

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 216th JUDICIAL DISTRICT
SUE SMITH) KERR COUNTY, TEXAS

**DEFENDANT’S MOTION TO SUPPRESS
ILLEGALLY OBTAINED EVIDENCE**

TO THE HONORABLE ALBERT D. PATTILLO, JUDGE OF THE 216TH JUDICIAL
COURT OF KERR COUNTY, TEXAS:

Sue Smith moves to suppress all evidence obtained on December 28, 2023 in violation of the Fourth and Fourteenth Amendments to the United States Constitution; Article 1, § 9 of the Texas Constitution; and article 38.23 and Chapter 14 of the Texas Code of Criminal Procedure.

**I.
The Pertinent Facts**

On December 28, 2023, at approximately 12:07 in the afternoon, Officer Matthew Adams was dispatched to the intersection of Park Lane and Kerr County Drive in Kerrville, Texas where a truck was reported stopped at a stop sign with a person slumped over in the driver’s seat. He knocked on the truck’s window for approximately one minute, arousing the driver, Ms. Smith, who turned off the ignition and, when asked, told him she had no identification.

Officer Amanda Brown arrived shortly after Adams. According to Officer Brown’s written report she smelled the odor of alcohol emitting from the truck and saw Ms. Smith’s red,

glassy eyes. Officer Brown wrote that she “had to forcibly remove Smith from the vehicle due to her attempting to turn the truck back on.” She immediately pulled Ms. Smith away from her truck and Officer Adams, and began to question her, though only parts of their conversation can be heard because, inexplicably, Officer Brown’s body worn camera was not recording. According to Officer Brown, Ms. Smith was unsteady on her feet and her words were “slurred and slow.” Based on the physical clues she observed, and the HGN test she had administered, and on Ms. Smith’s admission that she had been drinking, Officer Brown arrested her for driving while intoxicated.

According to Officer Adams’s incident report, “a small white hand bag fell off her lap onto the ground” as Officer Brown removed Ms. Smith from the truck. Quickly after Officer Brown pulled Ms. Smith away, Officer Adams bent down, picked up the hand bag, opened it and looked inside, he said, “to see if she had any identification.” When he opened the hand bag, he saw a clear plastic baggie containing methamphetamine and a smoking pipe.

It is clear from Officer Adams’s body worn camera that he searched the hand bag mere seconds after it fell from the truck, and well before his colleague placed Ms. Smith under arrest. The camera footage also makes it clear that Officer Adams was never concerned in the least that Ms. Smith would return to the truck to harm him or destroy evidence. Indeed, shortly after discovering the contraband inside the closed hand bag, he walked to his patrol car and set both the methamphetamine and the pipe on the hood, and turned his back on Ms. Smith as she spoke with Officer Brown, unrestrained, and inches away from the

contraband. No reasonable police officer who thought that a suspect would harm him or destroy evidence would have acted as Adams did.

II. The Law

Time and again, this Court has observed that searches and seizures “conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well delineated exceptions.”

Minnesota v. Dickerson, 508 U.S. 366, 372 (1993); *see e.g.*, *Katz v. United States*, 389 U.S. 347, 357 (1967). “[C]onstitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.” *Coolidge v. New Hampshire*, 403 U.S. 443, 454 (1971), *quoting Boyd v. United States*, 116 U.S. 616, 635 (1886). 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.*” *State v. Granville*, 423 S.W. 3d 399, 405 (Tex. Crim. App. 2014)(emphasis supplied).

III. The Law Applied To The Facts Of This Case

As the court of criminal appeals noted in *Granville*, that case was “about rummaging through a citizen's electronic private effects – a *cell phone* – without a warrant.” *Id*(emphasis

supplied). In Ms. Smith case, the police rummaged through a citizen's private effects – a *hand bag*, without a warrant. The *Granville* court condemned the warrantless rummaging there, and affirmed the trial court's order suppressing the search of the phone. Suppression is likewise the proper remedy for the constitutional violation that Sue Smith was subjected to when the police opened the hand bag without warrant or probable cause. And as we will now show, none of the “few specifically established and well-delineated exceptions” that might permit warrantless searches justified Officer Adams's actions in the present case.

A. This search was not incident to arrest.

Officer Adams's warrantless search of the hand bag was not a search incident to arrest. It is indisputable that when Officer Adams retrieved and opened and looked inside the hand bag, Ms. Smith had not yet been arrested and had been removed a distance away by Officer Brown. So there was no realistic possibility at that time that she would return to the truck and harm Officer Adams or destroy the evidence in the truck or the hand bag. As the Supreme Court has held, while there is “ample justification” to search the person of an arrestee and the area within her immediate control, namely the area from which she might gain possession of a weapon or destructible evidence, there is no “comparable justification,” for searching any place other than where the arrest occurs. *Chimel v. California*, 395 U.S. 752, 763 (1969): *see also Arizona v. Gant*, 556 U.S. 332, 343 (2009)(“*Chimel* rationale authorizes police to search a vehicle incident to a recent occupant's arrest only when the

arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search”). “A rule that gives police the power to conduct such a search whenever an individual is caught committing a traffic offense, when there is no basis for believing evidence of the offense might be found in the vehicle, creates a serious and recurring threat to the privacy of countless individuals. Indeed, the character of that threat implicates the central concern underlying the Fourth Amendment—the concern about giving police officers unbridled discretion to rummage at will among a person's private effects.” *Id.* at 345.

