

**SIGNIFICANT DECISIONS
UNITED STATES SUPREME COURT AND
THE COURT OF CRIMINAL APPEALS
FROM SEPTEMBER 2022 TO APRIL 2023**

HON. DAVID C. NEWELL
JUDGE, PLACE 9
Court of Criminal Appeals

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Acknowledgement

This paper was largely drafted by my law clerk, Peyton Maddox, and my staff attorney, Tiffany Talamantez. Every year poor intrepid souls agree to come work for me after they graduate from law school only to be hit with having to summarize every published majority opinion from the Court of Criminal Appeals. And if that wasn't bad enough, they also have to summarize every significant decision from the United States Supreme Court. And I can see it on their faces when I tell them. They hate me. Make no mistake. To Peyton's credit, she's done an admirable job befitting her stellar service in my employ. So, I hope you enjoy this gift of Peyton's time and intellect. I would be remiss, however, if I did not mention the hard work of my staff attorney, Tiffany Talamantez. When Peyton was offered a dream job in March, Tiffany took over the summarization duty. On top of everything else she does for me. And I think she did a fine job, if I do say so myself. Which I apparently just did. As for my part, I have reviewed all the summaries, added nuances and details where necessary and some pretentious pontification (sometimes with alliteration) as commentary. And poor grammar. If you see it, that's my fault. Don't blame Peyton or Tiffany. They've had to deal with enough already. I do hope they get something out of it, though. Just as I hope that you all find something helpful in this paper.

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SCOTUS/CCA Update

Significant Decisions from August 2022 to March 2023

I. INTRODUCTION

This paper covers the published opinions issued by the Court of Criminal Appeals between August 1, 2022, and April 30, 2023. It also includes the significant criminal cases from the United States Supreme Court that have broad applicability, issued between October 1, 2022 and April 30, 2023. If you feel that a particular case was overlooked, please email me through Nichole Reedy at nichole.reedy@txcourts.gov and we'll do our best to accommodate you. More importantly, we update the paper throughout the year, so don't lose that email if you would like a copy of the most updated paper. But you will have to wait until July 2023 for that.

Oh, and one more thing. I tried little something new last year and it seems to have been well received. At least, I haven't had any complaints. As with last year, if it doesn't work, then you aren't in any different position than you were reading a regular version of the paper so don't worry. But I have included hyperlinks to the related opinions online. So, if you click on a case citation in this paper, hopefully, Google Chrome will pull up a link to the related opinions. Cases from the CCA and SCOTX have separate PDF files for majority and side opinions, so for those summaries I have tried to incorporate separate hyperlinks for corresponding opinions. United States Supreme Court opinions consist of only one file that has all opinions on it so there was no way for me to separate them out. For those cases you just get one hyperlink if you are interested. Of course, I can't guarantee that the version of the paper you receive at whatever CLE you choose to attend will have working functionality on this point. So, if you get a copy of this paper and it looks like there's a hyperlink, but it doesn't work when you click it, I'm sorry. I do not take any responsibility for link rot.

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person and neither is Nichole. Nevertheless, if you want a copy of our PDF version of the paper so you can see if that does work, you can reach out to us and we will send our master PDF copy to you. I know, master PDF sounds so serious. I just mean the original PDF we send out to be included in CLE material. It's not that serious. In any event, I wish you way more than luck.

II. MOTIONS TO SUPPRESS

A. Investigative Detentions

1. **Consensual encounter escalated to investigative detention when officers physically touched an individual while telling him to show his hands.** Tairon Jose Monjaras Monjaras was walking around an apartment complex when police officers saw Monjaras and believed it was "not normal" that Monjaras was carrying a backpack and that Monjaras was "overdressed for the weather." The officers announced in their body-worn camera recording that they were beginning a consensual encounter "to see where [Monjaras] was going, or what was going on." The officers got out of the police vehicle and began speaking with Monjaras. Both officers had their service pistols visible but holstered. They asked him for basic information including his name, where he lived, and if he had identification. Monjaras appeared to understand the questions but replied in broken English. One officer asked Monjaras if he had anything illegal on him. Monjaras shook his head no but began emptying his pockets. One officer then said, "Hold on, hold on, hold on. May I search you?" while placing his hand on Monjaras's arm. Monjaras reached into his pocket again while the other officer put his hand around Monjaras's elbow and said, "It's a question. Hold on. Talk to me." Monjaras continued to remove items from his pocket and said, "But I-I-I know. You said—you said you wanted to search me." With his hand on Monjaras's back, the officer responded, "No, no, no, you're not understanding what I'm saying. The second officer then took two steps forward, extended both hands outwards with his palms facedown and instructed Monjaras "manos, manos."

