NO. CR 0000

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

DEFENDANT'S OBJECTIONS TO EVIDENCE PURSUANT TO RULE 103(a)(1)

TO THE HONORABLE JUDGE OF THE COURT:

Joe Smith objects prior to trial, under Rule 103(a)(1) of the Texas Rules of Evidence, to certain evidence he believes the state may offer at trial.

I.
Rule 103(a)(1)

Rule 103(a)(1) of the Texas Rules of Evidence provides that : "When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating those objections." In this document, the defense reurges all objections it has previously made, and makes further objections to evidence discussed herein, also under Rule 103(a)(1).

II.
Extraneous Misconduct

Mr. Smith moves to exclude all extraneous crime or misconduct evidence which is not alleged in the indictment in this case, unless it can be shown by sufficient proof that he perpetrated such conduct. In deciding whether to admit such evidence, this Court

"must, under rule 104(b) (of the Texas Rules of Evidence), make an initial determination at the proffer of the evidence, that a jury could reasonably find beyond a reasonable doubt that the defendant committed the extraneous offense." *Harrell v. State*, 884 S.W. 2d 154, 160 (Tex. Crim. App. 1994). Additionally, the state must prove that this extraneous evidence is relevant to a material issue in the case other than character conformity; and that its probative value outweighs its potential for prejudice. In this case, such "evidence" includes, but is not limited to, the following, as alleged by the state in its notices of intent to offer evidence, dated April 8, 2018:

1. "Audio Recording of Scenic Heights POA Meeting Dated 11/10/17;"
2. "Any and all Subscriptions attributable to Defendant by a Forensic Handwriting Expert;"
3. Criminal Mischief Allegation on 5/12/07;"
4. "Any comments relative to the ethnicity of Herbert G. Sorola and Margaret D. Sorola;"
5. Comments made by defendant during the 11/20/17 Scenic Heights Property Owners Association Meeting."

The state cannot prove beyond a reasonable doubt that Mr. Smith perpetrated any of these transactions. Mr. Smith has not been convicted of any offense concerning these transactions, as required by Rule 609 of the Texas Rules of Evidence. These transactions are irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. If relevant to anything, they are relevant only to character conformity, and therefore inadmissible under Rule 404(b). These transactions are

unfairly prejudicial, confusing and misleading, and therefore inadmissible under Rule 403.

III.
The Court Must Make A Preliminary Determination Of The Admissibility Of Extraneous Evidence

Texas law favors a preliminary presentation of questionably admissible evidence outside the presence of the jury. Specifically, Texas Rule of Evidence 103(c) states that [i]n jury cases, proceedings shall be conducted to the extent practical, so as to prevent inadmissible evidence from being suggested to the jury by any means, such as making statements or offers of proof or asking questions in the hearing of the jury. Similarly, Texas Rule of Evidence 104(c) allows for hearings in criminal cases outside "the hearing of the jury when the interests of justice so require . . . ."

In deciding whether to admit evidence of alleged extraneous misconduct, this Court "must, under rule 104(b) [of the Texas Rules of Evidence], make an initial determination at the proffer of the evidence, that a jury could reasonably find beyond a reasonable doubt that the defendant committed the extraneous offense." *Harrell v. State*, 884 S.W. 2d 154, 160 (Tex. Crim. App. 1994). Extraneous misconduct is irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence unless it can be shown by sufficient proof that the defendant perpetrated such conduct. And Rule 403 limits the admissibility of such evidence "when it is doubtful that the defendant committed the extraneous offense." *Id*.

III.
Extraneous Misconduct
Not Timely Disclosed

Mr. Smith also moves to exclude all extraneous crime or misconduct evidence, notice of which was requested by defendant, but not provided by the state as required by Rules 404(b) and 609(f) of the Texas Rules of Criminal Procedure, and article 37.07 of the Texas Code of Criminal Procedure.

IV.
Polygraph Examination

In an interview on April 28, 2018, Carol Twiss of the Kerr County Sheriff's Department asked Mr. Smith if he was willing to take a polygraph test and a discussion was had. Later, witness Luke Scott was also asked to take a polygraph. Any mention of a polygraph in Texas is absolutely prohibited, and, among other things, would be contrary to Rules 401, 402 and 403 of the Texas Rules of Evidence, and to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13 and 19 of the Texas Constitution. *See also Crawford v. State*, 617 S.W.2d 925 (Tex.Cr.App.1981); *Fernandez v. State*, 564 S.W.2d 771 (Tex. Crim. App.1978); *Romero v. State*, 493 S.W.2d 206 (Tex. Crim. App. 1973).

V.
Hearsay And Unauthenticated Documents

Mr. Smith objects to any documentary evidence that constitutes or contains hearsay, inadmissible under Rules 801 and 802 of the Texas Rules of Evidence, or

which is not properly authenticated, as required by Rule 901 of the Texas Rules of Evidence, or which has not been maintained with the proper chain of custody to insure its evidentiary integrity.

VI.
Inadmissible Opinion Testimony

Mr. Smith objects to anyone giving expert opinion testimony unless that person is qualified under Rule 702 of the Texas Rules of Evidence, and their testimony is not unfairly prejudicial, confusing, misleading, or confusing, under Rule 403. Specifically, Mr. Smith objects to opinion testimony from Kenneth Crawford concerning the alleged authorship of writing or printing on two subscriber cards. A *Daubert* hearing was held on November 25, 2017, and the state failed to carry its burden of proving that Mr. Crawford's testimony was either relevant or reliable as required by Rule 702 of the Texas Rules of Evidence. *See Daubert v. Merrell Dow Pharamaceuticals*, 509 U.S. 579, 589 (1993); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999); *Hartman v. State*, 946 S.W.2d 60, 62 (Tex. Crim. App. 1997).

VII.
Untimely Designated Expert Witnesses

Mr. Smith objects to any expert witness testifying for the state unless that person was timely designated as a witness.

VIII.
Undisclosed Witnesses

Mr. Smith filed a motion for discovery of state's witnesses, and that motion was

granted on June 1, 2018. Mr. Smith objects to any witness testifying for the state who has not already been named as a possible witness by the state.

IX.
Victim Impact Evidence

Mr. Smith objects to the admission of any victim impact or victim character evidence at the first phase of the trial.

X.
Untested Character Evidence

The defense objects to the presentation of any evidence by the state concerning his character through character witnesses who have not been previously examined outside the presence of the jury.

XI.
The Right To Silence

Mr. Smith objects to any testimony or allusion to his exercising his constitutional right to remain silent when confronted by the police or agents of the state. Texans have the constitutional right to remain silent in the face of questioning by the police. Mr. Smith objects to the state eliciting evidence before the jury that he invoked his constitutional right to remain silent. Eliciting this sort of evidence would violate the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13 and 19 of the Texas Constitution. *See also Doyle v. Ohio*, 426 U.S. 610 (1976); *Sanchez v. State*, 707 S.W. 2d 575 (Tex. Crim. App. 1986). And this evidence

is irrelevant, in violation of Rules 401 and 402 of the Texas Rules of Evidence. Additionally, whatever marginal relevance the evidence has is substantially outweighed by its potential for unfairly prejudicing the jury, in violation of Rule 403 of the Rules of Evidence.

XII.
The Right To Counsel

Mr. Smith moves to exclude any reference to his having requested to speak to a lawyer before speaking to officers or agents of the State of Texas, and to his refusal to speak to said officers and agents until being allowed to do so. Such references would be contrary to article 38.38 of the Texas Code of Criminal Procedure, Rules 401, 402 and 403 of the Texas Rules of Evidence, and to the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13 and 19 of the Texas Constitution. *See also Doyle v. Ohio*, 426 U.S. 610 (1976); *Sanchez v. State*, 707 S.W. 2d 575 (Tex. Crim. App. 1986). And this evidence is irrelevant, in violation of Rules 401 and 402 of the Texas Rules of Evidence. Additionally, whatever marginal relevance the evidence has is substantially outweighed by its potential for unfairly prejudicing the jury, in violation of Rule 403 of the Rules of Evidence.

XIII.
The Privilege Against Self-Incrimination

At the insistence of his attorney, Mr. Smith invoked his privilege against self-incrimination, guaranteed by the Fifth and Fourteenth Amendments to the United States

Constitution, and Article I, § 10 of the Texas Constitution during a deposition conducted by opposing parties in civil litigation. Eliciting this sort of evidence would violate the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13 and 19 of the Texas Constitution. And this evidence is irrelevant, in violation of Rules 401 and 402 of the Texas Rules of Evidence. Additionally, whatever marginal relevance the evidence has is substantially outweighed by its potential for unfairly prejudicing the jury, in violation of Rule 403 of the Rules of Evidence.

XVI.
911 Calls

Numerous persons made 911 calls reporting this accident on October 1, 2017, shortly after 10:00 am. These reports are hearsay, inadmissible under Rules 801 and 802 of the Texas Rules of Evidence. Additionally, this information denies Mr. Smith his right to confront and cross-examine witnesses against his, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution. And contents of these calls are unreliable, and their admission would violate 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. This content is also substantially more prejudicial than probative, and would likely confuse and mislead the jury if admitted, in violation of Rule 403 of the Texas Rules of Evidence.

XVII.
Previously Urged Objections

On March 21 – 23, 2018, pre-trial hearings were held on various motions filed by the defense and on that date and shortly thereafter, this Court ruled. Mr. Smith lodged numerous objections to admission of certain evidence, and he reurges those objections at this time. If those objections are again overruled, the defense requests that the Court consider the objections as having been made if the state offers the evidence at trial, and that the defense not be required to make the objections again, as is provided by Rule 103(a)(1).

XVIII.
The Attorney-Client Privilege

The state has listed two of Mr. Smith's attorneys as potential witnesses – Gordon Jones and Martin Brown. Confidential communications between Mr. Smith and his attorneys are privileged and inadmissible against Mr. Smith. *See* TEX. R. EVID. 503(b)(1). Additionally, any fact that came to the knowledge of either attorney by reason of the attorney-client relationship is privileged and may not be disclosed in Texas. *See* TEX. R. EVID. 503(b)(2). No evidence should be elicited from either attorney until this Court has determined, outside the presence of the jury, that they have unprivileged evidence to give. Mr. Smith should not be required to assert the attorney-client privilege in the presence of the jury. *See* TEX. R. EVID. 513. And the fact that Mr. Smith contacted or retained attorneys may not be used against him or commented

on by the prosecutors or the Court. *See* TEX. CODE CRIM. PROC. ANN. art. 38.38.

IXX.
Hearsay From The Complainant

The discovery provided the defense in this case is filled with references allegedly made by the complainant about Mr. Smith to third parties. We move to exclude any reference to hearsay testimony from the complainant because said testimony is inadmissible under Rules 801, 802 and 803 of the Texas Rules of Evidence, and the Confrontation Clauses of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution.

XX.
Divorce Documents On Computer

The state seized a number of computers and computer equipment from Mr. Smith's home and effects. We have previously objected to the admission of any evidence from the computers because that evidence was illegally obtained, for a number of reasons.

Recently, the state has notified the defense that it intends to attempt to prove that certain evidence purportedly relating to Mrs. Smith's intention to divorce Mr. Smith was found on one of the computers seized, and this evidence was viewed by someone, was sent off to a storage facility, and later deleted. Besides being inadmissible because it was illegally obtained, this evidence is inadmissible for the following reasons:

A. The computer in question was one of several owned by the Smith family and it cannot be proven that Joe Smith viewed the evidence in question, or that he sent

it to the storage facility, or that he deleted it. Absent such proof, the evidence is irrelevant under Rules 401 and 402, and whatever marginal relevance it may have is substantially outweighed by its potential for prejudice.

B. The divorce information in question is hearsay, inadmissible under Rules 801, 802 and 803 of the Texas Rules of Evidence, and the Confrontation Clauses of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution.

C. The divorce information in question, some of which purportedly comes information provided by the complainant to her divorce attorney, contains a number of damaging and unsupported claims which would be highly prejudicial to Mr. Smith. Such information is entirely irrelevant to this prosecution and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. Whatever marginal relevance it might have is substantially outweighed by its potential for prejudice, making it irrelevant under Rule 403.

XXI.
Transcripts of Recorded Conversations

The state has tendered to the defense transcripts of certain conversations purportedly between Mr. Smith and others. The prosecutors advise the defense that they want the jury to use these transcripts. Respectfully, the defense disagrees that the transcripts thus far provided by the state fully and accurately capture the recorded conversations. The defense maintains that the tapes themselves are the best evidence of the content of the conversations, and that the transcripts will not assist the jury in learning the true evidence. Allowing the jury to use these transcripts will deny Mr. Smith the right to confront and cross-examine witnesses against him and the effective assistance of counsel, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution.

XXII.
Personal Writings

Various writings were seized from Mr. Smith and his home and vehicles and computers pursuant to several search warrants. The state maintains that some of these documents were written by Mr. Smith and some were not. Those personally written by him are inadmissible under article 18.02 (10) of the Texas Code of Criminal Procedure. Those not personally written by him are irrelevant, unfairly prejudicial, and inadmissible under Rules 401, 402, and 403 of the Texas Rules of Evidence.

XXIII.
Hearsay And Unauthenticated Documents

Mr. Smith objects to any documentary evidence that constitutes or contains hearsay, inadmissible under Rules 801 and 802 of the Texas Rules of Evidence, or which is not properly authenticated, as required by Rule 901 of the Texas Rules of Evidence, or which has not been maintained with the proper chain of custody to insure its evidentiary integrity.

