

**VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH**

**COMMONWEALTH OF VIRGINIA,**

**Plaintiff**

**v.**

**DOCKET NO:**

**,**

**Defendant**

**MOTION TO SUPPRESS EVIDENCE RECOVERED FROM WARRANTLESS  
VEHICLE SEARCH**

COMES NOW Mr. \_\_\_\_\_, by counsel, and respectfully moves this court to suppress evidence recovered pursuant to a warrantless search in violation of the 4th Amendment to the United States Constitution. Facts and legal argument in support of this motion follow:

**Statement Of Facts**

1. On November \_\_\_\_\_, police responded to a parking lot located on \_\_\_\_\_ Street for a medical emergency call. Upon arrival, police found the defendant unconscious in the driver's seat of a vehicle. The police briefly attempted to revive him until fire and rescue personnel arrived on scene within one minute. Rescue lifted the defendant from the vehicle and laid him on the ground where they rendered treatment before eventually moving him into an ambulance. The defendant's wife, \_\_\_\_\_, was on scene and advised officers that the defendant had called her in a state of distress and told her that he had taken eight Xanax. A prescription pill bottle for Xanax bearing the defendant's name was visible in the center console. While rescue treated the defendant, officers searched the vehicle and recovered suspected heroin and a firearm wrapped in a car seat cover. At the preliminary hearing, the police acknowledged that those items were not in plain view prior to the search. The defense moves to suppress all evidence stemming from the warrantless search of the vehicle.
2. The Fourth Amendment guarantees the right of the people to be secure . . . against unreasonable searches and seizures. Const. amend. IV. It is well-settled that "warrantless searches and seizures are per se unreasonable and, therefore, unlawful under the Fourth Amendment. Commonwealth v. Ealy, 12 Va. App. 744, 751-52 (1991). However, warrantless searches and seizures are permissible where an established and well-delineated warrant exception is applicable under the circumstances. Thompson v. Louisiana, 469 U.S. 17, 19-20 (1984). *The*

*Commonwealth bears the burden of establishing a warrantless search or seizure was “reasonable”* under the given circumstances, and thus constitutionally permissible. Welsh v. Wisconsin, 466 U.S. 740, 749–50 (1984) (emphasis added). As in all Fourth Amendment cases, the touchstone is “reasonableness under the facts and circumstances of the case.” Weathers v. Commonwealth, 32 Va.App. 652, 658 (2000).

3. “One concession to reasonableness” is the emergency aid exception to the warrant requirement, which “recognizes the ‘right of the police to enter and investigate’ when someone’s health or physical safety is genuinely threatened.” Kyer v. Commonwealth, 45 Va. App. 473, 480 (2005). The exception “rests on the commonsense rationale that ‘preservation of human life is paramount to the right of privacy.’” Id.; see also Brigham City v. Stuart, 547 U.S. 398, 403 (2006) (“The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency.” While courts have typically discussed the emergency aid exception in the context of home searches, the defense would agree that the police in the present case had the right to enter the defendant’s vehicle upon arriving at the scene in order to attempt to render aid to him.
4. However, once rescue personnel arrived on scene and took over treatment of the defendant, the defense respectfully submits that the police were no longer involved in rendering aid to the defendant. Bodycam footage does not depict any ongoing communication relevant to the defendant’s treatment between rescue and the police after the defendant was removed from the vehicle. Thus, when the police searched the defendant’s vehicle, they were engaged in an investigatory function rather than providing emergency aid. Thus, in order to support a search of the vehicle, the police were required to have probable cause that the vehicle contained evidence of a crime.
5. At the time that the vehicle was searched, the only information the police had was that the defendant was unconscious and that he may have overdosed on his prescription Xanax. Their suspicion that the defendant may have overdosed on something other than Xanax was not based on probable cause. Instead, it was based on an inchoate and unparticularized suspicion or hunch.

### **Request For Relief**

The defendant respectfully moves this Honorable Court to suppress all evidence found pursuant to the search of the defendant’s vehicle because the Commonwealth has

failed to satisfy their burden of establishing that the warrantless search was “reasonable” under the Fourth Amendment.

Respectfully submitted,

By: \_\_\_\_\_

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CERTIFICATE OF SERVICE

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Taite A. Westendorf