NO. 01-24-00996-CR

IN THE COURT OF APPEALS
FOR THE FIRST JUDICIAL DISTRICT OF TEXAS

JIMMIE LEE PEAVY, *Appellant*

VS

STATE OF TEXAS, *Appellee*

Appeal from the 12th Judicial District Court
Grimes County, Texas
Cause No. 19314 CT III
Honorable J. D. Langley, Judge presiding

APPELLANT'S BRIEF

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ORAL ARGUMENT NOT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

The following is a complete list of all names and addresses of all parties to the Trial Court's final judgment and the names and addresses of all trial counsel:

Appellant:	**JIMMIE LEE PEAVY** TDCJ Inmate # 02537541 TDCJ Unit: Gib Lewis 777 FM 3497 Woodville, TX 75990
Counsel at Trial	**Zach Coufal** SBN: 24102829 2505 Willow Bend Drive Bryan, TX 77802 zctxatty@gmail.com
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Appellee:	**State of Texas**
Counsel:	**Andria Mosley Bender** **Meagan Ghormley Callaham** Grimes County Criminal District Attorney 270 FM 149 Anderson, Texas 77830 *andria.bender@grimescountytexas.gov*
Trial Court:	**Hon. J. D. Langley** -*Visiting Judge* 12th District Court 1100 University Ave. Huntsville, Texas 77340 Tel: (936) 436-4916 Email: tmschweitzer@co.walker.tx.us

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STATEMENT OF THE CASE

With permission of the Trial Court, this is an appeal of the order denying Appellant's pre-trial *Motion to Suppress.*[1] (CR 215, 249). After denial of his motion, Appellant entered a plea bargain in which he received 35 years confinement for spitting on a police officer, while the officer was officially transferring Appellant to jail. (CR 5, 239, 249)

Sole Issue Presented:

The Court Erred in Denying Appellant's Motion To Suppress (CR 215)

Sole Issue Restated:

The Evidence was Insufficient to Detain Appellant.

STATEMENT OF FACTS

On December 17, 2024, Appellant entered into a plea bargain agreement which resulted in his conviction of ***Harassment of Public Servant*** [2] a third degree felony as alleged in Count III of the indictment. Pursuant to the agreement, Counts I and II were "taken into consideration"[3] and Appellant also pled "True" to two felony "habitual" enhancement counts. In exchange, Appellant was given an agreed punishment of 35 years confinement for Count III; for spitting on a Navasota Police Officer while the officer was acting in his official capacity in

[1] TRAP 25.2 (a)(2)(A)&(B)

[2] Penal Code § 22.11 -***Harassment of Public Servant***

(a) A person commits an offense if, with the intent to assault, harass, or alarm, the person: (3) causes another person the actor knows to be a public servant ***to contact the*** … ***saliva***. . . of the actor, while the public servant is lawfully discharging an official duty . . ..

[3] 12.45 CCP

transporting Appellant to jail. Appellant was also given permission to appeal the denial of his *Motion to Suppress*. (CR 5, 239, 249)

Before the plea bargain was entered, a jury was actually chosen. After selection of the jury and before their return, Appellant through trial counsel urged his *Motion to Suppress* all evidence derived and flowing from his warrantless arrest for public intoxication that occurred on November 30th, 2023. (CR 215) Such evidence would include any spitting by Appellant upon the officer. Once the State stipulated that the arrest was indeed warrantless, the State assumed the burden to prove the validity of the arrest and the admissibility of all evidence stemming therefrom. (RRII 5)

The State presented two witnesses. The first was the convenience store clerk, Ms. Whitaker, who eventually called the police after seeing Appellant in a "pushing and shoving fight" with another black man out by the gas pumps. (RRII 8, 15-16) But prior to the disturbance at the gas pumps, Ms. Whitaker related that Appellant was in the store and approached the checkout counter, smelling of alcohol, and became overly irritated when issues arose in correctly ringing up his items.

Ms. Whitaker testified that Appellant was "Very rude and was very aggressive. Started accusing us of things that we weren't trying

to do, but instead of letting us help and fix the issue, it was -- he was just very argumentative". She went on to say,

"He did not attempt to try to come over the counter, and he did also leave and walk out front door. So at that point, I thought he was just --under the smell that I knew -- or presumed he was intoxicated and the aggression was just one behavior. It hadn't happened before. So when he left the store, I thought the issue was over." (RRII 8-10)

But then, Ms. Whitaker related that her concerns with Appellant weren't completely over. She further stated,

"And then there was presumed to be a fight with his friend, I guess, because they were in the same car, and they were fighting out there. And I didn't know where that was going to go. So I called the police officers." (RRII 11)

When specifically asked what Ms. Whitaker remembered seeing, she responded:

"I see them kind of swinging at each other, pushing each other up against the car, and one falling to the ground. And then the other one got into the car and drove off as I was on the phone with the police officers." (RRII 12)

Ms. Whitaker testified, "They both had their hands on each other" and she didn't know who started it or swung first. She assumed Appellant was fighting with a friend, as they were in the same car. (RRII 11, 16)

Ms. Whitaker concluded by saying that when the officers arrived, she told them her observations about the fight, the rudeness of Appellant at the counter and her belief that Appellant was intoxicated. (RRII 11-12)

The State next called Officer Sorsby of the Navasota Police Department. He testified that when he arrived at the convenience store, Appellant was still in the restroom for 5 to 10 minutes. (RRII 24, 37) While he and other officers waited for Appellant, he spoke with Ms. Whitaker. Appellant then left the restroom and Officer Sorsby testified that Appellant "seemed to be not very cooperative with the instructions that he was provided by myself and Officer Hutto." Appellant was instructed to "stop walking away from us and come talk to us, to which he did not." (RRII 26)

Officer Sorsby stated that he observed, "The distinct odor of alcohol emitted from his body, and at the time, he was not very cooperative. Therefore, he was detained." (RRII 26)

After Appellant is detained in handcuffs, Officer Sorsby goes with the store manager to observe recorded video footage of the gas pump scuffle. (RRII 27, 31) Apparently, Officer Sorsby then goes outside and sees Appellant "square up towards" Officer Hutto after being initially released from handcuffs for "a courtesy transport" according to Officer Sorsby. Officer Sorsby says this action by Appellant meant Appellant was a danger to himself or others. . (RRII 28)

Later on cross-examination, Officer Sorsby elaborated when asked how Appellant was specifically a danger to himself? Officer Sorsby merely stated,

"He was unaware of his surroundings and the way he was like -- it's not very common that when you're asked to stop by a police officer to speak with them, that you intentionally walk away from them. It's not very common." (RRII 37)

Officer Sorsby stated, "He was being detained originally in the store for disorderly conduct, fighting in the parking lot." (RRII 38)

But aside from Appellant being argumentative, Officer Sorsby admitted that he hadn't observed Appellant making any threats or harassing anyone in the store. Officer Sorsby stated that Appellant was ultimately arrested for public intoxication but not disorderly conduct. (RRII 39, 40)

SUMMARY OF THE ARGUMENT

Officer Sorsby lacked sufficient legal cause to detain Appellant as Appellant left the restroom. (RRII 37) Wherefore, Appellant's *Motion to Suppress* should have been granted.

ARGUMENT and AUTHORITY

The Court of Criminal Appeals has often stated and held "although great weight should be given to the inferences drawn by the trial judges and law enforcement officers, determinations of reasonable suspicion and probable cause

should be reviewed de novo on appeal." ***Guzman v. State***, 955 S.W.2d 85, 87 (Tex. Crim. App. 1997) (citing ***Ornelas v. United States***, 517 U.S. 690, (1996)). Furthermore, "[i]n determining whether an officer is justified in making a ***Terry*** stop, courts use an objective standard: Would a reasonable officer in the same situation believe a crime had been or was being committed? This objective standard requires reviewing courts to place themselves in the shoes of the officer at the time of the inception of the stop—***considering only the information actually known*** by or available to the officer ***at that time***." . . . "Information that the officer either acquired or noticed after a detention or arrest cannot be considered. A detention is either good or bad at the moment it starts." (*emphasis added*) ***State v. Duran***, 396 S.W.3d 563, 569 (Tex. Crim. App. 2013).

In the instant case at the time of initial detention, Officer Sorsby only knew that Appellant had been in the restroom for 5 to 10 minutes. The only "articulable facts" that Officer Sorsby uttered to justify Appellant's initial detention were: "The distinct odor of alcohol emitted from his body, and at the time, he was not very cooperative. Therefore, he was detained." "He was unaware of his surroundings and the way he was like -- it's not very common that when you're asked to stop by a police officer to speak with them, that you intentionally walk away from them. It's not very common." (RRII 37)

Officer Sorsby uttered nothing that would suggest a crime had been or was being committed. He offered no articulable facts to support his conclusion that Appellant didn't know his surroundings. To the contrary, Officer Sorsby's testimony clearly indicated that Appellant clearly knew where the restroom and the exit were located. Officer Sorsby's testimony merely showed that he did not care for Appellant's choice to not be "very cooperative".

