

NO. 0000

STATE OF TEXAS)	IN THE DISTRICT COURT
VS.)	437TH JUDICIAL DISTRICT
JOE SMITH)	BEXAR COUNTY, TEXAS

**MOTION TO QUESTION VENIRE PANEL INDIVIDUALLY
CONCERNING PUBLICITY**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves this Court for leave to question the venire panel individually about their exposure to any publicity in the case, and for good cause shows the following:

I.

The trial court has discretion to permit individual voir dire in a non-capital case. *See* Tex. Code Crim. App. Proc. Ann. art. 35.17(1).

II.

Counsel believes that a large number of the venire persons will have heard something about this case before coming to court. Counsel intends to ask the venire as a whole whether they have heard any publicity about the case.

III.

After determining whether the individual venire persons have heard about the case, counsel proposes to question them individually, outside the presence of each other, about what they have heard.

IV.

This questioning must be done individually, because to do so in the presence of

other venire persons, would possibly taint those venire persons.

V.

In *Smith v. State*, 703 S.W.2d 641 (Tex. Crim. App. 1985), the Texas Court of Criminal Appeals held that the trial court abused its discretion in denying appellant his right to an individual voir dire in a non-capital case on the question of pre-trial publicity. Such questioning was necessary in *Smith*, and is necessary in our case, to permit the defendant to intelligently exercise his peremptory challenges as guaranteed by article I § 10 of the Texas Constitution and the Sixth and Fourteenth Amendments of the United States Constitution. Additionally, such questioning is necessary to determine whether venire persons are subject to challenge for cause under article 35.16 of the Texas Code of Criminal Procedure, and to permit defendant to be tried by a fair and impartial jury, guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution and article I, §§ 10, 13, and 19 of the Texas Constitution.

WHEREFORE, PREMISES CONSIDERED, the defendant prays that this Court permit his counsel to question individually all prospective jurors who acknowledge having heard something about the case during voir dire.

Respectfully submitted:

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Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of Defendant's Motion to Question Venire Panel individually Concerning Publicity has been delivered to the Bexar County District Attorney's Office, 101 W. Nueva St., San Antonio, Texas, on July 14, 2018.

MARK STEVENS

ORDER

On this the ___ day of _____, 2018 came to be considered Defendant's Motion to Question Venire Panel Individually Concerning Publicity, and said motion is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING