NO. 2025CR0000

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

DEFENDANT'S MOTION TO SUPPRESS BLOOD TEST EVIDENCE OBTAINED IN VIOLATION OF TEXAS LAW

TO THE HONORABLE JUDGE OF THIS COURT:

Joe Smith moves this Court to suppress the following:

A. The alleged results of any tests to determine the alcohol 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 a test to determine the alcohol content of his blood.

I.
Pertinent Facts

On March 7, 2025, San Antonio Police Officers Robinson and Quiroga conducted a traffic stop, illegal because it was done without reasonable suspicion. Then, based on a brief conversation and the administration of three field sobriety tests by an inexperienced, probationary officer, Mr. Smith was arrested without probable cause to believe that he was intoxicated. After handcuffing Mr. Smith behind his back, the officers proceeded to advise him of various rights in a manner that was both misleading and

contrary to the laws of Texas and the United States. Specifically, as shown on the body worn cameras, the following transpired immediately after Mr. Smith was arrested:

- Officer Robinson first broached the subject of testing verbally, advising Mr. Smith that, "when we get down there, they're gonna ask you to provide a sample of either your breath or your blood. Okay? If you do a breath test, and your breath test is below 0.80, *we're gonna have to take you back home*, *right, because there's gonna be no charges filed on you. Clean slate, right*." [Robinson BWC, 15:07–15:23][emphasis supplied] This advice is no where found on the DIC 24 form, which says nothing at all about releasing arrestees if their breath score is below 0.080. Indeed, Robinson's advice – that they would "have to" release Mr. Smith – is not only extra-statutory, it is also contrary to policy established in the San Antonio Police Department General Manual. Furthermore, Robinson's representation is simply untrue in San Antonio, where people blowing less than 0.08 are still charged and booked for DWI if they are thought to be under the influence of something other than alcohol. False advice of this sort would tend to psychologically coerce any reasonable, objective person forced to choose whether to give a specimen of his breath or blood. *Cf.*, *Fienen v. State*, 390 S.W.3d 328, 336 (Tex. Crim. App. 2012)(noting that the officer's extra-statutory advice was not untrue).

- Immediately after this untrue and unauthorized information about *breath testing*, Officer Robinson pivoted, and administered "real quick" the warnings required by *Miranda*, and article 38.22: that Mr. Smith did not have to make any statement to anyone; that if he did, that statement would be used as evidence against him in court or at his trial; that he had a right to have a lawyer present to advise him before and during any questioning; that if he could not afford a lawyer, the court would appoint a lawyer now or at any other time; that if he decided to talk to anyone, he could stop talking at any time, and that these were continuing rights that could be urged at any stage of the proceedings. [Robinson BWC, 15:23 – 16.02] That is, after falsely telling Mr.Smith that he would have to be released if he scored under 0.08 on a breath test, he was told that any statement he made would be used as evidence against him at his trial, and that he had a right to have a lawyer "now," to advise him before and during any questioning.

- Officer Robinson then put Mr. Smith in the back of his police vehicle and *verbally* advised him that he had "some more required reading" and that "*some of this stuff isn't gonna apply to you*, *I have to read it all,*" although he failed to tell him what part of the reading did apply, and what did not. He proceeded to read

from the DIC 24 form, but he read the form before he allowed Mr. Smith to read it. After reading it, he said he would give him the form to read *later*, "once we get down there." [Robinson BWC, 19:50 – 22:17][emphasis supplied] That practice – verbally reading the form before allowing the arrestee to read it, and before requesting a specimen - directly contradicts the mandatory language of both the form itself, and TEX. TRANSP. CODE § 724.015 (a)("*Before* requesting a person to submit to the taking of a specimen, the officer *shall inform the person orally and in writing*" about the matters required by the statute). The video proves that this mandatory statute –which is obviously meant to ensure that an arrestee clearly understand the consequences of taking or refusing to take the breath test – was violated.

- Minutes after informing Mr. Smith that they would ask him to provide a sample "once we get down there," Officer Robinson changed the plan while they were still at the scene of the stop. He asked twice if he was going to give a sample once they got "down there," and both times Mr. Smith answered that he did not know yet, that he would decide when he was "down there." [Robinson BWC, 22:19 – 22:40] Considering that Robinson's request for a decision at the scene was made before Mr. Smith was allowed his statutory right to read the written DIC 24 information, his insistence on delaying his decision was entirely appropriate. Particularly so, since Robinson's request for a decision was inconsistent with the earlier advice he himself had given — that Mr. Smith would be given an opportunity to decide about the testing later, "down there."

- When Officer Robinson informed his partner that "he doesn't know yet," Officer Quiroga told Mr. Smith that it was a "yes or no question," and that his "*refusal to answer is gonna be taken as a refusal*." When Mr. Smith attempted to explain that Officer Robinson had told him he could decide at the station, Officer Quiroga responded, "Well, I'm telling you, no." He continued to insist that the only option was "yes or no." Once again, Mr. Smith said, "when we get down there, I will advise you." Quiroga said, "Okay, so we're gonna take that as a refusal, okay, cause you're refusing to answer us right now, so we need an answer right now." Mr. Smith answered, "This is the 5th time you're asking me," and Quiroga said, "so we're gonna take it as a refusal."
[Quiroga 22:48 – 23:42] *But, as the video plainly shows, Mr. Smith had not once said he refused the breath test. He merely said he would decide once he got to the station, which was what Officer Robinson had said he could do, and which would have allowed him to read the DIC 24, as required by the law.*

II.
Mr. Smith's Blood Results Must Be Suppressed Under Article 38.23(a) Of The Texas Code Of Criminal Procedure Because His Blood Was Obtained In Violation Of Texas Law

A. The officers who arrested Mr. Smith and obtained a warrant for the seizure of his blood ignored the mandatory requirements of TEX. TRANSP. CODE § 724.015(a).

1. By mandating that arrested persons be advised both orally and in writing of their rights, Texas law ensures that consent be not subtly coerced, expressly or impliedly.

Texas law requires that officers give detailed and specific information to persons arrested for DWI explaining the consequences of refusing and submitting specimens of breath or blood. That law also requires, both that the information be given *before* the requests are made, and that the information be given "*orally and in writing*." *See* TEX. TRANSP. CODE §724.015(a)(emphasis supplied). The purpose behind this statute is self-evident: To ensure that all persons arrested in Texas are fully and *clearly* advised of the consequences of their decision to allow or to refuse the taking of their breath or blood, so that there can be no doubt that this decision was made voluntarily. Our society has a "deeply felt belief that the criminal law cannot be used as an instrument of unfairness, and that the possibility of unfair and even brutal police tactics poses a real and serious threat to civilized notions of justice." *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973). Consent must not be coerced, by explicit or implicit means. "For, no matter how subtly the coercion was applied, the resulting 'consent' would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is

directed." *Id.* at 228.

2. <u>This mandatory statute was violated in multiple ways</u>.

As we set out in § I, above, the body camera footage of Officers Robinson and Quiroga provides irrefutable proof that this mandatory statute was violated in multiple ways.

<u>First</u>, Officer Robinson initially told Mr. Smith, orally, that he would be offered a test "when we get down there," and that if he took it and blew below 0.80, the officers would have to take him home "because there's gonna be no charges filed on you. Clean slate, right." The promise made – that charges would not be filed if he blew below a certain score – is found nowhere in that statute, and is, in fact contrary to both law and the regular practice of the San Antonio Police Department.

<u>Second</u>, immediately after orally giving this incorrect and extra-statutory advice, Officer Robinson advised Mr. Smith that he had the right not to make any statement to anyone, that if he did make a statement it would be used as evidence against him in court, and that he could consult with a lawyer before and during any questioning.
That is, after falsely telling Mr. Smith that he would have to be released if he scored under 0.08 on a breath test, the same officer told him that any statement he made would be used against him later.

<u>Third</u>, when Officer Robinson finally got around to reading the actual language required by §724.015(a), he began by telling him that "some of this stuff isn't gonna

apply to you," without bothering to say what did and did not apply. Then he violated that statute's express and mandatory requirement that *before* requesting a specimen, he inform Mr. Smith both orally *and in writing* of the consequences of the decision he was about to make. But instead of allowing Mr. Smith to read the information before the request was made, the officer informed him that he would get a copy to him later, "down there," well after both officers had asked for breath samples.

Fourth, contrary to both the statute itself, which provided Mr. Smith the important right to read the written information, and his earlier representation just moments before that he would be allowed to decide once they got "down there," Officer Robinson asked twice for an immediate decision, falsely claiming that this was necessary to ready the breath testing machine.

Fifth, Officer Quiroga compounded the confusion by insisting on a decision "right now," on the side of the road, which not only contradicted the earlier information provided by Officer Robinson, but also was contrary to the express guarantee of §724.015(a) that the subject be allowed to review the warnings *in writing*. And when Mr. Smith responded the same way, every time he was asked – that he would give his decision when he got downtown, just as Officer Robinson initially told him he could, and entirely consistent with Robinson's promise to get him the written information "once we get down there ," - Officer Quiroga demanded an answer on the spot. When Mr. Smith did nothing whatsoever more than ask for the time he had been promised,

Quiroga charged him with a refusal.

3. <u>Mr. Smith did not refuse to provide a sample of this breath</u>.

In the face of information that was false, contradictory, confusing, and violative of Texas law, it simply cannot be argued that Joe Smith refused a sample at all, and much less that he did so voluntarily.

B. The warrant to seize Mr. Smith's blood was invalid under article 18.01(j)(2) of the Texas Code of Criminal Procedure because he did not refuse to give a specimen.

Officer Robinson's affidavit supporting the warrant sought authorization to search Mr. Smith's person for blood evidence and to seize that blood pursuant to article 18.01(j) of the Texas Code of Criminal Procedure. Article 18.01(j)(2) provides:

> Any magistrate who is an attorney licensed by this state may issue a search warrant under Article 18.02(a)(10) to collect a blood specimen from a person who:
>
> > (1) is arrested for an offense under Section *49.04*, 49.045, 49.05, 49.06, 49.061, 49.065, 49.07, or 49.08, Penal Code; and
> >
> > (2) *refuses* to submit to a breath or blood alcohol test.

TEX. CODE CRIM. PROC. art. 18.01(j)(2)(emphasis supplied).

Mr. Smith was arrested for driving while intoxicated under §49.04 of the Texas Penal Code, as specified in article 18.01(j)(1). But, as we demonstrated above in §IIA of this motion, he did *not* refuse any test. Accordingly, under the unambiguous terms of article 18.01(j)(2), the attorney-magistrate who issued the search

warrant for Mr. Smith's blood was not authorized to do so. The warrant was invalid, the blood was unlawfully obtained, and the results are inadmissible under Article 38.23(a) of the Texas Code of Criminal Procedure.

III.
Conclusion

Defendant Joe Smith respectfully moves that this Court:

1) Set this Motion to Suppress Blood Test Evidence 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 was seized at the time of or subsequent to the arrest in order that said evidence will be inadmissible and unavailable for any purpose of the prosecution.

Respectfully submitted:

/s/ Mark Stevens

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CERTIFICATE OF SERVICE

I certify that a copy of Defendant's Motion to Suppress Blood Test Evidence Obtained in Violation of Texas Law has been electronically delivered to the Bexar County District Attorney's Office on June 2, 2025.

/s/ Mark Stevens
MARK STEVENS

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ORDER

On this the _____day of _____, 2025, came on to be considered Defendant's Motion to Suppress Blood Test Evidence Obtained in Violation of Texas Law, and said Motion is hereby

(GRANTED)

(DENIED)

_____
JUDGE PRESIDING