

NO. 2010-CR.-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 144TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO SET ASIDE THE INFORMATION

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that the information filed in this case be set aside by virtue of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, Article I §§ 10 and 19 of the Texas Constitution, and Articles 1.05, 21.01, 21.02, 21.03, 21.04, and 21.11 of the Texas Code of Criminal Procedure for the following reasons:

I.

The information is defective because it fails to sufficiently identify or describe the property allegedly stolen. *See Swabado v. State*, 597 S.W. 2d 361, 363 (Tex. Crim. App. 1980); *Amaya v. State*, 551 S.W. 2d 385, 387 (Tex. Crim. App. 1977); *See also* TEX. CODE CRIM. PROC. ANN. art. 21.09.

II.

The information does not specify how the complainant's consent was not effective, even though the term "effective consent" has multiple statutory definitions. *See Geter v. State*, 779 S.W.2d 403, 406 (Tex. Crim. App. 1989).

III.

The information alleges that defendant unlawfully appropriated eight tops, one dress and one pair of shorts having a value of Fifty Dollars (\$50.00) or more but less than

Five Hundred Dollars (\$500.00). On its face, then, the information in a single count and paragraph alleges ten separate offenses. This is in violation of article 21.24 of the Texas Code of Criminal Procedure which provides that each separate offense be stated in a separate count.

IV.

Although the information has aggregated the amounts of the property for jurisdictional purposes, it has not alleged that the "amounts are obtained . . . pursuant to one scheme or continuing course of conduct . . ." which is required before these can be considered as "one offense." Texas Penal Code Ann. § 31.09. In omitting this language the State has failed to allege in its information "everything which is necessary to be proved" in violation of Texas Code Criminal Procedure Ann. Article 21.03.

V.

Because of these defects:

1. The information does not accuse defendant of an "act or omission which, by law, is declared to be an offense", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.01.
2. The offense is not "set forth in plain and intelligible words", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.02(7).
3. The information does not state "[e]verything . . . which is necessary to be proved", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.03.
4. The information does not possess "[t]he certainty . . . such as will enable the accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense," in violation of TEX. CODE CRIM. PROC. ANN. art. 21.04 and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I §§ 10 and 19 of

the Texas Constitution.

5. The information does not "charge[] the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant and with what degree of certainty that will give the defendant notice of the particular offense with which she is charged, and enable the court, on conviction, to pronounce the proper judgment . . ." in violation of TEX. CODE CRIM. PROC. ANN. art. 21.11 and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, §§ 10 and 19 of the Texas Constitution.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion To Set Aside The Information has been delivered to the District Attorney's Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on this the ____ day of May, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered Defendant's Motion to Set Aside the Information, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING