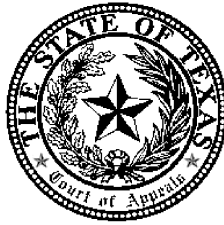


**Affirmed and Opinion filed October 11, 2001.**



**In The**  
**Fourteenth Court of Appeals**

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**NO. 14-00-00927-CR**

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**SUZANNE MARIE ARNETT, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the County Criminal Court at Law No. 8  
Harris County, Texas  
Trial Court Cause No. 0995640**

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**OPINION**

Suzanne Marie Arnett appeals the trial court's denial of her motion to suppress evidence underpinning her conviction for driving while intoxicated. We affirm without deciding whether her arrest was made without probable cause because she failed to prove her arrest was warrantless.

**Background**

Ms. Arnett was arrested by Jersey Village police officer Barbara Morris for driving while intoxicated. Following the denial of her motion to suppress evidence stemming from

her arrest, Ms. Arnett pled guilty and the trial court assessed punishment at six months in jail, fully probated, and a fine. Officer Morris was the only witness at the suppression hearing.

Ms. Arnett's appeal is based principally upon Officer Morris' failure to give her a field sobriety test prior to arrest. Thus, Ms. Arnett argues, the arrest was made without probable cause and the trial court incorrectly overruled her motion to suppress. No affirmative evidence in the record establishes that Ms. Arnett's arrest was warrantless, though this fact is circumstantially obvious.

### **Proof of Warrantless Arrest**

A movant in a motion to suppress alleging lack of probable cause must initially produce evidence that a warrantless arrest or seizure occurred. *See Russell v. State*, 717 S.W.2d 7, 9 (Tex. Crim. App.1986). The burden then shifts to the State to show that a warrant existed. *Id.* If the State produces evidence that a warrant existed, then the burden shifts back to the defendant to show the invalidity of the arrest or seizure. *Id.* If the State cannot prove that a warrant existed, it must prove the reasonableness of the arrest or seizure. *Id.* at 10.

We are bound by *Russell* from inquiring into the sufficiency of probable cause. *See, e.g., Highwarden v. State*, 846 S.W.2d 479, (Tex. App.—Houston [14<sup>th</sup> Dist.] 1993, *pet. dismiss'd, improvidently granted*, 871 S.W.2d 726, (Tex. Crim. App. 1994). Here, as in *Highwarden* and its progeny, because no affirmative evidence established that the arrest occurred without a warrant, the burden never shifted to the State to either produce evidence of a warrant or prove the reasonableness of the arrest pursuant to one of the recognized exceptions to the warrant requirement. Ms. Arnett's single point of error is overruled.

Accordingly, the judgment of the trial court is affirmed.

/s/ Don Wittig  
Senior Justice

Judgment rendered and Opinion filed October 11, 2001.

Panel consists of Justices Yates, Edelman, and Wittig.<sup>1</sup>

Do Not Publish — TEX. R. APP. P. 47.3(b).

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<sup>1</sup> Senior Justice Don Wittig sitting by assignment.