

NO. 0000

STATE OF TEXAS ) IN THE DISTRICT COURT  
VS. ) 186TH JUDICIAL DISTRICT  
JOE SMITH ) BEXAR COUNTY, TEXAS

**DEFENDANT'S OBJECTIONS  
TO ADMISSIBILITY OF VIDEOTAPE OF  
JOE SMITH ON NOVEMBER 30, 2017**

TO THE HONORABLE JUDGE OF THE 186TH JUDICIAL DISTRICT COURT:

**Introduction**

The law permits the introduction of a defendant's oral statements if certain conditions are satisfied. First and foremost, before "the defendant's statement" can be admitted against him, it must at least be his statement. In this case the videotape in question lasts more than three hours, beginning at 12:43 pm with Mr. Smith sitting silent and alone in an interrogation room at the San Antonio Police Department, and concluding at 3:57 pm, well after he has been removed from the room. Although Mr. Smith does make some statements during this time, as we show in detail in this motion, the overwhelming majority of words on the videotape are spoken by others – the two interrogating detectives, unidentified persons, Deserae Jones, various medical doctors, and police officers. By far the largest part of this videotape contains evidence that is either wholly irrelevant to Mr. Smith, or highly and unfairly prejudicial to him, or both, and which is inadmissible for various reasons, including that it is hearsay and denies him

the constitutional right to confront and cross-examine witnesses against him, that it refers to inadmissible extraneous misconduct, that it violates his constitutional and statutory rights to hire and consult with counsel, and that it violates his constitutional rights to privacy and the presumption of innocence.

This motion points out in detail that evidence that the defense has so far been able to identify as inadmissible. Removing all the inadmissible evidence, then introducing the redacted version will reduce the original videotape to a peculiar looking skeleton, whose emaciated existence will necessarily confuse and mislead the jury, and prejudice Mr. Smith, and deny him his evidentiary right to effectively assert “the rule of optional completeness,” and prevent him from mounting a defense, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 10, 13, and 19 of the Texas Constitution.

The only proper remedy is to suppress the entire videotape. The defense made various arguments for broader suppression on February 6, 2018 at the evidentiary hearing, on various constitutional and statutory grounds, and he reurges those objections at this time.

Should his objections to the entire videotape be overruled, Mr. Smith makes the following objections to specified portions of the videotape:

**I.**  
**Statements By Detectives Dubs And Hines, Deserae Jones, Doctors,**  
**And Others**  
**That Violate The Hearsay Rule**  
**And Mr. Smith's Rights To Confront And Cross-Examine**

On their face it is clear that the following are out-of-court statements that meet the definition of inadmissible hearsay under Rule 801, and are therefore inadmissible under Rule 802 of the Texas Rules of Evidence. Additionally, admitting these statements against Mr. Smith would violate his right to confront and cross-examine witnesses against him, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution. *See also Crawford v. Washington*, 541 U.S. 36 (2004). The beginning and end of the videotaped portion at issue are found atop the pertinent written transcriptions.

**[12:53:38 – 1:02:25]**

Dubs:           Okay. So that's Wednesday. Okay. Umm. In front of uh, Deserae here just a little while ago. I wrote it down on one of these pieces of paper. I talked to Doctor Conner. Pediatric ICU physician over at University Hospital. Okay?

Joe:    Um hmm.

Dubs:           Thank you sir. And here's what we know, for a fact. Jonathan's injuries, there's a lot of them. Cast, splint, bruises everywhere, contusions, uh. Trauma to the brain. Are all not, non-accidental trauma. Understand what that means? You understand what non-accidental trauma means? What does that mean to you?

Joe:    It means not a, not accidental.

Dubs: Okay, so, if, if it's not an accident, that means it's on purpose.

Joe: Um hmm.

Dubs: Right? Just by mere definition.

Joe: Right.

Dubs: If something's not an accident, it's on purpose.

Joe: Right.

Dubs: Okay. So, um, his exact words were non-accidental trauma, uh, consistent with child abuse. Umm. Jonathan has got bruises, scratching, and swelling of his genitals and anus area. Consistent with sexual assault. They're examining him, a sexual assault examination is being conducted as we speak. Umm. Deserae spent our time at the hospital telling me lies. Some of the lies she told me were kinda consistent with some things you told the patrolman this morning. Such as that you guys both heard a loud bump, and went to, you went to see what was wrong and Jonathan was on the floor in the bedroom. Deserae has since told me that the story that she told the story at the hospital, and that you agreed to at the hospital, about how Jonathan broke his leg is also not the truth. And has told me her version of the truth, anyway. I, I'm not going to call what she told me the second time the truth. . . .

