

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 2, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-3095**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**IN THE INTEREST OF KELSEY C.R., A PERSON UNDER  
THE AGE OF 17:**

**STATE OF WISCONSIN,**

**PETITIONER-RESPONDENT,**

**v.**

**KELSEY C.R.,**

**RESPONDENT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
M. JOSEPH DONALD, Judge. *Affirmed.*

¶1 FINE, J. Kelsey C.R. appeals from a dispositional order entered on her admission to the charge of illegal possession of a firearm by a person under the age of eighteen. See WIS. STAT. § 948.60(2)(a). She claims that the trial court erroneously denied her suppression motion. We affirm.

**I.**

¶2 Milwaukee police officer Bernard Gonzalez testified that on March 1, 1999, at around 7:40 p.m., he was in his squad car with his partner when he saw “a female juvenile” sitting on the sidewalk with her back resting against a building. It was dark out. The girl was Kelsey C.R.

¶3 The officers stopped the car, rolled down their window, and asked her if she was all right. She replied that she was, and, in response to their question, told them that she was fifteen years old. She also told the officers that she lived nearby and was waiting for a friend. Concerned that she might be a runaway, the officer wanted to “talk to her further.”

¶4 The officer told her to “stay put,” and turned the squad around. Kelsey then ran. After a substantial chase, which lasted some “[t]hirty to forty seconds,” the officers stopped her. The officers checked her on the department computer; she was not a runaway. They asked for her telephone number, which she gave them, and they called her home. Officer Gonzalez spoke to Kelsey’s mother, who “asked me to bring her home.” The officer would have taken her home whether the mother had asked him to do so or not.

¶5 Officer Gonzalez told the trial court that he will not put anyone in his squad car before making certain that the person is not armed. Accordingly, he asked a female police officer to meet them to do a pat-down search of Kelsey. Twenty minutes after he called for the female officer, she arrived. She patted Kelsey’s outer clothing, felt a hard object in Kelsey’s pocket. It was a small loaded handgun.

## II.

¶6 Whether an investigatory stop was legally justified presents a question of law that we decide *de novo*. See *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The facts essential to this determination here are not disputed.

¶7 Police officers have a community-caretaker function. *State v. Anderson*, 142 Wis. 2d 162, 169, 417 N.W.2d 411, 414 (Ct. App. 1987), *rev'd on other grounds*, 155 Wis. 2d 77, 454 N.W.2d 763 (1990). Persons under the age of eighteen may be taken into custody by a law-enforcement officer if they are runaways. See WIS. STAT. §§ 48.19(1)(d)4; 48.02(2); 938.19(1)(d)4; & 938.02(10m). An officer who believes that a person under the age of eighteen may be a runaway has the right to investigate. See *Terry v. Ohio*, 392 U.S. 1, 22 (1968) (“police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest.”).<sup>1</sup> The officers’ investigation here, however, was cut short when Kelsey fled, which permitted them to chase and physically stop her. See *Illinois v. Wardlow*, 120 S. Ct. 673, 676 (2000) (flight warrants further investigation); *Anderson*, 155 Wis. 2d at 86-87, 454 N.W.2d at 767 (“proper balance” under Fourth Amendment permits

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*Terry* [*v. Ohio*, 392 U.S. 1 (1968),] accepts the risk that officers may stop innocent people. Indeed, the Fourth Amendment accepts that risk in connection with more drastic police action; persons arrested and detained on probable cause to believe they have committed a crime may turn out to be innocent. The *Terry* stop is a far more minimal intrusion, simply allowing the officer to briefly investigate further.

*Illinois v. Wardlow*, 120 S. Ct. 673, 677 (2000).

temporary stop of person “engaging in flight upon sighting law enforcement officers”). Although Officer Gonzalez told the trial court that he would have taken Kelsey home whether her mother had asked him to do so or not, Kelsey’s mother *did* ask him to bring Kelsey home. *Cf.* WIS. STAT. §§ 48.20(2)(ag) (“Except as provided in pars. (b) to (d), a person taking a child into custody shall make every effort to release the child immediately to the child’s parent, guardian or legal custodian.”); 938.20(2)(ag) (“Except as provided in pars. (b) to (g), a person taking a juvenile into custody shall make every effort to release the juvenile immediately to the juvenile’s parent, guardian or legal custodian.”).<sup>2</sup>

¶8 Concerned for their safety with a passenger in the back seat, the officers had a female officer check to see if Kelsey was armed. In fact, Officer Gonzalez testified that it is his routine practice. In our view this is the only prudent practice. *Cf. State v. Swanson*, 164 Wis. 2d 437, 442, 475 N.W.2d 148, 150 (1991) (routine practice to do a pat-down frisk for weapons of anyone placed in a squad car; lawfulness not decided). Simply put, a “reasonably prudent” police officer would want to make certain that the person in the back seat is not armed. *See Terry*, 392 U.S. at 27 (“The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.”). Our society is awash with illegal guns; the minimal intrusion of an

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<sup>2</sup> Thus, we do not decide whether the result of this case would be different if Kelsey’s mother had not asked the officer to bring Kelsey home. *See* WIS. STAT. §§ 48.20(2)(c) (“If the child is 15 years of age or older, the person who took the child into custody may release the child without immediate adult supervision after counseling or warning the child as may be appropriate.”); 938.20(c) (“If the juvenile is 15 years of age or older, the person who took the juvenile into custody may release the juvenile without immediate adult supervision after counseling or warning the juvenile as may be appropriate.”).

outer-clothing frisk of someone about to ride in the back of a squad car is more than outweighed by the need to ensure the officers' safety.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

