

NO. 000000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER FOUR
REYNALDO SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO SET ASIDE THE INFORMATION

TO THE HONORABLE JUDGE OF SAID COURT:

Reynaldo 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 joins two offenses in a single information without separating same into separate paragraphs, in violation of art 21.24 of the Texas Code of Criminal Procedure. Specifically, the information in this case attempts to allege offenses, in the same paragraph, pursuant to §§ 550.022 and 550.023 of the Texas Transportation Code.

II.

The information is defective because it alleges that defendant unlawfully failed to give certain information to the driver of the other vehicle, but does not allege a culpable mental state in connection with that act or omission.

III.

The information is defective because it alleges that an accident occurred “upon a public highway” but does not allege its general locality in the county, in violation of article 21.09 of the Texas Code of Criminal Procedure.

IV.

The information is defective because it alleges that Herbert Brown drove a vehicle, but does not describe the vehicle by name, kind, number and ownership, in violation of article 21.09 of the Texas Code of Criminal Procedure.

V.

The information is defective because it does not allege all the elements required by § 550.022 of the Texas Transportation Code.

VI.

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 he 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.

WHEREFORE, premises considered, the defendant prays that the Court set aside the information in the above-numbered and entitled cause.

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 19th day of September, 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