

III.

The information alleges that Mr. Smith participated in an acceleration contest, but does not define “acceleration contest,” nor does it specify what it means to participate in such a contest. The phrase “acceleration contest” is not defined by the statute that purports to criminalize the conduct. Because there is no definition of this phrase in either the charging instrument or in the statute, no reasonable person could understand what the law in this regard is meant to prohibit, or how he might conform his conduct to that law. The statute is unconstitutionally vague, and the charging instrument fails to give adequate notice, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Course of Law Provision of Article I, §§ 13 and 19 of the Texas Constitution.

IV.

The information alleges that Mr. Smith was the driver and operator of a motor vehicle, but it does not identify that motor vehicle “by name, kind, number, and ownership,” in violation of article 21.09 of the Texas Code of Criminal Procedure.

V.

The information alleges that Mr. Smith participated in a drag race and acceleration contest, which it describes as the operation of “two or more vehicles,” but it does not allege how many vehicles were involved, nor does it identify the other motor vehicles “by name, kind, number, and ownership,” in violation of article 21.09 of the Texas Code of Criminal Procedure. By failing to name or identify the other vehicle or vehicles allegedly

involved, the state has also deprived Mr. Smith of the notice he requires to defend himself, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Due Course of Law Provision of Article I, §§ 13 and 19 of the Texas Constitution.

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 1st day of April, 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