

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER ELEVEN
JOE SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO SUPPRESS BLOOD TEST EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT;

Joe Smith moves this Court to suppress the following:

- A. The alleged results of any tests of the defendant's blood to determine the alcoholic content of his blood.
- B. The testimony of law enforcement officers, their agents and all other persons working in connection with such officers and agents, including all persons who had anything whatsoever to do with requesting, directing, assisting, or in any manner obtaining an test to determine the alcoholic content of his blood.

As a basis for this Motion, the defendant shows the following:

I.

A.

On January 17, 2011 Mr. Smith was arrested for driving while intoxicated and was requested by the arresting officer to submit to a blood test. According to the officer, Mr. Smith refused to agree to give a sample of his blood, so he obtained a search warrant. The officer then took Mr. Smith to the nurse's station at the Magistrate's office, but when

the nurse was unable to take blood from Mr. Smith's arms or hands, the officer took him to University Hospital. There blood was drawn from Mr. Smith's neck.

B.

A compulsory blood-draw by the police constitutes a search and its legality must be determined pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and Article I, § 9 of the Texas Constitution. The two questions to be determined are “ whether the police were justified in requiring petitioner to submit to the blood test, and whether the means and procedures employed in taking his blood respected relevant Fourth Amendment standards of reasonableness.” *Schmerber v. California*, 384 U.S. 757, 768 (1966). In Mr. Smith's case, both questions must be answered against the state.

C.

The “means and procedures employed” in taking blood from Mr. Smith's neck were not constitutionally reasonable. At the time the officer compelled this exceedingly unnatural, painful, and dangerous procedure, Mr. Smith was in custody and could not have driven any more. The public was not in any danger at this point. The sole purpose of this procedure was to gather evidence to be used in a later criminal proceeding. But at this time, the police already had evidence, in the form of the testimony of at least one trained police officer, and perhaps at least two other officers, as well as a videotape that contained driving facts, and Mr. Smith's performance on four field sobriety tests. The

state of Texas proceeds to trial in DWI cases every day with this sort of evidence, and often less. To force this abnormal medical procedure on a young man, solely for the purpose of attempting to obtain more evidence, and when no public safety concern existed, was excessive and therefore constitutionally unreasonable and violates the Fourth and Fourteenth Amendments to the United States Constitution and Article I, § 9 of the Texas Constitution. *See Hereford v. State*, 339 S.W.3d 111, 126 (Tex. Crim. App. 2011).

D.

Forcibly taking blood from Mr. Smith's neck, solely to create additional evidence in a criminal case, "is conduct that shocks the conscience. . . and is bound to offend even hardened sensibilities." *Rochin v. California*, 342 U.S. 165, 209-210 (1952). In *Rochin*, the Supreme Court held that the forcible extraction of the defendant's stomach contents violated Due Process of Law. The conduct of the arresting officer in this case, and those who assisted him, was far more invasive and offensive, and requires that the blood seized be suppressed, pursuant to the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and by the Due Course of Law provisions of Article I, §§ 13 & 19 of the Texas Constitution.

E.

Nor was the arresting officer justified in requiring Mr. Smith to give a sample of his blood. There was no probable cause for Mr. Smith's arrest, or for seizing his blood. Additionally, the affidavit in support of the search warrant for Mr. Smith's blood does not

provide probable cause to justify the seizure of blood. The blood test results are fruits of a seizure made in violation of the Fourth and Fourteenth Amendments of the United States as well as Article I, § 9 of the Constitution of the State of Texas, and Chapter 14 of the Texas Code of Criminal Procedure and must therefore be suppressed.

II.

No alcohol or cocaine was found in Mr. Smith's blood. According to the lab report provided in discovery, several chemical substances were located in amounts "less than limit of quantitation" or by some method that is "unconfirmed," or that "requires quantitation." Concerning those substances that apparently could be quantified, there is no indication on the report, or in any other discovery provided thusfar, that this evidence is relevant to Mr. Smith's alleged intoxication. It would be error in this DWI case to allow evidence of this sort "without the State first showing that the evidence was relevant to Appellant's intoxication." *Layton v. State*, 280 S.W.3d 235, 242 (Tex. Crim. App. 2009). Additionally whatever limited relevance this evidence might have is substantially outweighed by its potential to prejudice Mr. Smith, and confuse and mislead his jury. *See* TEX. R. EVID. 403.

III.

The blood test results here are not capable of determining whether Mr. Smith was intoxicated at the time he was operating a motor vehicle, as is required by the Texas Transportation Code.

IV.

The state has failed to make available full information concerning the analytical results of the test to Mr. Smith or his attorney.

WHEREFORE, PREMISES CONSIDERED, defendant respectfully moves that this Court:

- 1) Set this Motion to Suppress for a pretrial hearing pursuant to Article 28.01 of the Texas Code of Criminal Procedure; and,
- 2) Suppress these matters set forth in the foregoing paragraphs and any such illegal evidence that has been seized at the time of or subsequent to the arrest in order that said evidence will be inadmissible as evidence against him and unavailable for any purpose of the prosecution.

Respectfully submitted:

MARK STEVENS
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205-3192
(210) 226-1433
State Bar No. 19184200

Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a copy of defendant's Motion To Suppress Blood Test Evidence has been delivered to the Bexar County District Attorney's Office on August 12, 2011.

MARK STEVENS

ORDER

On this the _____ day of _____, 2011, came on to be considered
defendant's Motion to Suppress Blood Test Evidence, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING