

NO. 000000

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 in this case be dismissed 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 indictment is defective because it alleges that defendant employed Charles Calhoun "to shoot . . . Chere Smith with a gun . . . ."

II.

The indictment wholly fails to allege as required by § 19.03(a)(3) of the Texas Penal Code, that defendant employed Calhoun "to commit the murder for remuneration of the promise of remuneration." (emphasis supplied). It is not capital murder to employ someone merely to shoot another. An essential element of the offense of capital murder has been omitted.

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:

-----  
MARK STEVENS  
State Bar No. 19184200  
310 S. St. Mary's, Ste 1920  
San Antonio, TX 78205  
(210) 226-1433  
mark@markstevenslaw.com

Attorney for Defendant

### **CERTIFICATE OF SERVICE**

I certify that a copy of this Motion has been delivered to the Bexar County District Attorney's Office, on November 20, 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