The first officer then, more insistently, repeated, "May I search you? May I go into your pockets and search you?" Neither officer informed Monjaras that he did not have to consent. After pausing, Monjaras

responded, “Yeah.” The officer then instructed, “Okay, slide your hands on the car for me, please.” Upon searching Monjaras, the officers found a pistol under Monjaras’s groin.

Monjaras pleaded guilty to unlawful possession of a firearm by a felon after the trial court denied his motion to suppress evidence where he argued that his interaction with law enforcement was an investigative detention without reasonable suspicion rather than a consensual encounter. On appeal, Monjaras argued that the trial court erred in denying his motion to suppress. The court of appeals affirmed the trial court and found that the interaction was a consensual encounter.

The Court of Criminal Appeals reversed. [Monjaras v. State, --- S.W.3d ---, 2022 WL 17170923 \(Tex. Crim. App. Nov. 23, 2022\) \(5:0:4\).](#) Writing for the Court, Judge Walker explained that an encounter is consensual only if the citizen is free to leave and terminate the interaction at any time. The Court agreed with the court of appeals that Monjaras’s initial interaction with the officers was a consensual encounter. The Court noted that the two officers approached Monjaras around midday in a public location using a tone that was not overtly hostile. Besides a brief handshake, the officers did not initially touch or speak to him in a way indicating that compliance was required.

However, the Court disagreed with the court of appeals’s conclusion that the encounter did not escalate to an investigative detention. The Court stated that the court of appeals undertook “a piecemeal or ‘divide and conquer’ approach” instead of viewing the totality of the circumstances. Further, the court of appeals focused on the initial encounter and the subjective intent of the officers rather than the perspective of an objectively reasonable person in the same circumstances. The Court concluded that when the officer moved closer to Monjaras with his hands extended and said “manos, manos” while the other officer had his hand on Monjaras’s body, a reasonable person in his shoes would no longer feel free to disregard the officers’ requests in light of the officers’ show of authority.

Presiding Judge Keller dissented without an opinion along with Judges Hervey, Keel, and Slaughter.

[**Commentary:** This is an exceedingly close and fact-bound case. Beware of trying to broaden this holding beyond the facts of this case. Note as well, that all the Court determined in this case is whether an investigative detention occurred. The case was remanded back for the court of appeals to determine whether that detention was based upon reasonable suspicion.]

2. Briefly and safely driving on the dividing line between the center and right lane of traffic with a U-Haul’s right rear tire does not give rise to reasonable suspicion for a traffic stop without additional facts. Late at night, Sheila Jo Hardin drove her rented U-Haul truck on the highway. A police officer saw her U-Haul and followed her because he had received a “Be on the Lookout” (BOLO) regarding a U-Haul that was suspected of being involved in multiple burglaries drove in the middle lane of a three-lane highway with no other cars around her. As the officer followed Hardin, she did not drive erratically, speed, or come close to hitting anything with the U-Haul. When he saw the right rear tire of the U-Haul touch and drive on the striped line marking the right side of the center lane he stopped her for committing the offense of “failing to maintain a single marked lane of traffic.” Nothing in the record showed that Hardin’s driving behavior was unsafe. The officer listed in his offense report that he did not stop her based upon the BOLO. Based upon evidence collected pursuant to a search of Hardin’s vehicle after the traffic stop, the State charged Hardin with fraudulent possession of identifying information and forgery of a government instrument. The trial court granted Hardin’s motion to suppress evidence obtained after the warrantless traffic stop. The trial court held that the stop was not justified by the BOLO alert, which the State did not challenge. The State appealed, however, on the issue of whether Hardin’s conduct amounted to a violation of the offense of “failure to maintain a single marked lane” even though Hardin’s driving was not shown to be unsafe. The court of appeals affirmed.

The Court of Criminal Appeals affirmed. [State v. Hardin, --- S.W.3d ---, 2022 WL 16635303 \(Tex.](#)

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