

NO. B10000

STATE OF TEXAS)	IN THE DISTRICT COURT
VS.)	198TH DISTRICT COURT
JOE SMITH)	KERR COUNTY, TEXAS

MOTION TO SUPPRESS EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to suppress all evidence obtained as a result of his seizure and arrest, and the search of his person, and for good cause shows the following:

I.

On or about March 13, 2025, at approximately 2:00 pm, officers with the Kerrville Police Department, including B. Brown, J. White, and Jim Jones, were dispatched to the H.E.B. #1, 300 Main St., Kerrville Texas, “regarding some suspicious people who might be intoxicated.”¹ Mr. Smith exited the store, alone, in broad daylight, while the store was open for business. He was observed to be “moving very slow and to be unsteady on [his] feet” and was deprived of his freedom of movement by the officers, who acted without a warrant to search or arrest him. The officers detected what they described as “the odor of an alcoholic beverage emitting from [his] breath and or person . . . eyes [that were] glassy and blood shot . . . speech [that] was slow and lethargic and he was unsteady on his feet.” According to an officer, at some point Mr. Smith allegedly said he had been mixing a prescription medication with alcohol, and a Horizontal Gaze Nystagmus test revealed six

¹ All quoted references are from the report of officer Jones.

out of six possible clues. Based on this he was placed under arrest for public intoxication by an officer who was of the opinion that Mr. Smith “was a danger to himself and or others.”

II.

Based on the report just cited, and the videotape evidence, there was no reasonable suspicion to seize Mr. Smith, who was on the premises of a grocery store during business hours, and, at the time he was seized, was not engaging in apparent criminal behavior.

Nor did probable cause to arrest him for public intoxication develop after the initial, illegal seizure. The symptoms allegedly observed – slow and unsteady movement, an indefinite smell of alcohol on his “breath and or person,” and glassy, bloodshot eyes – combined with a single field sobriety test and an admission of mixing some prescription medication with an indeterminate amount of alcohol at an unknown time, did not combine to establish probable cause to believe either that Mr. Smith was intoxicated, or that he was a danger to himself or others.

III.

All evidence obtained as a result of these illegal seizures, arrests, and searches, including, but not limited to any observations made by the police officers, any physical evidence seized from the defendant, any photographs, videotapes, or audiotapes obtained, and any statements, written or oral, allegedly made by the defendant, must be suppressed pursuant to 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.

IV.

Additionally, any statements made to law enforcement that were the product of custodial interrogation and that were made either without compliance with article 38.22, § 3 of the Texas Code of Criminal Procedure, or the principles established in *Miranda v. Arizona*, 384 U.S. 436 (1966), or the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution, or that were obtained after Mr. Smith invoked his rights to silence and counsel pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, and Article I, § 10 of the Texas Constitution, were also illegally obtained and must be suppressed.

V.

The defendant respectfully moves the 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 that was illegally obtained.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of defendant's Motion To Suppress Evidence has been delivered to the Kerr County District Attorney's Office on August 9, 2025.

MARK STEVENS

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ORDER

On this the _____ day of _____, 2025, came on to be considered defendant's Motion To Suppress, and said Motion is hereby

(GRANTED) (DENIED).

PRESIDING JUDGE