

Suppression Hearings

Deborah Earley, Blanco County Attorney

Motion to Suppress

What is a Motion to Suppress?

A Motion to Suppress requests the judge to order certain evidence be excluded from the case.

CAUSE NO. 54321

THE STATE OF TEXAS

vs.

JOHN SMITH

§
§
§
§
§

IN THE COUNTY COURT

OF

WILD WEST COUNTY, TEXAS

MOTION TO SUPPRESS EVIDENCE

The Defendant, through his attorney, Robert Lawless, moves this Honorable Court to suppress the following evidence:

1. All tangible evidence seized by law enforcement officers or others in connection with the detention and arrest of the Defendant in this case.
2. All written and oral statements made by the Defendant to any law enforcement officers or others in connection with this case.
3. Testimony of law enforcement officers or others concerning any actions of the Defendant while under detention or arrest in connection with this case.
4. Testimony of law enforcement officers or others concerning the tangible evidence or statements to which reference was made above.

In support of this Motion, Defendant would show the following:

I.

The detention and subsequent arrest of the Defendant were illegal and in violation of the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States and Chapter 14 of the Texas Code of Criminal Procedure.

II.

Any tangible evidence seized in connection with this case was seized without lawful warrant, probable cause or other lawful authority in violation of the Defendant's rights under the

Example of Motion to Suppress

Fourth and Fourteenth Amendments to the United States Constitution, Article I, Section 9 of the Constitution of the State of Texas, and Chapters 14 and 38 of the Texas Code of Criminal Procedure.

III.

Any statements obtained from Defendant were obtained in violation of Defendant's rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, Sections 9, 10, and 19 of the Constitution of the State of Texas, and Chapter 14 and Articles 38.21, 38.22 and 38.23 of the Texas Code of Criminal Procedure.

IV.

Testimony concerning any actions of the Defendant while he was under arrest or in detention would be a product of a violation of the Defendant's rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, Article I, Sections 9, 10, and 19 of the Constitution of the State of Texas, and Chapter 14 and Articles 38.21, 38.22 and 38.23 of the Texas Code of Criminal Procedure.

WHEREFORE, PREMISES CONSIDERED, Defendant prays this Honorable Court find the detention and subsequent arrest of Defendant were unlawful and that any and all evidence, tangible and intangible, oral or otherwise, obtained as a result of said detention and arrest, be suppressed and excluded from evidence in this case.

Respectfully submitted,

PUBLIC DEFENDER

By:

ROBERT LAWLESS
Attorney for Defendant
State Bar No. 12345678

Example of Motion to Suppress

CCP Art. 28.01 – Filing and Notice

Sec. 2. When a criminal case is set for such pre-trial hearing, any such preliminary matters not raised or filed seven days before the hearing will not thereafter be allowed to be raised or filed, except by permission of the court for good cause shown; provided that the defendant shall have sufficient notice of such hearing to allow him not less than 10 days in which to raise or file such preliminary matters.

The Hearing





CCP Art. 28.01 – Determining Merits of Motion

Sec. 1. (6) Motions to suppress evidence—

When a hearing on the motion to suppress evidence is granted, the court may determine the merits of said motion on the motions themselves, or upon opposing affidavits, or upon oral testimony, subject to the discretion of the court;

Pretrial Hearing

Even if a trial court sets a pretrial hearing, the court retains discretion to hold an evidentiary hearing on the defendant's motion to suppress or to postpone the determination of the motion until the issue arises at trial.

Calloway v. State, 743 S.W.2d 645, 649 (Tex. Crim. App. 1988); *Garza v. State*, 126 S.W.3d 79, 84-85 (Tex. Crim. App. 2004).

Whether to decide suppression issues at pretrial hearing or trial...

- Court's calendar
- County resources
- Court appointed attorney versus retained attorney
- Ruling on suppression motion can dispose of need for trial – plea agreement or dismissal of case

Defendant's Presence at the Hearing

- The presence of the defendant is generally required at a suppression hearing.

Riggall v. State, 590 S.W.2d 460, 461 (Tex. Crim. App. 1979).

- However, a defendant's absence is not harmful if the defendant's attorney is present and his presence bears a substantial relationship to the defendant's opportunity to defend.

Adanandus v. State, 866 S.W.2d 210, 219-220 (Tex. Crim. App. 1993).

Rules of Evidence

- Except for rules governing privileges, the rules of evidence do not apply at a suppression hearing. Tex. R. Evid. 101, 104.
- Without rules of evidence at a suppression hearing:
 - Unsworn police report may be admitted
 - Hearsay is allowed (but judge determines weight of the evidence)
 - Lack of independent knowledge by a police officer about the event surrounding an investigative stop does not make him incompetent as a witness
 - Lay witness's testimony may be admitted without predicate requiring it to be "rationally based"
 - Reports and records may be admitted without a business record predicate

Rules of Evidence

The rules of evidence allow a defendant to testify on a preliminary matter outside the presence of the jury without being cross-examined on matters not covered by the defendant's direct testimony.

Tex. R. Evid. 104(d); *Simmons v. United States*, 390 U.S.377, 384 (1968).

Burden of Proof

- The defendant bears the initial burden to prove a Fourth Amendment violation, which is usually done by establishing that a search or seizure was conducted without a warrant.
- Once the defendant establishes a warrantless search or seizure, the burden of proof shifts to the State to show that the search or seizure was conducted pursuant to a warrant or was reasonable.

Bishop v. State, 85 S.W.3d 819, 822 (Tex. Crim. App. 2002).

Burden of Proof

- If the State provides evidence of a warrant, the burden shifts back to the defendant to prove the warrant was invalid.

Rumsey v. State, 675 S.W.2d 517, 520 (Tex. Crim. App. 1984).

- If the State claims the search was conducted by consent, it must show by clear and convincing evidence that the consent was freely and voluntarily given.

Gutierrez v. State, 221 S.W.3d 680, 686 (Tex. Crim. App. 2007).

DWI Cases - Reasonable Suspicion

- In DWI cases, a defendant may move to suppress evidence that was seized because the officer lacked “reasonable suspicion” to stop the vehicle.
- Reasonable suspicion: “specific, articulable facts that when combined with rational inferences from those facts, would lead the officer to reasonably conclude that a particular person is, has been, or soon will be engaged in criminal activity.”

Fowler v. State, 266 S.W.3d 498, 502 (Tex. App.—Fort Worth 2008, pet ref’d).

DWI Cases - Reasonable Suspicion

- The “reasonable suspicion” requirement for an investigative detention is a lower standard than the “probable cause” requirement for arrest.
- Both are based on the totality of the circumstances.

Fowler v. State, 266 S.W.3d 498, 501 (Tex. App.—Fort Worth 2008, pet ref’d).

DWI Cases - Probable Cause

- Most DWI arrests occur without a warrant; the State must prove that there was probable cause for a warrantless DWI arrest.
- Probable cause to arrest: articulable facts known by the officer that would lead a reasonable person to believe a suspect has committed a crime.

See Amador v. State, 221 S.W.3d 666, 672 (Tex. Crim. App. 2007).

Practical Considerations

- Request that the defense attorney narrow down the suppression issues when the hearing starts
- Whether to review video evidence during or after the suppression hearing

Post-Hearing Matters

Post-Hearing Decisions

- The judge may allow additional briefing by the parties on matters that arose during the suppression hearing.
- The judge can:
 - Grant the motion in whole or in part,
 - Deny the motion, OR
 - Carry the motion with trial.

Post-Hearing Findings

- Upon request of the losing party, the trial court is required to enter findings of fact and conclusions of law explaining its ruling on a motion to suppress.
- When the trial court makes no findings, the appellate court presumes implicit findings that support the trial court's decision on the motion to suppress.

State v. Cullen, 195 S.W.3d 696, 698 (Tex. Crim. App. 2006).

Objections at Trial

If the defendant's motion to suppress is denied in a pretrial hearing, the defendant may still object to the admission of evidence at trial.

Pierce v. State, 32 S.W.3d 247 (Tex. Crim. App. 2000).

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