NO. 2025CR0000

STATE OF TEXAS	)	IN THE DISTRICT COURT
VS.	)	175TH JUDICIAL DISTRICT
JOE SMITH	)	BEXAR COUNTY, TEXAS

MOTION TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF A WARRANTLESS SEARCH OF JOE SMITH'S JAIL CELL

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to suppress all evidence obtained as a result of the warrantless search of his jail cell at the Bexar County Adult Detention Center on December 1, 2016, and for good cause shows the following:

I.
Joe Smith Is A Presumptively Innocent Citizen Who Presently Lives In The Bexar County Adult Detention Center, But Only Because He Cannot Afford Bond

Joe Smith's indictment alleges murder. He is presently a pretrial detainee – presumptively innocent under our Constitution – who resides at the Bexar County Adult Detention Center because he has been financially unable to make bond, which has been set in the amount of $100,000.

II.
Solely To Prepare For Trial The Prosecutor Seized Mr. Smith's Personal And Private Property Without Warrant Or Probable Cause

Mr. Smith's case is set for trial on June 1, 2017. Lead prosecutor Mary Johnson

issued the following directive to Michael Taylor, Chief Administrator at the Bexar County Adult Detention Center, on December 1, 2016:

> In preparation for an upcoming trial, I request that you conduct a cell search of inmate Joe Smith's cell/housing area and that you seize and provide the following: Original, non-privileged correspondence, to include: any/all writings, notes, correspondence (inmate and outside mail), drawings, poetry and any contraband found during the search.

A copy of Johnson's directive is attached to this motion as Exhibit A.

On that same date, as ordered in the directive, two deputies, John Jones and Greg Williams, entered Mr. Smith's cell and seized – without warrant, probable cause, reasonable suspicion, or consent – a variety of materials, including photographs, drawings, notes, correspondence, and assorted writings, some of which were written by Mr. Smith himself. Every thing seized was owned and possessed by Joe Smith. Exhibit B, attached, is the written inventory left with Mr. Smith by deputies Jones and Williams.

III.
The Prosecutor Has Confirmed Her Intent To Use Those Materials At Trial Against Mr. Smith

When undersigned counsel contacted Johnson she confirmed that the seizure had taken place at her direction, and that she intends to use anything seized from Mr. Smith's cell she deems admissible at his upcoming trial. In response to a written motion for discovery from counsel, Ms. Johnson provided photocopies of everything she says was seized from Mr. Smith's cell, and those copies, because of their personal and private

nature, have been filed under seal with this Court as Exhibit D.

IV.
There Is No Iron Curtain Between The Constitution And Our Prisons

The "assumption that prisoners or pretrial detainees are without any Fourth Amendment rights is not supported by the Supreme Court." *State v. Granville*, 423 S.W. 3d 399, 414 (Tex. Crim. App. 2014). In Granville, the Court condemned the warrantless search of a pretrial detainee's cellular telephone. The Court quoted *Wolff v. McDonnell*, 418 U.S. 539, 555-556 (1974): "There is no iron curtain drawn between the Constitution and the prisons of this country." *Granville v. State*, 423 S.W. 3d at 414. The "central concern underlying the Fourth Amendment" has remained the same throughout the centuries; it is "the concern about giving police officers unbridled discretion to rummage at will among a person's private effects." Id. at 405 (emphasis supplied), quoting *Arizona v. Gant*, 556 U.S. 332, 345 (2009).

But the "unbridled discretion to rummage at will among a person's private effects" is exactly what the prosecution had when it directed the jail to search Joe Smith's cell without warrant. With neither probable cause nor warrant, with absolutely no institutional concern for the safety of the jail, its employees, or other inmates, but solely for the purpose of preparing for its upcoming trial, the prosecutor sent deputies to take every non-privileged paper from the living quarters of this indigent, presumptively innocent citizen and they walked away with hundreds of pages of writings, drawings,

photographs and other materials every bit as personal and private as that found on cell phones.

A number of Courts around the country have condemned the sort of warrantless search for evidence that occurred here. The Court in *Cohen v. United States*, 796 F.2d 20, 23–24 (2d Cir.1986), cert. denied, 479 U.S. 854 (1986), held that the prisoner retained an expectation of privacy that was sufficient to challenge the investigatory search undertaken there.

> Because his effects were searched at the instigation of non-prison officials for non-institutional security related reasons, the validity of the search may be challenged. An individual's mere presence in a prison cell does not totally strip away every garment cloaking his Fourth Amendment rights, even though the covering that remains is but a small remnant.

Id. See also *Rogers v. State*, 783 So. 2d 980, 991-92 (Fla. 2001); *State v. Henderson*, 517 S.E.2d 61, 63-66 (Ga. 1999), cert. denied, 528 U.S. 1083 (2000); *State v. Jackson*, 729 A.2d 55, 56 (N.J. Ch. Div. 1999); *McCoy v. State*, 639 So. 2d 163, 166-67 (Fla. Dist. Ct. App. 1994); *State v. Neely*, 462 N.W.2d 105, 112 (Neb. 1990).

One unpublished Texas case reached the opposite conclusion. In *Broadnax v. State*, 2011 WL 6225399 *10 (Tex. Crim. App. 2011)(not designated for publication), the Court concluded that "a shakedown search of a pretrial detainee's cell does not violate the Fourth Amendment or due process." Cf. *Soria v. State*, 933 S.W. 2d 46, 60 (Tex. Crim. App. 1996), , cert. denied, 520 U.S. 1253 (1997)(rejecting a challenge where "[i]t was not unreasonable for jail officials to conclude that the drawing at issue disserved legitimate

institutional interests)(emphasis supplied). Another unpublished civil case from the San Antonio Court of Appeals, *Lutz v. Collins*, also permitted the search, but found two significant distinguishing facts from the Cohen case. First, Lutz, unlike Cohen, was not a pretrial detainee. Second, unlike in Cohen, the search of Lutz's cell was in relation to an entirely different crime. 2009 WL 330958, at *4 (Tex. App.–San Antonio, 2009, pet. denied)(not designated for publication).

V.

This Warrantless Seizure Violated Constitutions and Statutes

The seizure of items, papers and effects from Joe Smith on December 1, 2016 was effected without valid warrant, probable cause, reasonable suspicion, or consent, in violation of the Fourth and Fourteenth Amendments to the United States Constitution, Article I § 9 of the Texas Constitution, Article 38.23 of the Texas Code of Criminal Procedure, and Chapter 14 of the Texas Code of Criminal Procedure. All physical evidence seized is inadmissible, as is all evidence that was obtained either directly or indirectly from this illegal seizure.

Joe Smith moves this Court to set the matter for a pretrial hearing pursuant to article 28.01 of the Texas Code of Criminal Procedure, and, after hearing evidence, that the Court suppress all evidence seized as a result of this illegal seizure.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of this motion has been delivered to the Bexar County District Attorney's Office, on April 1, 2025.

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MARK STEVENS

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ORDER

The defendant's Motion To Suppress Evidence Obtained As A Result Of A Warrantless Search Of Joe Smith’s Jail Cell is hereby:

(GRANTED) (DENIED)

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PRESIDING JUDGE