

II. Law

A. Custody

Under well-established Texas law, there are at least four general situations which indicate that a person has been taken into "custody:"

1. when the suspect is physically deprived of his freedom of action in any significant way,
2. when a law enforcement officer tells the subject that he cannot leave,
3. when law enforcement officers create a situation that would lead a reasonable person to believe that his freedom of movement has been significantly restricted, and
4. when there is probable cause to arrest and law enforcement officers do not tell the suspect that he is free to leave. *Dowthitt v. State*, 931 S.W.2d 244, 255 (Tex. Crim. App. 1996); See also *Rodgers v. State*, 111 S.W.3d 236, 241 (Tex. App- Texarkana 2003, no pet.).

Several factors often come into play in considering whether a particular encounter amounted to an arrest or detention, including the amount of force displayed, the duration of the detention, whether the officer told the detained person that he or she was under arrest or was being detained only for a temporary investigation, whether it was conducted at the original location or the person was transported to another location, and the efficiency of the investigative process. If the degree of incapacitation appears more than necessary to simply safeguard the officers and assure the suspect's presence during a period of investigation, this suggests the detention is, in fact, an arrest. *State v. Sheppard*, 271 S.W.3d 281, 291 (Tex. Crime. App. 2008); *Kuether v. State*, 523 S.W.3d 798 (Tex. App.-Houston (14th Dist.) 2017, pet. ref'd).

In the present case, the defendant contends that "custody" occurred when when the defendant was

placed in handcuffs, placed inside a patrol car and transported to a different location for the performance of an interrogation.

B. Custodial Interrogation

After having been taken into custody, the officers began to interrogate the defendant. "Custodial interrogation is questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *McCulley v. State*, 352 S.W.3d 107, 115 (Tex. App.-Fort Worth 2011, pet. ref'd). In the present instance, the questioning by law enforcement officers elicited comments from the defendant regarding his actions that evening. These statements were obtained in violation of State and federal law.

C. No *Miranda* Warnings Given

As the statements at issue were obtained as a result of custodial police interrogation, officers were obligated to provide the defendant with *Miranda* warnings and to follow the more stringent requirements mandated by Texas Code of Criminal Procedure Sec. 38.22. The officers' failure to follow these fundamental requirements violated both State and federal law and rendered the statements at issue involuntary and inadmissible. See Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution; Art. I, Section 10 of the Texas Constitution; Article 38.22 of the Texas Code of Criminal Procedure; *Miranda v. Arizona*, 384 U.S. 436 (1966).

D. State Bears Burden

The burden of showing that the defendant waived such rights knowingly, intelligently and voluntarily rests upon the State. *Joseph v. State*, 309 S.W.3d 20, 24 (Tex. Crim. App. 2010).

No evidence obtained by an officer in violation of any provisions of the Constitution or the laws of the State of Texas or of the United States shall be admitted into evidence against an accused on trial in any criminal case. Texas Code of Criminal Procedure 38.23.

WHEREFORE, PREMISES CONSIDERED, the defendant prays the Court grant this Motion to suppress the post-arrest statements of the defendant.

Respectfully Submitted,

DeGUERIN & DICKSON

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COURTESY OF A
FOIA AROUND AND FIND OUT SPONSOR

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the attached and foregoing document has been served on the prosecutor via efile on the 21st day of April, 2026.

/s/Ed McClees_____

ED MCCLEES

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FOIA AROUND AND FIND OUT SPONSOR

CAUSE NO. 1888712

STATE OF TEXAS

§

IN THE 497th

V.

§

DISTRICT COURT OF

LEE GILLEY

§

HARRIS COUNTY, TEXAS

ORDER

Having heard the Defendant's Motion to Suppress Statement, and arguments of counsel, if any, the motion is hereby:

_____ GRANTED.

_____ DENIED.

SIGNED this _____ day of _____, 2026.

JUDGE PRESIDING

COURTESY OF A
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