

NO. 2023CR0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 379TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**MOTION TO SUPPRESS EVIDENCE ILLEGALLY
OBTAINED PURSUANT TO SEARCH WARRANT**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to suppress all evidence obtained pursuant to the search warrant for his blood issued and executed on November 18, 2022, because this evidence was obtained in violation of articles 18.01(b) and 38.23(a) of the Texas Code of Criminal Procedure, Article I, § 9 of the Texas Constitution, and the Fourth and Fourteenth Amendments to the United States Constitution.

I.

The Facts Alleged Within The Four Corners Of The Affidavit

1. On November 18, 2022, Investigator John Jones of the Bexar County Sheriff's Office filed an affidavit for search warrant concerning a "partial whole blood sample(s) drawn in the University Hospital during the care and treatment of Joe Smith . . . maintained in the toxicology laboratory storage at University Hospital, located at 4502 Medical Dr, San Antonio TX 78229." It was the investigator's "belief" that there was located in that blood sample evidence of Mr. Smith's "blood alcohol and/or drug content at or about the time of the Major crash detailed below."

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2. The affidavit goes on to state:

- “[t]he offense of PC 19.01 Murder, occurred on November 17, 2022 and was reported to the Bexar County Sheriff’s Office. under case number 2022-BCSO-00000. On November 17, 2022, at or about 2:51 AM, Bexar County Sheriff’s Office Traffic Deputy Michael Miller initiated a traffic stop for impeding traffic on a 2005 Ford Mustang bearing Texas license plate ABC1234. The Mustang was reportedly traveling at approximately 40 mph on the main lanes of 1400 Blk IH-10 W SB. This portion of IH-35 is a posted 60 mph speed zone.”
- “Upon activating his red and blue emergency lights, the driver of the mustang was slow to respond to the red and blue lights. Deputy Miller activated his audible siren in an effort to get the drivers attention. The driver reacted to the siren by slowing down even more and activating his right blinker while appearing to exit the highway at Santa Rosa Street.”
- “As the Mustang veered toward the exit, it changed direction and moved to the left while still signaling to the right and entered back onto the main lanes of 1400 Blk IH-10 W SB.”
- “Upon passing the exit for Santa Rosa completely, the Mustang rapidly increased it speed. Deputy Miller had to increase his speed to approximately 107 mph in an effort to keep up with the Mustang, which was pulling away and gaining distance as it approached the exit for S Frio/Cesar Chavez.”
- “As the Mustang entered the curve for the Frio St exit, it veered to the left and struck the concrete wall at a high rate of speed. The Mustang drove up the wall and slid across the wall before falling over the side of the wall and falling approximately 20 feet.”
- “Deputy Miller made his way to the crash site, which was at the corner of Jane and James Doe. Upon locating the vehicle, Deputy Miller discovered the driver had been ejected and was lying in front of the Mustang. Further inspection of the vehicle yielded a female front passenger with severe facial trauma and ultimately would be pronounced deceased a short time later.”
- “The driver, identified as Joe Smith was transported to University Hospital for his injuries sustained in the crash.”
- “Upon arrival of Traffic Investigators, the scene was forensically mapped and

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evidence documented and collected.

- “While conducting the Mustang’s inventory in preparation for the tow, a loaded syringe with a brown liquid and blood was discovered.”
 - “Therefore, the Affiant asks that a warrant be issued for the purpose of seizing said first draw blood sample(s) from University Hospital to submit it to Quality Forensic Toxicology Laboratory for forensic toxicological analysis.”
3. The affidavit was signed by Investigator Jones, and sworn to and subscribed before Magistrate Cynthia Johnson at 2:10 o’clock pm on November 18, 2022.
 4. The Return and Inventory associated with the affidavit states that the warrant was executed on November 18, 2022, and contains this statement: “4x blood vials of first blood.” It was signed by Investigator Jones and sworn to and subscribed on November 18, 2022.
 10. A copy of this affidavit and complaint for search warrant is attached to this motion as Exhibit A.

II. The Relevant Constitutional And Statutory Provisions

The Fourth Amendment to the United States Constitution – applicable to the States through the Fourteenth Amendment – provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, § 9 of the Texas Constitution provides:

The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.

Article 18.01(b) of the Texas Code of Criminal Procedure provides: "No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance."

Article 38.23 of the Texas Code of Criminal Procedure provides: "No evidence obtained by an officer or other person in violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case."

III. The Law Applied To The Facts

- A. This affidavit does not provide a "fair probability" that Mr. Smith drove the car, or that he was intoxicated, or that evidence of alcohol or drugs would be found in his blood.**

The core of the Fourth Amendment's warrant clause and its Texas equivalent is that a magistrate may not issue a search warrant without first finding "probable cause" that a particular item will be found in a particular location. The test is whether a reasonable reading by the magistrate would lead to the conclusion that the four corners of the affidavit provide a "substantial basis" for issuing the warrant. Probable cause exists when, under the totality of the circumstances, there is a "fair probability" that contraband or evidence of a crime will be found at the specified location.