In ***Terry v. Ohio,*** 392 U.S. 1, 16 (1968), the Supreme Court addressed these very same issues. "It must be recognized that, whenever a police officer accosts an individual and restrains his freedom to walk away, he has "seized" that person." "Moreover, it is simply fantastic to urge that such a procedure performed in public by a policeman while the citizen stands helpless, perhaps facing a wall with his hands raised, is a "petty indignity." It is a serious intrusion upon the sanctity of the person, which may inflict great indignity and arouse strong resentment, and it is not to be undertaken lightly." (pg 17)

In the instant case, the unjustified detention by Officer Sorsby subjected Appellant to great indignity and raised understandable resentment in Appellant – which resentment Officer Sorsby "bootstrapped" and then welded against Appellant. Moreover, what Officer Sorsby did articulate in part as "justification" for the detention was strictly rejected by the Supreme Court in ***Terry*** at page 35:

"Of course, the person stopped is not obliged to answer, answers may not be compelled, and ***refusal to answer furnishes no basis*** for an arrest, although it may alert the officer to the need for continued observation." (*emphasis added*)

CONCLUSION

Officer Sorsby offered no articulable facts to support his detention of Appellant. The Supreme Court's statements in ***Terry*** best support the conclusion that Appellant's *Motion to Suppress* should have been granted based upon the wrongful and inciteful actions of Officer Sorsby.

"Under our decision, courts still retain their traditional responsibility to guard against police conduct which is overbearing or harassing, or which trenches upon personal security without the objective evidentiary justification which the Constitution requires. When such conduct is identified, it must be condemned by the judiciary, and its fruits must be excluded from evidence in criminal trials." ***Terry,*** *supra at 35.*

PRAYER

Wherefore, Premises Considered, Appellant prays that this Court reverse the trial court's judgment and remand this case to the trial court for a new trial and holdings consistent herewith.

Respectfully submitted,

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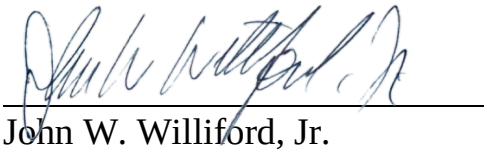
CERTIFICATE OF SERVICE

I, John W. Williford, Jr., certify that on this the 13th day of June, 2025, a true and correct copy of the above Appellant's brief was forwarded to the District Attorney's Office for Grimes County, Texas, the counsel for the Appellee by electronic delivery and to the Appellant by mail, at:

JIMMIE LEE PEAVY
TDCJ Inmate # 02537541
TDCJ Unit: Gib Lewis
777 FM 3497
Woodville, TX 75990

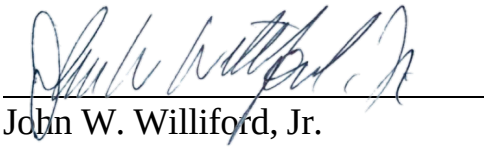


John W. Williford, Jr.

CERTIFICATE OF COMPLIANCE

(With Word Count)

I, John W. Williford, Jr., certify pursuant to the provisions of TEX. R. APP. P. 9.4(i)(3), that the word count of the foregoing Appellant's brief is **2,301 words**.



John W. Williford, Jr.

Filed 12/17/2024 7:44 AM
Diane LeFlore
District Clerk
Grimes County, Texas
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CAUSE NO. 19,314

STATE OF TEXAS	§	**IN THE DISTRICT COURT**
	§	
vs.	§	**12th JUDICIAL DISTRICT**
	§	
JIMMIE PEAVY, JR.	§	**GRIMES COUNTY, TEXAS**

DEFENDANT'S MOTION TO SUPPRESS

Jimmie Peavy, Jr., (hereinafter "Defendant") by and through his attorney of record Zach Coufal brings this Motion to Suppress and would respectfully show the Court the following:

The Defendant was arrested on the alleged offense date. The arrest was without a warrant. After the arrest, the acts/omissions which form the basis of the State's indictment in this cause allegedly occurred. The Defendant seeks to suppress the "fruits" of said arrest due to the arrest being warrantless and the law enforcement officers not having lawful authority to effectuate such an arrest. The Defendant seeks to have the evidence of his arrest and all evidence arising subsequent to the arrest and before charges were filed suppressed. Defendant seeks to suppress this evidence on the basis aforementioned, as well as, the arresting officers not having probable cause to arrest the Defendant, specifically, but not limited to, the issue of intoxication.

The Defendant invokes both the Texas Constitution, the United States Constitution, and Article 38.23[1] (exclusionary rule) in filing this Motion.

The Defendant prays this Court suppress the evidence after determining said evidence was unlawfully obtained, due to an illegal arrest being effectuated and that arrest being a "but-for" cause of the allegations which form the basis of the State's indictment.

Respectfully,

ZC

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FILED AT 10:30A M
DIANE LeFLORE DIST. CLERK
DEC 17 2024
GRIMES COUNTY, TEXAS
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[1] Tex. Code Crim. Pro.

Order

This motion was heard and denied on this 17th day of December, 2024.

J. D. Langley

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