SMU | Dedman School of Law

SMU Law Review

Volume 55
Issue 3 *Annual Survey of Texas Law*

Article 9

January 2002

Criminal Procedure: Confessions, Searches and Seizures

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CRIMINAL PROCEDURE: CONFESSIONS, SEARCHES AND SEIZURES

*Michael E. Keasler**

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WHEN we review the past year's criminal cases, we find no remarkable departures from prior Texas and Federal law as to confessions, searches, and seizures. Harmless error analysis is still routinely applied, and both state and federal appellate courts give credence to trial court fact-findings unless they are clearly erroneous.

I. CONFESSIONS

A. VOLUNTARINESS

Courts determine a confession's voluntariness by considering the totality of the circumstances.[1] They review trial court decisions as to admissibility under an abuse of discretion standard and will not disturb them as long as the rulings are within the zone of reasonable disagreement. And if the ruling is correct under any applicable theory of law, it will be sustained, even if the trial court gives the wrong reason for its ruling.[2]

A statement is involuntary if the record shows such official, coercive conduct that any resulting statement is unlikely to have been a free and

* Judge, Texas Court of Criminal Appeals.

1. Jeffley v. State, 38 S.W.3d 847, 860 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd).

2. Reed v. State, 59 S.W.3d 278, 280-81 (Tex. App.—Fort Worth 2001, pet. filed).

unconstrained choice by its maker.[3] But "trickery or deception does not make a statement involuntary unless the method was calculated to produce an untruthful confession or was offensive to due process."[4]

On the other hand, where the facts surrounding multiple confessions showed that they had been coerced by threats, intimidation, and manipulation of the suspect's fragile mental state over several days, the statements were involuntary.[5]

B. Custodial Interrogation

In determining whether a person is in custody, the court will again consider the totality of the circumstances.[6] The following situations generally constitute custody:

- when a suspect is physically deprived of freedom of action in any significant way;
- when a law enforcement officer tells a suspect that he or she cannot leave;
- when a law enforcement officer creates a situation that would lead a reasonable person to believe that his or her freedom of movement has been substantially restricted; or
- when there is probable cause to arrest, and a law enforcement officer does not tell the suspect that he or she is free to leave.

In the first three situations, the restriction on freedom of movement must rise to the degree associated with an arrest and not just an investigative detention. And in the fourth situation, the officer must manifest knowledge of probable cause to the suspect.[7]

The *Miranda* warnings as codified in Texas Code of Criminal Procedure Article 38.22 apply only to statements made during custodial interrogation. If an investigation is not at an accusatorial or custodial stage, a person's Fifth Amendment rights have not yet come into play, and the voluntariness of those rights is not implicated.

For example, when a person was allowed to move about freely at the police station, allowed to walk unescorted to the restroom in the foyer, allowed to call his parents and pastor and speak to them privately, and was told repeatedly that he was not under arrest and was free to leave, his confession was voluntary and non-custodial.[8] In another case, a juvenile's statements to juvenile probation officers while in custody were held not to be the result of "interrogation."[9]

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3. *Jeffley*, 38 S.W.3d at 860.
4. *Id.*
5. Soffar v. Johnson, 237 F.3d 411 (5th Cir. 2000) *reh'g granted*, 253 F.3d 227 (5th Cir. 2001).
6. *Jeffley*, 38 S.W.3d at 860.
7. *Id.* at 855.
8. Sander v. State, 52 S.W.3d 909 (Tex. App.—Beaumont 2001, pet. ref'd).
9. Rushing v. State, 50 S.W.3d 715, 729-32 (Tex. App.—Waco 2001, pet. ref'd).

Of course, the warning requirements of *Miranda* do come into play when the suspect is in custody. And in order to waive a *Miranda* right, a suspect must do so unambiguously.[10] Nevertheless, if there is additional overwhelming evidence of guilt, the admission of a confession in violation of *Miranda* can be harmless error.[11]

If there is a pretrial hearing and a defendant wishes to challenge a confession's admissibility, he or she had better do so at that time. In *Ramirez v. State*,[12] a defendant failed to present any evidence during a pretrial hearing on admissibility that he had invoked his right to remain silent before the statement was taken. Although he later testified at trial that he had invoked the right, the Austin court held that the later testimony did not affect the statement's admissibility as determined in the pretrial hearing.[13]

As to privileged communications, the only privilege that applies in child abuse or neglect cases is the attorney-client privilege. Thus, confessions to a church elder[14] and a pastor[15] were ruled admissible and not privileged.

Generally, when an adult suspect confesses in another state to a Texas crime, Texas courts will look to see if the out-of-state officers substantially complied with the required warnings.[16]

C. JUVENILES

We had more published juvenile cases this year than usual. Texas courts continue to look very closely at juvenile confessions and insist that they be obtained in strict adherence to the relevant Family Code provisions. Of course, the Code's provisions generally do not apply to juveniles' non-custodial statements.[17] But the Austin Court of Appeals held that since a juvenile's first confession was improperly obtained, subsequent non-custodial statements made to police officers modifying the earlier statement were also inadmissible.[18]

The Court of Criminal Appeals held that because a juvenile's oral statements were not the result of custodial interrogation and were made on the way to a juvenile processing office, the trial court properly admitted them. But because the juvenile was not first taken to the processing office before the police acted upon those statements, the court erred in admitting evidence concerning recovery of the stolen property de-

10. Saldana v. State, 59 S.W.3d 703, 711 (Tex. App.—Austin 2001, pet. filed).
11. U.S. v. Virgen-Moreno, 265 F.3d 276 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 843 (2002) (mem.).
12. Ramirez v. State, 44 S.W.3d 107 (Tex. App.—Austin 2001, no pet. h.).
13. *Id.*
14. Bordman v. State, 56 S.W.3d 63 (Tex. App.—Houston [14th Dist.] 2001, pet. ref'd).
15. Gonzales v. State, 45 S.W.3d 101 (Tex. Crim. App. 2001).
16. Nonn v. State, 41 S.W.3d 677 (Tex. Crim. App. 2001); Buckley v. State, 46 S.W.3d 333 (Tex. App.—Texarkana 2001, pet. ref'd).
17. *In re* E.M.R., 55 S.W.3d 712 (Tex. App.—Corpus Christi 2001, no pet. h.).
18. *In re* R.J.H., 28 S.W.3d 250 (Tex. App.—Austin 2000, no pet. h.).

scribed.[19] In another case, the Court of Criminal Appeals held that a forty-five to fifty minute delay in taking a juvenile to the designated juvenile office was a reasonable delay for officers to secure a crime scene and attempt to save a victim's life. The subsequently obtained written statement was therefore admissible.[20]

With regard to parental notification as to a child's being in custody, the intermediate courts of appeals have demanded strict compliance. For example, Odessa police notified a suspect's mother that he had been taken into custody as a juvenile absconder. They did not, however, tell her that they suspected him of committing a murder. They also did not tell her the reason they were taking him to the police station the next morning until she called back to determine her son's status. The confession taken from the defendant at a juvenile detention facility after he was duly warned of his rights was held to be improperly admitted by the trial court.[21] The courts have also held that parental notification must be prompt, or any statement taken will be inadmissible.[22]

According to one court opinion, the Family Code protection even follows juveniles to other states. A juvenile was arrested in Chicago on a Texas arrest warrant for murder. She gave a written confession to Chicago police officers. The Corpus Christi court held that the juvenile was entitled to all procedural protections that Texas law provided. Since the Chicago police did not follow Texas law, the court held the confession to be inadmissible. The Court of Criminal Appeals has granted review of this issue.[23]