State v. Duarte, 389 S.W.3d 349, 354 (Tex. Crim. App. 2012).

An examination of the affidavit reveals that it did not provide a "substantial basis"

for issuance of the warrant. Specifically, the totality related in the affidavit does not provide a “fair probability” that evidence of the crime of murder – or any other crime – would be found in the blood of Defendant Joe Smith.

1. There is nothing whatsoever within the four corners of the affidavit that supports the affiant’s conclusion that Mr. Smith was the “driver” of the car. The affidavit does not allege that the deputy who initiated the traffic stop ever actually saw Mr. Smith driving the car, or behind the wheel of the car, or exiting the car. To the contrary, it is clear that the deputy chased the moving vehicle for a distance before watching it go over a barrier and fall approximately 20 feet below, at which time he lost sight and had to make his way to the crash site and locate the crashed car. At that point he found Mr. Smith, who “had been ejected and was lying in front of the Mustang,” and, inside the car, a front passenger with severe injuries. Apart from his proximity to the car after an unknown lapse of time following the crash, the affidavit provides no basis to support the bare conclusion that Mr. Smith drove the car, and absent any evidence that he did, there is no basis for the affiant’s “belief” that a blood sample from Mr. Smith would reveal evidence of a crime.
2. More importantly, even if there was support for the affiant’s conclusion that Mr. Smith was the driver, nothing in the affidavit even suggests, much less provides a “fair probability,” that his blood contained alcohol or drugs.
3. That the driver was initially traveling 40 miles per hour on the highway, without more, does not even suggest that he was “impeding traffic,” much less that he was intoxicated. That he drove away before completely stopping, attained a high speed, and then crashed when unable to negotiate a curve on the highway might show bad driving, but again, that driving behavior, even when coupled with what preceded it, does not indicate the presence of intoxicants in the driver’s blood.
4. Nor is there anything in the affidavit concerning post-crash activity that suggests the presence of intoxicants in Mr. Smith’s blood. There is not a word in the affidavit about even one of the symptoms that are typically observed in intoxicated drivers. No smell of intoxicants. No slurred or confused speech. No unsteadiness. No blood shot eyes. No admission of drinking or drug use. No field sobriety tests. There is not even an assertion in this affidavit attributed to anyone who dealt with or observed Mr. Smith that he was intoxicated or impaired in any way.

5. The affidavit says the traffic investigators forensically mapped the scene and collected evidence, but says nothing at all about any opinions of those investigators concerning the intoxication of the driver of the car.
6. The affidavit references a “loaded syringe with a brown liquid and blood” discovered during the inventory of the vehicle before it was towed. There is no mention of where the syringe was found inside the car, or whether it was linked in any way – by proximity, fingerprints, DNA, or otherwise – to Mr. Smith. And crucially, the investigator who authored the affidavit offers no opinion, and indeed, does not even speculate, about the chemical contents of the syringe.

B. Magistrates must be more than “a rubber stamp.”

No reasonable person reading the affidavit and considering the totality of circumstances it asserts, could conclude either that Joe Smith was the driver to the Ford Mustang that crashed, or that he was intoxicated, or that his blood would contain any evidence of drugs, or alcohol, or murder. Reviewing courts must “conscientiously review the sufficiency of affidavits on which warrants are issued” to ensure that magistrate issuing the warrant was not just “a rubber stamp.” *State v. Duarte*, 389 S.W. 3d at 354. A conscientious review of the four corners of the investigator’s affidavit in the present case permits only one conclusion — it wholly fails to establish a fair probability that Joe Smith’s blood contained evidence of alcohol or drugs. The magistrate who reviewed this affidavit did not have a substantial basis for issuing the warrant, but instead acted as a rubber stamp. The blood evidence in this case was obtained illegally, in violation of the Fourth and Fourteenth Amendments to the United States Constitution, Article I, § 9 of the Texas Constitution, and articles 18.01(b) and 38.23(a) of the Texas Constitution, and must therefore be suppressed.

IV.
We Request A Hearing

Mr. Smith respectfully moves the Court to set the matter for a pretrial hearing pursuant to article 28.01 of the Texas Code of Criminal Procedure.

Respectfully submitted:

/s/ Mark Stevens
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CERTIFICATE OF SERVICE

I certify that a copy of Defendant's Motion To Suppress Evidence Obtained As A Result Of Unlawful Seizure has been electronically delivered to the Bexar County District Attorney's Office on this the 18th day of March, 202.

/s/ Mark Stevens
MARK STEVENS

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ORDER

On this the _____ day of _____, 2024, came on to be considered defendant's Motion To Suppress Evidence Obtained As A Result Of Unlawful Seizure, and said Motion is hereby

(GRANTED) (DENIED).

PRESIDING JUDGE