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# TIBA TEXAS INDEPENDENT BAR ASSOCIATION

Post Office Box 783  
Austin, Texas 78767  
Tel. 512-354-7823  
Fax: 512-532-6282



Web Site: [www.texindbar.org](http://www.texindbar.org)

⌘ Vol. 12, No. 42 - October 25, 2004

**Case Name:** [The State of Texas v. Craig Allen Kothe](#)

- OFFENSE: Possession of Controlled Substance
- COUNTY: Kendall
- COURT OF APPEALS: San Antonio 2004
- C/A CITATION: 123 S.W.3d 444
- C/A RESULT: Suppression Order Affirmed
- CCA. CASE No. PD-1738-03
- DATE OF OPINION: October 20, 2004
- DISPOSITION: Court of Appeals Reversed VOTE: 9-0
- OPINION: [Cochran, J.](#)
- TRIAL COURT: 216th D/C; Hon. Steve Ables
- LAWYERS: [David Schulman](#), [Lee Haidusek](#), [Wallace Ferguson](#) (Defense); [Bruce Curry](#) (State), [Matthew Paul](#) (SPA)

**Ed Note:** (Background Facts) Officer Forslund stopped Appellant for suspected DWI and requested a computer check for any outstanding warrants. Forslund quickly determined Appellant was not intoxicated, but kept Appellant detained another 3 to 12 minutes until he received a report that Appellant was not wanted on any warrants. As he was about to tell Appellant he could leave, Forslund received a report that Appellant might have a bank bag with silver coins taken from someone's safe. Appellant denied possessing the bag, but gave consent to search his car. Forslund did not find the bag, but did find some drug paraphernalia. He asked Appellant's passenger, Brantley, about the paraphernalia, and she admitted having two baggies of heroin stashed in her bra, and said Appellant gave them to her to hold. Appellant moved to suppress the heroin, contending he had been unreasonably detained after Forslund determined he was not intoxicated. The trial court granted the motion, and the State appealed. The Court of Appeals affirmed the suppression order after initially reversing it (see ⌘, [Vol. 11, No. 38](#); 09/29/2003).

⌘ **32.01 Search & Seizure / Standing:** Appellee's motion to suppress challenged the seizure of heroin from Brantley's bra. He claimed that, under [Wong Sun](#), he had standing to challenge the illegality of the seizure because it was "come at by" the exploitation of an illegal detention.

**Holding:** Standing may be raised for the first time on appeal, even if the State is appealing, and legal issues such as standing are determined de novo. Generally a person has no standing to complain about the search of another person, but Appellant here was complaining about his own detention, and therefore had standing to complain about the search of Brantley because it would have been the fruit of his own detention if that detention was not reasonable.

**Comments:** ([John G. Jasuta](#)) This could be an important case on standing. First, it appears to be the first Texas case holding that, under [Wong Sun](#), a person has standing to complain about the seizure of drugs (etc) from another person. Second, there is some language in Judge Cochran's discussion which could be taken to mean that, under certain circumstances, the State

will waive it's right to complain about standing on appeal, in a warrantless search situation, if they don't raise it at the trial court.

¶ 31.028 Search & Seizure / Traffic Stops / Continued Detention: Appellee claimed that, once he determined that Appellee was not intoxicated and there were no outstanding warrants for Appellee, Forslund was required to let him go, and that, since he did not, the continued detention was unreasonable.

**Holding:** A detention to await the results of a driver's license and warrant check. after a stop for some other valid reason, is reasonable even though the basis for the initial stop has been resolved, unless it "unduly prolongs" the detention, or there is some evidence that the officer is using this delay to conduct a fishing expedition. Forslund's actions here were reasonable, and the suppression order is set aside.