Although the Family Code does not require magistrates to advise juveniles of the adult range of punishment applicable to the offense charged, if a magistrate does so, he or she had better be right. The San Antonio court said that a magistrate's well-intentioned but erroneous volunteering of such information rendered the juvenile's subsequent confession involuntary. In this case, the magistrate advised him that the maximum sentence was one year in jail, rather than ninety-nine years or life in the penitentiary.[24]

Finally, an assistant principal's questioning of a juvenile suspect was held not to be custodial interrogation. The assistant principal was not a law enforcement officer, so the juvenile was not in official custody and did not have the right to remain silent or speak to a lawyer. Therefore, the statement given to the assistant principal was admissible.[25]

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19. Roquemore v. State, 60 S.W.3d 862 (Tex. Crim. App. 2001).

20. Contreras v. State, No. 1682-99, 2001 Tex. Crim. App. LEXIS 58 (Tex. Crim. App. June 27, 2001).

21. Hampton v. State, 36 S.W.3d 921 (Tex. App.—El Paso 2001, pet. filed).

22. *See* State v. Simpson, 51 S.W.3d 633 (Tex. App.—Tyler 2001, pet. filed); Pham v. State, 36 S.W.3d 199 (Tex. App.—Houston [1st Dist.] 2000, no pet. h.); Hill v. State, No. 12-00-00172-CR, 2001 Tex. App. LEXIS 3050 (Tex. App.—Tyler May 9, 2001, no pet. h.).

23. Vega v. State, 32 S.W.3d 897 (Tex. App.—Corpus Christi 2000, pet. granted).

24. Diaz v. State, 61 S.W.3d 525 (Tex. App.—San Antonio 2001, pet. dism'd).

25. *In re* V.P., 55 S.W.3d 25 (Tex. App.—Austin 2001, pet. denied).

D. Sixth Amendment Right To Counsel

It is well established that once a suspect has an attorney, any interrogation without first notifying the attorney is unlawful, and any statement obtained as a result of the interrogation is excludable. The Supreme Court in reversing the Court of Criminal Appeals decision, held that because the Sixth Amendment right to counsel is "offense specific," it does not necessarily extend to offenses that are "factually related" to those that have actually been charged.[26]

E. Miscellaneous Cases

In other Texas cases decided this year, courts have resolved the following issues:

- In a suppression hearing, a defendant cannot be compelled to give up his Fifth Amendment protection against self-incrimination in order to assert his Fourth Amendment right to be free from unreasonable searches and seizures.[27]
- A defendant cannot successfully challenge a confession's admissibility under the Vienna Convention on Consular Relations.[28]
- When a defendant in custody initiated a meeting with a therapist and counselor and made an inculpatory statement to him, the statement was admissible. Since he initiated the meeting, he was not entitled to be advised of his right to remain silent under *Estelle v. Smith*.[29] Furthermore, there was no applicable patient-physician privilege.[30]

II. SEARCH AND SEIZURE

A. In General

Texas courts continue to follow the U.S. Supreme Court's lead in search and seizure cases. Virtually all the Texas cases in this area are primarily analyzed in light of the Fourth Amendment, rather than the Texas Constitution.

This year, the courts reminded us yet again that the Fourth Amendment does not forbid all searches and seizures—only unreasonable ones,[31] and that one complaining of a search must have a reasonable expectation of privacy.[32]

The Austin Court of Appeals reiterated that the reasonableness inquiry under the Fourth Amendment is an objective one, wholly divorced from

26. Texas v. Cobb, 532 U.S. 162 (2001).
27. Crosson v. State, 36 S.W.3d 642, 645 (Tex App.—Houston [1st Dist.] 2000, pet. ref'd).
28. U.S. v. Jiminez-Nava, 243 F.3d 192 (5th Cir. 2001), *cert. denied*, 121 S.Ct. 2620 (2001).
29. 451 U.S. 454 (1981).
30. Ruckman v. State, No. 12-99-00388-CR, 2000 Tex. App. LEXIS 8708, at *17-18 (Tex. App.—Tyler Nov. 29, 2000, no pet. h.).
31. King v. State, 35 S.W.3d 740 (Tex. App.—Houston [1st Dist.] 2000, no pet.).
32. Carroll v. State, 56 S.W.3d 644 (Tex. App.—Waco 2001, pet. ref'd).