Joe: Um hmm.

Dubs: until I get enough of a consistent story out of her to match what I know is facts. See, the medical evidence are facts. Because I've got an expert at the hospital . . . .

Joe: Umm.

Dubs: that can say, these are the injuries, and they could or could not be happened according to what the two people that are in this child's life are telling us.

Joe: Umm.

Dubs: Okay. That's not possible. Or that is possible. So, uh, for me to be able to say that everything she has told me is the truth, is, would be incorrect. But what she has described to me is you abusing Jonathan.

Joe: Me abusing Jonathan?

Dubs: Yes.

Joe: How?

Dubs: Some pretty specific cases where she's heard slapping, where she's heard hitting, where she's heard crying and screaming. And there's always been, been, according to her, there's always been a, what she considered, because she didn't want to think differently . . . .

Joe: Uh huh.

Dubs: a good explanation, or a evil laugh, as she put it, as you tormented Jonathan, which she said happened frequently. Not necessarily torture as in, you know, snapping his bones in half, but just tormented him. She's also mentioned to me how when you guys first got together, the children were not living with her, things were a lot different. Because now its two single people without kids, that are able to go do things like go to the Gruene Dance Hall, and get drunk, and you beat the hell out of her at two o'clock in the morning. She actually gave me the date of that. Do you have your cell phone with you?

Joe: Do I have it with me?

Dubs: Yeah.

Joe: Yeah.

Dubs: Okay. Umm, she's also described the naked pictures of her

son in the bathtub that you have on your cell phone. Umm. Didn't say whether she knows whether their there now or not. Dubs: It, it, it was just a question. Umm. Said that you've actually shown them to people that she knows, that I can verify. Uh, she has described you sitting naked in the bathtub with the shower running, which normally somebody takes a bath, they're in the bath and the water's running, and the shower's running, sitting naked Indian-style, which means bottom half of your legs are folded, him sitting naked on your lap, while you smoked a cigarette.

Joe: No.

Dubs: Uh. With a child in the room that has asthma. Umm, she also described how you didn't want to call 911 this morning, and when she handed you the, or when you grabbed the phone, how she had to grab the phone from you because you weren't dialing 911, because you were asking, "are you sure." She described that, what you describe as, asleep with her, that you never came to bed until 15 minutes before she found out that Jonathan was injured this morning. You weren't in bed with her. That she was at one location sleeping, and she heard you get in bed for the first time, and it was about 10 or 15 minutes before you, "Did you hear that," and she didn't hear anything. And that all of a sudden you find the child injured, and are making things up as you go in order to fit the story that you want her to believe. Now, this wasn't a constant, this is everything that happened that I know bad that happened that I've seen him do. This was a long, painstaking, "what did you do this day, what did you do this day, what did you do this day, what did you do this day, now let's go back in and fill in the blanks. According to what the doctors, along with three, three phone calls to the doctors, so that I can get timelines on injuries, and so on and so forth. Umm, kids weren't jumping on the couch. You were in the room with Jonathan when he broke his leg. She heard a loud slapping noise, and she went in there, you told her the baby's foot was caught in the futon. She never saw it. She wasn't there when you picked the baby up. She walked in the room and you were holding the baby. Now. That's a lot of inconsistencies. Before I left the office

a couple of minutes ago, my sergeant told me exactly what she wants to do. You see these cases on the news, I'm sure. Okay. She told detective Hines and I a little while ago, you will be diligently working this case until its conclusion today, I take it. And somebody will be going to jail today, I take it.

Joe: Um hmm.

Dubs: What part of this is true, and what part of this is not true?

Joe: [unintelligible]

Detective: I already told him somebody was gonna go to jail, it was gonna be him or Deserae.

Dubs: What part of this stuff is true, what part is not.

[GRANTED]

[DENIED]

[ 1:11:23 – 1:12:49]

Dubs: And a lot harder than what I did, but I like him, so I didn't [unintelligible] Convince me you don't go to jail. Defend yourself. Or admit that you really fucked up, and convince me that my report needs to say that you're not really a bad guy, you just need some counseling.

Joe: [unintelligible]

Dubs: I'm sorry.

Joe: I don't know what to think about this whole thing.

Dubs: Well, I, I'm not sure of the confusion. Did I, is there something I didn't explain properly?

Joe: No, you did sir. But I just can't take it all in because I can't believe that this is, all those things that she said. And they're not true.

Dubs: Okay, so if . . . .

Joe: I was in bed. I did go to bed last night. She was the one that woke me up. She woke me up first.

Dubs: Okay. And what time?

Joe: I don't know, I don't know when it was, six?

Dubs: She was at the hospital already by six.

[GRANTED]

[DENIED]

## **II. Extraneous Misconduct**

Throughout the videotape Detectives Dubs and Hines accuse Mr. Smith of various acts of misconduct that are not alleged in this indictment. The asserted misconduct is detailed below, and its location on the videotape is bracketed. The state cannot prove beyond a reasonable doubt that Mr. Smith perpetrated any of these transactions. Mr. Smith has not been convicted of any offense concerning these transactions, as required by Rule 609 of the Texas Rules of Evidence. These transactions are irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. If relevant to anything, they are relevant only to character conformity, and therefore inadmissible under Rule 404(b). These transactions are unfairly prejudicial, confusing and misleading, and therefore inadmissible under Rule 403.

**[12:55:20 – 12:55:43]**

- “Jonathan has got bruises, scratching, and swelling of his genitals and anus area. Consistent with sexual assault. They’re examining him, a sexual assault examination is being conducted as we speak.”



[GRANTED]

[DENIED]

**[12:56:20 – 12:57:17]**

- “Deserae has since told me that the story that she told the story at the hospital, and that you agreed to at the hospital, about how Jonathan broke his leg is also not the truth. And has told me her version of the truth, anyway. I, I’m not going to call what she told me the second time the truth. . . until I get enough of a consistent story out of her to match what I know is facts. See, the medical evidence are facts. Because I’ve got an expert at the hospital . . . that can say, these are the injuries, and they could or could not be happened according to what the two people that are in this child’s life are telling us. That’s not possible, or that is possible.”

[GRANTED]

[DENIED]

**[12:57:28 – 12:58:18]**

- “But what she has described to me is you abusing Jonathan. Some pretty specific cases where she’s heard slapping, where she’s heard hitting, where she’s heard crying and screaming. And there’s always been, been, according to her, there’s always been a, what she considered, because she didn’t want to think differently . . . a good explanation, or a evil laugh, as she put it, as you tormented Jonathan, which she said happened frequently. Not necessarily torture as in, you know, snapping his bones in half, but just tormented him.”

[GRANTED]

[DENIED]

**[12:58:18 – 12:58:43]**

- “She’s also mentioned to me how when you guys first got together, the children were not living with her, things were a lot different. Because now its two single people without kids, that are able to go do things like go to the Gruene Dance Hall, and get drunk, and you beat the hell out of her at two o’clock in the morning. She actually gave me the date of that. Do you have your cell phone with you?”

[GRANTED]

[DENIED]

**[12:58:48 – 12:59:07]**

- “She’s also described the naked pictures of her son in the bathtub that you have on your cell phone. Didn’t say whether she knows whether their there now or not. Said that you’ve actually shown them to people that she knows, that I can verify.”

[GRANTED]

[DENIED]

### III.

#### **Statements By Persons Other Than Mr. Smith: Bolstering, Self-Serving, Unqualified-Expert, Or Argumenative Testimony By The Police**

[1:02:25 – 1:03:05]

Dubs: And for God sakes man, if you had the, the illusion when you walked into the police station today, that there was a chance that this was gonna be a happy family later . . . .

Joe: Uh huh.

Dubs: You can just put that out of your head. Because, if we don’t find the exact truth, we don’t know who to protect the child from, the child goes wherever CPS thinks the child is safe.

Joe: Right.

Dubs: And obviously, its not gonna be if we don’t, back into that home if we don’t know who did it. That just makes common sense. Don’t have any authority . . .

Joe: Um hmm.

Dubs: to remove children, because that’s not what I do.

Joe: Um hmm.

Dubs: But just from past experience I can tell you they’re not going to put the baby back in the house and say, “well, they say they didn’t do it.

Joe: Um hmm.

[GRANTED]

[DENIED]

[1:03:57 – 1:04:25]

Dubs: I'll show you where I wrote this stuff down, because I don't want you thinking I'm coming in here lying to you because I, the facts are the facts. I don't want, I don't want somebody to come in and, and, just so I can clear a case, so I can satisfy that boss over there. Because I got news for you. If I don't know who did it, I'm not going to arrest somebody just to arrest somebody. Okay. That's not what this is about. My job is to find the facts. Period.

[GRANTED]

[DENIED]

#### IV.

#### Mr. Smith's Right To Counsel

After he was informed he was under arrest, Mr. Smith expressly inquired about his right to counsel. Such references would be contrary to article 38.38 of the Texas Code of Criminal Procedure, Rules 401, 402 and 403 of the Texas Rules of Evidence, and to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13 and 19 of the Texas Constitution. *See also Doyle v. Ohio*, 426 U.S. 610 (1976); *Sanchez v. State*, 707 S.W. 2d 575 (Tex. Crim. App. 1986). And this evidence is irrelevant, in violation of Rules 401 and 402 of the Texas Rules of Evidence.

Additionally, whatever marginal relevance the evidence has is substantially outweighed by its potential for unfairly prejudicing the jury, in violation of Rule 403 of the Rules of Evidence.

[2:22:35 – 2:23:17]

Joe: [unintelligible] So now is it past the time too to talk to a lawyer, or anybody like that.

Dubs: I'm sorry?

Joe: Now is it past the time to talk to a lawyer?

Dubs: Oh no. Now would be pretty good time probably to talk to a lawyer. I mean, because you supposedly have told me everything you can tell me. And if you want a lawyer now, I'm not even allowed to talk to you anymore I'm not allowed to ask any questions.

Joe: Really?

Dubs: Yeah. So. If, if, if you don't have a lawyer when your first court date comes up, they'll appoint a lawyer for you. When you get over to the jail, all the phones there, you have to make collect calls. Cause he's gonna take your cell phone from you.

[GRANTED]

[DENIED]

[2:37:18 – 2:38:37]

Joe: Am I able to talk to a lawyer right now?

Dubs: Um. No.

Joe: I'm not?

Dubs: I mean, there are no lawyers in the building. Well, there are, but they work for us.

Joe: Uh huh.

Dubs: Basically, when your rights are read to you, it says that a lawyer will, that you don't have to speak to anybody, that you can have a lawyer appointed to you, and you ask for a lawyer, we just have to stop talking to you. Nobody from the state,

the district attorney's office or the police department, will speak to you unless the lawyer calls them. So, you have asked for a lawyer a couple of minutes ago, so I haven't asked you any questions. I can't talk to you about it. I mean, I can talk to you about where you're going, and stuff like that, but I can't ask you anything about this case, any more, because you've asked for a lawyer. But, we don't have a lawyer out standing waiting for you to. But, if you go, when you go to jail, they're gonna ask you if your family's hired you an attorney.

Joe: Umm.

Dubs: If they haven't then the court, they will appoint a lawyer from San Antonio to represent you, and he will contact you from jail, and there's rooms, there are conference rooms where you can actually go sit and talk to him.

Joe: Yeah.

Dubs: That answer your question?

[GRANTED]

[DENIED]

## V.

### **Mr. Smith's Right To Privacy**

At 2:27:10, Mr. Smith asked if he can use his cell phone, and Detective Dubs permitted him to do so. Dubs then asked: "Do you want me to close the door?" and Mr. Smith said, "please." Mr. Smith had a reasonable expectation of that his the several phone calls he made thereafter would be private, and the recording of these calls therefore violated the First, Fourth, and Fourteenth Amendments to the United States Constitution, and Article I, §§ 8 and 10 of the Texas Constitution. The phone calls he made on his cell phone – to his mother, his father, and his lawyer – after he had been arrested and advised

by the police that he had an expectation of privacy, must be suppressed in their entirety.

[2:27:10 – 2:37:25]

- Joe: Uh, please. Mom? Hey, it's Joe. I am in , at the San Antonio Police Department, and they have me detained for sexual abuse and beating Jonathan. So, uh, I am going to jail, to Bexar County. Umm, I guess you need to come here from McAllen just as soon as you can. So we can clear all this up. Okay? I love you. Call me back. Fast, if you can. Bye-bye.

Dubs: Just checking. We've had people that like tried to use the phone cord to hang themselves. Just checking.

Joe: Dad. Dad, I, I need your help, bad. I am being detained in the San Antonio Police Department. They are saying that there is, there's from Jonathan, they're saying that I beat him and that I sexually abused him. It just happened. Last night. Because Jonathan just woke up. He. I went to him to go check on him, and he was just, he was on the ground. He had fallen off, jumped off the bed, done something. I don't know. And he was knocked out. Just go to the San Antonio Police Department.

Dubs: Keep it open so I can keep my eye on.

Joe: What? Deserae's here and she's telling them stuff that, that, that's not right. She's making, just making things up as it goes along. And I don't know, I don't know what to do. They're asking me questions. They're asking me stuff, signed statements, what happened last night, tell them, they're saying that it's not matching up. That I'm not telling the right story, that she is. Some of the things match, some of them don't. [background chatter] Yeah. Hmm. No, I haven't. Um hmm. She's telling them that she has seen me act that way before. Yeah. That she was asleep, and that I was awake, that it seemed like I slipped in the bed. [chatter] Um hmm. Well, I'm calling on my cell phone right now. To find out anything about me, I don't know. Hold on just a

minute. Sir? I have a, I have a question. About, I need to give a number to my parents.

unidentified: There is none. It's gotta be a collect call from there. From you to them.

Joe: I know. To where they can find out where I'm being held at.

Dubs: Bexar County Sheriff's Department.

Hines: Bexar County Jail. 335-6000.

Joe: 335-6000. Bexar. Bexar County Jail. No. Uh huh. Right. Yeah. Yeah. Okay. Yeah. Yeah. Yeah, I'm about to be. I'm going to be. Okay. Yeah. It's at the apartment. No, an officer has 'em.

[GRANTED]

[DENIED]

**[2:35:55 – 2:37:21]**

- Joe: Okay. Okay. Yeah. Well, she's here too. They're asking her questions, if she did it. Yeah. Yeah. Um hmm. Right. Right. Right. Right. Um hmm. Right. [chatter] Um hmm. Okay. I already did. I already called her. I already did. I already did call her and I left her a message. All right, just remember just to come down to the San Antonio Police Department, or the Bexar County Sheriff. Um hmm. Or the Bexar County Jail. [chatter] Can I? Am I able to talk to a lawyer right now?

[GRANTED]

[DENIED]

**[2:50:37 – 3:01:03]**

Joe: Hi mom. Yeah. I don't know mom. Yeah. I don't know. I don't know what's going on. I'm in San Antonio. At the San Antonio Police Department. Downtown. I got over here with an officer. They gave me a ride over here. Huh? It happened, uh, last night, I guess, during the night. I woke up this morning and walked in and found Jonathan on the floor, neck up to the wall, like he had fallen out of the bed and he was just laying

there. He wasn't moving. And so I picked him up and rushed him in and that was pretty much it. Now they're saying I rushed him in, I picked him up, and I took him back in the living room where we were sleeping, and laid him down, and gave him his nebulizer and called 911, and then the cops came and everything, and thought I was gonna go to the hospital, and the cop started asking questions and then I said that I was in the room and that was it. And the guy said they had to bring me and her down for questions. No, she was, she was there. She was there. I woke up. I heard it. I heard a big bang. Nobody. Yeah. On the futon in the living room. Because we were watching TV. She is. She's here too. She is here. Yeah. She's just throwing. She's just throwing everything against me, so she doesn't go to jail, I'm sure, like I was when I would drink, and I'd get mean, and do stuff like that, that's what she's telling them, and they're like, more favorable on her side than yours, and you can't really tell us what's going on. And I keep denying everything, and tell them I didn't do that. I didn't do that. There's no way, there's no way. No, no. And then finally at the end. Hello. Okay. So then finally at the end I just made up. I just said, well yeah, I dropped him accidentally. Why did I do what? No. I didn't. I mean, I did. Well, that's kind of unny all of a sudden you bring it up like that now. [chatter covers up phone call] Just come up here. Right now. Come and then, get a lawyer, bail me out. Do whatever you can. As soon as you can. Four hours. Okay.

Yes, I dropped him accidentally. Cause I already told them that and they don't believe it. [unintelligible due to laughter and chatter of police] Yeah, I did drop him on accident. He was squirming. I grabbed him by the cast, and he squirmed it out, and I had one arm and his head hit the ground. I don't know, they won't tell me. I think he has like a contusion, or hematoma, I don't know, something. Pretty bad. And then all that stuff. And they were playing. And, you know. Playing, and wrestling, and the bruises, and they're using that and saying that the bruises. I don't know if they're making it up and saying that his anus has been messed with. Yeah. Yeah. Okay. Soon as you get off work? Come up here now. Oh. The card is on the refrigerator. At grandpa's house. I don't have his number here with me. Uhh. One hundred, something. Yeah. The card is on the refrigerator at grandpa's house. Leonard Whittaker. Whittaker. Look it up in the phone book. It's in the phone book. I know it is. Leonard Whittaker. Attorneys at law. Child abuse, yeah, attempt. I don't know. I really don't know. Child abuse, sexual abuse. Yeah. Because the whole thing. His butt is black and blue, or something. I am telling you. They're



like right out the door. I can't talk very loud. I'm still in the sex crimes, child abuse, murder, homicide, wing, division. Yes. There's no precinct. It's just downtown. Yeah. The jail downtown. Because he said its about 20 minutes away from here, and I know you've seen this place. I know you've passed by it. It's right by Bill Miller's barbeque. I don't know mom. I don't know why. I don't know. She's turning all. She's turning all stuff against me. Everything that I could have done, and. I don't know she told them about the time, one time that he was sick, and I even asked her before if I go ahead could get in the bathtub, and he wants me to hold him and so I did, and he ended up going to the bathroom in the bathtub, and I took him out and gave him a shower. And she's telling them that, and she's telling them just a bunch of other stuff. Here. I have it right here. Law offices of Leonard K. Whittaker. And Leonard's cell phone is 821- ... I might be able to. I might be able to. Hmm. All right. [chatter] Okay. 821-9918. 821-9918. They're gonna take me now.

officer: Hop off the phone when you're ready.

Joe: Okay. 821-9918. Yes. All right, I'm not gonna be able to. The officer's already here. They're gonna take me. All right. Love you.

[GRANTED]

[DENIED]

## VI.

### **Irrelevant Chatter Between Police Officers, Most Of Which Appears To Have Nothing To Do With This Case**

Portions of the videotape contain irrelevant chatter between police officers, obviously outside Mr. Smith presence, concerning matters that plainly have nothing to do with his case. This chatter is irrelevant under Rule 401, and therefore inadmissible, under Rule 402 of the Texas Rules of Evidence. It is also has a substantial likelihood of confusing and misleading the jury, and prejudicing it against Mr. Smith, and is therefore inadmissible under Rule 403 of the Texas Rules of Evidence. Furthermore, it is hearsay under Rule 801, and are therefore inadmissible under Rule 802 of the Texas Rules of

Evidence. Additionally, admitting these statements against Mr. Smith would violate his right to confront and cross-examine witnesses

**[12:43:45 -- 12:51:50]**

The beginning of the videotape shows Mr. Smith sitting alone room 4 at the police department. In the background several people, apparently police officers, can be heard talking about subjects that seem to have nothing at all to do with the case against Mr. Smith. Among other things, the officers discuss their policies for submitting cases and making recommendations to the district attorney's office, an unidentified woman who questioned the officer's artistic abilities, Area 51, electromagnetic waves, the length of time they have served on the police department, how time flies, and their own children.

[GRANTED]

[DENIED]

**[2:08:21 – 2:13:23]**

The two detectives leave the interrogation room, saying, "we're done," leaving Mr. Smith sitting alone. Meanwhile, a conversation outside Mr. Smith presence, between several people, some of it not completely audible, and most, if not all of it having nothing to do with Mr. Smith.

[GRANTED]

[DENIED]

**VII.  
Violation Of The Presumption Of Innocence**

Beginning at 3:06:08 the videotape shows Mr. Smith being searched and

handcuffed, in violation of his constitutional right to be presumed innocent under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Due Course of Law Provision in Article I, §§ 13 and 19 of the Texas Constitution. *See Estelle v. Williams*, 425 U.S. 501 (1976). Nothing of even arguable relevance happens after this time.

Respectfully submitted:

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MARK STEVENS  
Attorney for Defendant

### **CERTIFICATE OF SERVICE**

I certify that a copy of Defendant's Objections To Admissibility Of Videotape Of Joe Smith On November 13, 2017 has been delivered to the Bexar County District Attorney's Office, 191 W. Nueva St. San Antonio, Texas, 78205, on this the 14th day of July, 2018.

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MARK STEVENS

**ORDER**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, came on to be considered Defendant's Objections To Admissibility Of Videotape Of Joe Smith On November 13, 2017, and said Motion is hereby granted and denied as indicated in the body of this motion

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JUDGE PRESIDING