B. The “plain view” exception does not apply.

Common-sensically, the Supreme Court has recognized that “in the vast majority of cases, any evidence seized by the police will be in plain view, at least at the moment of seizure.” *Coolidge v. New Hampshire*, 403 U.S. 443, 465 (1971). Accordingly, plain view alone, will not justify the warrantless seizure of evidence. “[N]ot only must the item be in plain view; its incriminating character must also be ‘immediately apparent.’” *Horton v. California*, 496 U.S. 128, 136 (1990). Although the closed hand bag might have been in Officer Adams’s plain view, its incriminating contents only came within the officer’s plain view after he opened it and looked inside. “[T]he ‘distinction between ‘looking’ at a suspicious object in plain view and ‘moving’ it even a few inches” is much more than trivial for purposes of the Fourth Amendment. . . . A search is a search, even if it happens to disclose nothing but the bottom of a turntable.” *Arizona v. Hicks*, 480 U.S. 321, 325 (1987); *see also Joseph v. State*, 807 S.W. 2d 303, 308 (1991)(“There is no evidence in the record

to indicate that it was immediately apparent to the police officer that the letter/greeting card, without further inspection, was evidence of a crime.”); *Nicholas v. State*, 502 S.W. 2d 169, 172 (Tex. Crim. App. 1973)(it was not “immediately apparent to the officers that they had evidence before them” until they held the negatives up to the light).

C. **There was no “emergency threatening life or limb.”**

“[A] warrantless search must be ‘strictly circumscribed by the exigencies which justify its initiation,’ and it simply cannot be contended that this search was justified by any emergency threatening life or limb.” *Mincey v. Arizona*, 437 U.S. 385, 393 (1978)(citation omitted). Search warrants are generally required “unless ‘the exigencies of the situation’ makes the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment.” The mere fact that opening the hand bag without a warrant would have been “more efficient can never by itself justify disregard of the Fourth Amendment.” *Id.* It cannot be credibly argued that Officer Adams’s need to locate the identification of a person who had been found slumped over in the seat of a truck was so compelling as to circumvent the Fourth Amendment’s warrant requirement. *Id.* at 394 (declining to create a “murder scene exception”). And as in *Mincey*, once Officer Adams had the hand bag in his possession, there was no danger either that “evidence would be lost, destroyed, or removed during the time required to obtain a search warrant” or that “that a search warrant could not easily and conveniently have been obtained.” *Id.*

D. The “automobile exception” does not apply.

“If a car is readily mobile *and probable cause exists to believe it contains contraband*, the Fourth Amendment thus permits police to search the vehicle without more.” *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996)(emphasis supplied)(agents had “abundant probable cause” in light of “fresh, direct, uncontradicted evidence that respondent was distributing a controlled substance from the vehicle”). But Officer Adams gave a single reason for his warrantless search of the hand bag — to look for Ms. Smith’s identification. Unlike *Labron*, there was no evidence at all – “fresh, direct, uncontradicted”, or otherwise – that there was contraband in either the hand bag or the truck. Absent probable cause, the State cannot rely on the “automobile exception” to justify this warrantless search,

IV.

Rights Protected By The Fourth Amendment Are No Mere “Formalities

We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own cannot be trusted.

McDonald v. United States, 335 U.S. 451, 455–56 (1948).

Officer Adams had no warrant to search the hand bag. Ms. Smith was not asked to consent to the search. Because there was no realistic possibility that Ms. Smith would return

to the truck or area of the search to harm the officer or destroy evidence, the search was not incident to arrest. The contraband was inside a closed container and not immediately apparent or in plain view. No emergency threatening life or limb justified the warrantless search. And there was no probable cause to believe contraband would be discovered in the hand bag or the truck before the hand bag was searched.

V.

The Illegally Obtained Evidence Must Be Suppressed

All evidence obtained as a result of the illegal seizure and search of the hand bag, the truck, Ms. Smith's person and effects, as well as testimony concerning the officers's actions and observations, statements by Ms. Smith, and all photographs, videotapes, audio recordings, and blood test results, must be suppressed pursuant to the Fourth and Fourteenth Amendments to the United States Constitution, Article 1 § 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.

WHEREFORE, PREMISES CONSIDERED, Defendant Sarah Smith respectfully moves that this Court:

- 1) Set this Amended Motion to Suppress for a pretrial hearing pursuant to Article 28.01 of the Texas Code of Criminal Procedure; and,
- 2) Suppress all illegal evidence that seized in this case.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that Defendant's Motion to Suppress Illegally Obtained Evidence was electronically served on Assistant District Attorney John Hoover on October 30, 2025.

/s/ Mark Stevens

MARK STEVENS

NO. A20000

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ORDER

On the ___ day of _____, 2025 this Court heard evidence and arguments of counsel and hereby orders that Defendant's Motion To Suppress Illegally Obtained Evidence is

(GRANTED)

(DENIED)

JUDGE PRESIDING