police officers' subjective beliefs. It involves an objective assessment of the officer's actions under the circumstances and not the officer's actual state of mind at the time the challenged action was taken.[33]

As to the standard of review on motions to suppress alleging illegally obtained evidence, the reviewing court gives almost total deference to the trial court's determination of historical facts and reviews *de novo* the court's application of search and seizure law.[34] And apparently, if trial judges fail to explain inexplicable rulings, do so incomprehensibly, or do so erroneously, the appellate courts will, nevertheless, toil mightily to justify them—if the judge suppresses the confession.[35] On the other hand, where the judge denied a defendant's motion to suppress, the Corpus Christi Court of Appeals gave the judge's decision no such deference.[36]

B. Arrest, Stop, Or Inquiry Without Warrant

As to traffic stops, an officer's observation of a traffic violation is sufficient authority for an officer to stop the vehicle and to arrest the driver. And when a police officer lawfully arrests an occupant of an automobile, the officer may, as a contemporaneous incident of the arrest, search that individual. Furthermore, a private citizen may arrest a traffic violator if the citizen observes the violation and the violation is egregious enough to constitute a breach of the peace. Consequently, when an arrest of a traffic offender by an off-duty United States Customs agent was lawful under Texas law, and when the cocaine seized from the vehicle's truck bed was incident to the arrest, the cocaine was admissible against the driver.[37]

Once the purpose for which a traffic stop is made has been accomplished, further detention is unlawful. Thus, further prolonged detention and questioning after police had issued a motorist a warning citation for speeding, absent articulable suspicion for the further detention, was ruled a Fourth Amendment violation.[38]

On the other hand, an officer is justified in conducting a pat-down search for weapons during a traffic stop, and if illegal drugs are discovered during such a protective search, they are admissible.[39] And when an officer smelled marihuana on a motorcyclist during the course of a traffic stop, the subsequent search of his person and seizure of the contraband was proper.[40] Of course, any illegal substance abandoned by the driver

33. State v. Nash, 55 S.W.3d 110 (Tex. App.—Austin 2001, no pet.). *See also* U.S. v. Sealed Juvenile 1, 255 F.3d 213 (5th Cir. 2001).

34. State v. Ross, 32 S.W.3d 853 (Tex. Crim. App. 2000).

35. *See id.* at 859-60 (Womack, J., concurring); *Nash*, 55 S.W.3d at 110; State v. Boone, 45 S.W.3d 743 (Tex. App.—Houston [1st Dist.] 2001, pet ref'd).

36. Reyes-Perez v. State, 45 S.W.3d 312 (Tex. App.—Corpus Christi 2001, pet. ref'd).

37. *Sealed Juvenile 1*, 255 F.3d at 213.

38. U.S. v. Jones, 234 F.3d 234 (5th Cir. 2000); *see also* U.S. v. Valadez, 267 F.3d 395 (5th Cir. 2001); McQuarters v. State, 58 S.W.3d 250 (Tex. App.—Fort Worth 2001, pet. filed); State v. Daly, 35 S.W.3d 237 (Tex. App.-Austin 2000, no pet.).

39. Farmer v. State, 47 S.W.3d 187 (Tex. App.—Texarkana 2001, pet. ref'd).

40. Burkhalter v. State, 38 S.W.3d 177 (Tex. App.—Texarkana 2001, no pet. h.).

or a passenger or in plain view during the stop is subject to seizure.[41]

An "investigative detention," or "stop," is a brief detention of a person reasonably suspected of criminal activity to determine his identity, or to maintain the status quo momentarily, while obtaining more information. It is distinguished from an "arrest" which occurs when a person's liberty of movement is restricted or restrained. An officer must have articulable suspicion to make a stop—less than probable cause[42]—since a stop is less intrusive than an arrest.

In determining the existence of articulable suspicion, courts look at the totality of the circumstances. Thus, an officer was justified in stopping and frisking a suspect whom he saw sprinting away from a grocery store in a high crime area, furtively glancing over his shoulder.[43] And an officer who saw a large "bong," or marihuana pipe in plain view through an open apartment door was justified in detaining and investigating the residents. He was further entitled to enter the apartment and arrest one of the residents without a warrant when his co-resident tried to flee and conceal the bong.[44]

Of course, if an officer is in a place where he or she has a right to be, any suspicious object in plain view is subject to seizure. So where an officer reasonably approached an apartment to investigate complaints of criminal activity, stood before an open door, and saw a handgun resting on the kitchen table, exigent circumstances existed for his entry into the apartment and his seizure of the weapon.[45] In another case, an officer visited a defendant at his motel room to investigate the harboring of a runaway child. The defendant allowed him to enter, and the officer saw an upside-down picture that looked like a young child in a sexual pose. On closer inspection, the officer's suspicion was confirmed, he seized the picture, and arrested the defendant for possession of child pornography. The Fifth Circuit panel held that an officer does not have to be sure that an item in plain view is incriminating before seizing it. The officer just needs to have probable cause to believe that the item is associated with criminal activity.[46]

On the other hand, a valid consensual encounter with police need not be supported by probable cause or even articulable suspicion. The test for determining whether an encounter with police qualifies as a valid consensual encounter is that set out in *Florida v. Bostick*.[47] "The issue in determining whether an encounter occurred is whether the police conduct would have communicated to a reasonable person that the person

41. *King*, 35 S.W.3d at 740; Sargent v. State, 56 S.W.3d 720 (Tex. App.—Houston [14th Dist.] 2000, pet. filed); Ste-Marie v. State, 32 S.W.3d 446 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

42. Garcia v. State, 43 S.W.3d 527 (Tex. Crim. App. 2001).

43. U.S. v. Jordan, 232 F.3d 447 (5th Cir. 2000).

44. Waugh v. State, 51 S.W.3d 714 (Tex. App.—Eastland 2001, no pet. h.).

45. U.S. v. Jones, 239 F.3d 716 (5th Cir.), *cert. denied*, 122 S. Ct. 142 (2001).

46. U.S. v. Simmonds, 262 F.3d 468 (5th Cir. 2001), *cert. denied*, 122 S. Ct. 851 (2002).

47. 501 U.S. 429 (1991).

was not free to decline the officers' requests or otherwise terminate the encounter."[48]

C. Affidavits Supporting Search Warrants

Whether the facts alleged in a probable cause affidavit sufficiently support a search warrant is determined by examining the totality of the circumstances. Probable cause exists when the facts submitted to the magistrate will justify a conclusion that the object of the search is probably on the described premises at the time the warrant is issued.[49] Only the facts contained in the affidavit may be considered, but the magistrate may draw reasonable inferences from them and must interpret the affidavit in a common sense manner.[50]

The Fourth Amendment incorporates the common law requirement that officers entering a home must knock on the door, identify themselves as police officers, and announce their purpose before entry. This requirement protects the officers and occupants from potential violence, prevents the unnecessary destruction of private property, and protects people from unnecessary intrusion into their private activities. This rule, however, is flexible and does not ignore overriding law enforcement interests. "Courts must decide whether an unannounced entry is reasonable under all the circumstances of the case and in light of law enforcement's actions as a whole."[51]

To justify a no-knock entry, the police must reasonably suspect that knocking and announcing their presence would be dangerous and futile, or that it would inhibit the effective investigation of a crime by, for example, allowing the destruction of evidence.[52]

One Texas court—the Eastland Court of Appeals—has held that the smell of burning marihuana will not provide probable cause for an officer to obtain a search warrant.[53] This issue is now before the Court of Criminal Appeals.

D. Searches Without Warrants

Warrantless searches are unreasonable *per se* unless they qualify as one of the court-created exceptions to the general rule that a search must be conducted pursuant to a warrant. And the State has the burden to show that a search comes within an exception. Usually, it is not very difficult to do so.

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48. Citizen v. State, 39 S.W.3d 367 (Tex. App.—Houston [1st Dist.] 2001, no pet. h.); *see also* Roy v. State, 55 S.W.3d 153 (Tex. App.—Corpus Christi 2001, no pet. h.).

49. *Id.* at 654.

50. Robuck v. State, 40 S.W.3d 650, 653 (Tex. App.—San Antonio 2001, pet. ref'd).

51. U.S. v. Cantu, 230 F.3d 148, 152 (5th Cir. 2000).

52. *Id.*

53. State v. Steelman, 16 S.W.3d 483, 490 (Tex. App.—Eastland 2000, pet. granted); Radford v. State, 56 S.W.3d 346 (Tex. App.—Eastland 2001, pet. filed).

However, when the police presented no evidence that the defendant was armed and dangerous, it was unreasonable for an officer to enter his motel room and seize illegal drugs without a warrant or consent. The fact that the defendant made a furtive gesture and threw something behind a door was insufficient justification to enter and search. "The State presented no evidence the officer entered the motel room either (1) to render aid or assistance to someone he reasonably believed was in need of assistance, (2) to prevent the destruction of evidence or contraband," (3) to protect himself from the defendant, or (4) to prevent the defendant's escape.[54]

Of course, the search of a person incident to a lawful arrest is excepted from the requirement of obtaining a warrant. And recently, the Texarkana Court of Appeals held that subjecting a defendant to a gastric lavage was reasonable when the arrestee had white powder in his mouth, police had transported him to a hospital, and a gram of cocaine was recovered from the arrestee's stomach by accepted medical procedures to save his life.[55]

E. Consent To Search

"Consent to search is one of the well-established exceptions to the constitutional requirements of either a warrant or probable cause."[56] The "consent to search must be positive and unequivocal and must not be the product of duress or coercion, either express or implied."[57] Voluntary consent is not by mere acquiescence to a claim of lawful authority. "Whether consent was given voluntarily is a question of fact to be determined from the totality of the circumstances."[58] The State has the burden of showing consent by clear and convincing evidence.[59] "A search is valid if, in light of all the circumstances, the officers' belief that they had consent to search was objectively reasonable."[60] And "the fact that appellant was in custody does not, without more, render his consent to search involuntary."[61]

It is well established that a "police officer may approach a citizen without probable cause or reasonable suspicion to even request a search."[62] There is, however, peculiar language in a Fourteenth Court of Appeals

54. Newhouse v. State, 53 S.W.3d 765, 770 (Tex. App.—Houston [1st Dist.] 2001, no pet. h.).

55. Lewis v. State, 56 S.W.3d 617 (Tex. App.—Texarkana 2001, no pet. h.).

56. Griffin v. State, 54 S.W.3d 820, 823 (Tex. App.—Texarkana 2001, pet. ref'd).

57. Heincelman v. State, 56 S.W.3d 799, 802 (Tex. App.—Eastland 2001, no pet. h.); Estrada v. State, 30 S.W.3d 599, 603-04 (Tex. App.—Austin 2000, pet ref'd).

58. *Id.*

59. *Estrada*, 30 S.W.3d at 604.

60. Morris v. State, 50 S.W.3d 89, 99 (Tex. App.—Fort Worth 2001, no pet. h.).

61. Manzi v. State, 56 S.W.3d 710, 716 (Tex. App.—Houston [14th Dist.] 2001, pet. granted).

62. Leach v. State, 35 S.W.3d 232, 235 (Tex. App.—Austin 2000, no pet.).

decision about reasonable suspicion to ask for consent to search.[63] It does not represent prevailing law.

As to authority to consent, officers must not always accept at face value the consenting party's assumption or claim of authority to allow the contemplated search. They cannot lawfully proceed without inquiry into ambiguous circumstances.[64]

The standard of admissibility is significantly higher when consent is obtained after an unlawful search or seizure. To evaluate consent given after a Fourth Amendment violation, the Fifth Circuit panel conducted a two-pronged inquiry:

1) whether the consent was voluntarily given; and
2) whether the consent was an independent act of free will.[65]

The first prong concerns coercion; the second concerns causal connection with the constitutional violation.[66]

The Fifth Circuit panel applied a six-factor test to determine whether the subsequent consent to search was voluntary. It considered the following factors:

1) the voluntariness of a defendant's custodial status;
2) the presence of coercive police procedures;
3) the extent and level of the defendant's cooperation with the police;
4) the defendant's awareness of his right to refuse consent;
5) the defendant's education and intelligence; and
6) the defendant's belief that no incriminating evidence will be found.[67]

The Court then considered whether the consent to search given was an independent act of free will. It considered the following factors:

1) the temporal proximity of the illegal conduct and the consent;
2) the presence of intervening circumstances; and
3) the purpose and flagrancy of the initial misconduct.[68]

F. Miscellaneous Cases

In other cases decided this year, courts have decided the following issues:

- Where the statute authorized the involuntary taking of blood if "(1) there was a life-threatening accident; (2) the defendant was arrested for an intoxication offense under Chapter 49" (of the Penal Code),

63. Simpson v. State, 29 S.W.3d 324, 328 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).
64. Corea v. State, 52 S.W.3d 311, 317 (Tex. App.—Houston [1st Dist.] 2001, pet. ref'd).
65. *Jones*, 234 F.3d at 242.
66. *Id.*
67. *Jones*, 234 F.3d at 242.
68. *Id.* at 243.

and (3) the arresting officer reasonably believed that the accident occurred as a result of the offense, a sharply divided Court of Criminal Appeals held that the officer was required to have an independent reasonable belief that the accident occurred as a result of the offense, based on specific and articulable facts of causation aside from the accident and the arrest.[69]

- Courts reaffirmed the police community caretaking function. "[A] police officer may stop and assist an individual who a reasonable person, given the totality of the circumstances, would believe is in need of help."[70] There are four nonexclusive, nonexhaustive factors in determining the reasonableness of such a stop:
  (1) the nature and level of the distress exhibited by the individual; (2) the location of the individual; (3) whether or not the individual was alone and/or had access to assistance independent of that offered by the officer; and (4) to what extent the individual, if not assisted, presented a danger to himself or others.[71]
- Where a state hospital implemented a policy setting forth procedures to identify pregnant patients suspected of drug abuse, testing suspected patients for drugs, and reporting positive tests to the police, the Supreme Court of the United States held the Fourth Amendment's prohibition of nonconsensual, warrantless, and suspicionless searches applied to the policy. The closely guarded category of "special needs" did not apply.

III. CONCLUSION

Our overview of this year's confession, search, and seizure decisions reveals significant but predictable clarifications of well-established law, as well as a few issues that should be resolved during the next term of court. We see that Texas courts will continue to afford the accused the same protections guaranteed by the United States Constitution and that those protections are only increased where Texas' statutory laws require it.

69. Badgett v. State, 42 S.W.3d 136, 138-39 (Tex. Crim. App. 2001).

70. Lebron v. State, 35 S.W.3d 774 (Tex. App.—Texarkana 2001, pet. ref'd); Morfin v. State, 34 S.W.3d 664 (Tex. App.—San Antonio 2000, no pet.).

71. *Id.* at 777.