant to a determination that evidence might be destroyed or removed:

> (1) the degree of urgency involved and the amount of time necessary to obtain a warrant . . . ; (2) reasonable belief that the contraband is about to be removed . . . ; (3) the possibility of danger to police officers guarding the site of the contraband while a search warrant is sought . . . ; (4) information indicating the possessors of the contraband are aware that the police are on their trail . . . ; and (5) the ready destructibility of the contraband and the knowledge that efforts to dispose of narcotics and to escape are characteristic behavior of persons engaged in the narcotics traffic.[231]

The only information supporting exigent circumstances was the officer's bare assertion that after he put his arm on the door, "it was an issue of destruction of evidence. If there . . . is marijuana in the house, I have to prevent it from being destroyed."[232] The dissent argued that under *King*, the first and third factors were no longer relevant to a determination of exigent circumstances.[233] The dissent would have affirmed the trial judge's ruling on the grounds that the evidence supported an implied determination that the officer reasonably believed that King knew that he was under investigation.[234] Thus, *Turrubiate* suggests that *King*'s impact on the exigent circumstances doctrine is in dispute.

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223. *Id.* at 790.
224. *Id.*
225. *Id.*
226. *Id.* at 791.
227. *Id.*
228. *Id.* at 791–92.
229. *Id.* at 781.
230. *Id.* at 792, 794.
231. *Id.* at 785 (quoting United States v. Rubin, 474 F.2d 262, 268 (3d Cir. 1973)).
232. *See id.* at 791–92.
233. *Id.* at 791–92 (Hilbig, J., dissenting).
234. *Id.* at 792–94.

F. Exclusionary Rule

Even when the police obtain evidence in violation of the Fourth Amendment, a criminal defendant is not always entitled to a remedy. The ordinary remedy is the exclusion of evidence under the exclusionary rule.[235] For the exclusionary rule to be appropriate, however, suppression must serve to advance the deterrence of Fourth Amendment violations.[236] This outcome usually depends on whether the police deliberately, recklessly, or with gross negligence, disregarded Fourth Amendment protections.[237]

In *Davis v. United States*, the Supreme Court of the United States held that the exclusionary rule will not bar evidence obtained through a search conducted with objectively reasonable, good-faith reliance on binding appellate precedent.[238] In April 2007, Willie Davis was arrested as a passenger during a traffic stop for giving the police a fake name.[239] After handcuffing Davis, the police searched the vehicle and found Davis's gun.[240] Davis was charged with possession of a firearm as a felon.[241] The trial judge denied Davis's motion to suppress and Davis was convicted.[242] While his appeal was pending, the Supreme Court decided *Arizona v. Gant*,[243] which overruled *New York v. Belton*,[244] holding that an automobile search conducted after a suspect had been handcuffed and the area had been secured was not a proper search incident to a lawful arrest.[245]

The Supreme Court held that the officer's reliance upon the binding circuit precedent at the time was objectively reasonable, and thus application of the exclusionary rule did not have any deterrent value.[246] The Court rejected Davis's argument that *Gant* applied because the retroactive application of a new rule would not affect the analysis of the proper application of the exclusionary rule.[247]

Davis is significant because retroactive new rules announced by the Court will not necessarily be favorable to defendants in their efforts to exclude evidence obtained in violation of the new rule. So long as a police officer conducts a search or seizure with objectively reasonable, good-faith reliance on binding appellate precedent, *Davis* prevents the application of the exclusionary rule.[248]

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235. Davis v. United States, 131 S. Ct. 2419, 2423 (2011).
236. *Id.* at 2426.
237. *Id.* at 2427.
238. *Id.* at 2429.
239. *Id.* at 2425.
240. *Id.*
241. *Id.* at 2425–26.
242. *Id.* at 2426.
243. Arizona v. Gant, 556 U.S. 332 (2009).
244. New York v. Belton, 453 U.S. 454 (1981).
245. *Gant*, 556 U.S. at 350; *accord Davis*, 131 S. Ct. at 2424–25, 2431.
246. *Davis*, 131 S. Ct. at 2429.
247. *Id.* at 2430–31.
248. *Id.* at 2429.

IV. CONCLUSION

Over the past year, the Supreme Court and the Court of Criminal Appeals considered various aspects of the law related to confessions, searches, and seizures. Recent decisions by these courts present few changes to the well-established precedent in these areas.