

NO. 2018-CR-0001

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 186TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that the indictment 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, 21.11, 21.15, 21.24, and 27.08(3) of the Texas Code of Criminal Procedure for the following reasons:

I.

The indictment is defective because it alleges in conclusory form only that Mr. Smith caused serious bodily injury to the child. Section 1.07(a)(46) of the Texas Penal Code provides multiple different definitions of the phrase “serious bodily injury.” The indictment does not specify which of the several statutorily defined types of serious bodily injury was allegedly caused. Nor does the indictment specify what part, member, or organ of the body was injured. Will the state rely on the injury to the child’s head, his abdomen, his leg, his arm, or some other part of the body altogether? Such specification is required under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the Due Cause Law Provision of Article I, §§ 10, 13, and 19 of the Texas Constitution, and article 21.11 of the Texas Code of Criminal Procedure, so that

Mr. Smith continue the notice he needs to defend himself. Additionally, the indictment as written is not certain enough for Mr. Smith to plead any judgment upon it in bar of a later prosecution for the same offense. *See* Tex. Code Crim. Proc. Ann. And 21.04 and the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13, and 19 of the Texas Constitution.

II.

The indictment does not adequately allege the manner and means by which defendant allegedly caused serious bodily injury to the complainant.

III.

Because of these defects:

1. The indictment 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 indictment does not state "[e]verything . . . which is necessary to be proved", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.03.
4. The indictment 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 indictment 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 indictment 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 Indictment has been delivered to the District Attorney's Office, Bexar County, Cadena-Reeves Justice Center, 300 Dolorosa, Suite 3200, San Antonio, Texas 78205 on this the 13th day of November, 2018.

MARK STEVENS

ORDER

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

(GRANTED) (DENIED)

JUDGE PRESIDING