XXIV.
The Behavior Of Others Cannot Fairly Be Attributed To Joe Smith

The Notice Of State's Intent To Introduce Extraneous offenses Or Acts Pursuant To T.R.E. 404(b), 609, and C.C.P. 38.37 makes several references to Warren Brown. Specifically, it identifies Warren Brown as one of "the FBI's Ten Most Wanted Fugitive List." It mentions weddings allegedly performed or entered into by Warren Brown with persons other than Joe Smith. It asserts that Joe Smith "aided and abetted and conspired

with Warren Brown" and that he failed to turn Warren Brown in to authorities.

It is apparent that the state wants to taint Joe Smith with Warren Brown's notoriety. The indictment in this case, however, does not allege a conspiracy, and, in fact, says nothing at all about Warren Brown. It is fundamentally unfair, in violation of the Due Process Clause of the Fourteenth Amendment, and the Due Course of Law Provision of Article I, §§ 13 and 19 of the Texas Constitution, for the prosecutors to attempt to convict Mr. Smith, or to prejudice his case in any way, because of the actions of any other person, including, but not limited to, Mr. Brown.

XXV.
Allegations, Findings, Or Conclusions
By TDFPS

The defense objects to the presentation of any evidence by the state that the Texas Department of Family and Protective Services made any allegations, findings, or conclusions that the complainant or any other persons in this case were the victims of abuse or neglect. Such allegations, findings, or conclusions are irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. If relevant to anything, they are relevant only to character conformity, and therefore inadmissible under Rule 404(b). And they are unfairly prejudicial, confusing and misleading, and therefore inadmissible under Rule 403, 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.

XXVI.
Claims Of Privilege Are Not The Proper Subject Of Comment

Various witnesses have invoked claims of privilege in this case. Rule 513(a) of the Texas Rules of Evidence prohibits both Court and counsel from commenting on a witness's claim of privilege, "whether in the present proceeding or upon a prior occasion," and mandates that "no inference may be drawn therefrom."

XXVII.
The Admissibility Of Statements Allegedly Made By Mr. Smith Must Be Determined Outside The Presence Of The Jury

Counsel for Mr. Smith is unaware of any statements – written or oral – that the state claims that Mr. Smith made to law enforcement officers or its agents in this case. If there are such statements, Mr. Smith is entitled to a hearing, outside the presence of the jury, to determine their admissibility. *See Jackson v. Denno*, 378 U.S. 368 (1964); TEX. CODE CRIM. PROC. ANN. art. 38.22, § 6; TEX. R. EVID. 104(c).

XXVIII.
Improper "Outcry" Testimony

The defense objects to so-called "outcry" testimony from persons other than the complainant who might claim that complainant told them of offenses allegedly committed by Mr. Smith, because such testimony is hearsay, inadmissible under Rules 801, 802 and 803 of the Texas Rules of Evidence. Additionally, admission of such testimony would deny Mr. Smith his right to confront and cross-examine witnesses against him, in violation of the Sixth and Fourteenth Amendments to the United States

Constitution, and Article I, § 10 of the Texas Constitution.

XXIX.
Defendant's Objections To Admissibility of Videotape Of Joe Smith On April 28, 2018

Previously Mr. Smith filed two written documents styled "Motion To Suppress Written Or Oral Statements Of Defendant," and "Defendant's Objections To Admissibility of Videotape Of Joe Smith On April 28, 2017." On February 9 and 16, 2018, hearings were held on these matters, outside the presence of the jury, and Mr. Smith made specific objections that any statements he allegedly made to law enforcement, including statements made on April 28, 2017, are inadmissible because they were involuntary, in violation of article 38.21 of the Texas Code of Criminal Procedure, the Fifth and Fourteenth Amendments to the United States Constitution, and Article I, §10 of the Texas Constitution. Alternatively, Mr. Smith also objected to specific portions of his videotaped interview on April 28, 2017 with Carol Twiss, including that statements by Carol Twiss and others violated the Hearsay Rule and his rights to confront and cross-examine; that the videotape contained evidence of extraneous misconduct inadmissible under Rules 401, 402, 403, and 404(b) of the Texas Rules of Evidence; that the videotape contained inadmissible comments on credibility; and that the videotape contained inadmissible references to a polygraph examination. Mr. Smith reurges those objections at this time and requests a ruling on them before this inadmissible evidence is in any way brought to the attention of his jury.

XXX.
Business Records

The state has filed business records affidavits and purported business records from Main High School and the Callallen Independent School District. Admission of these records would deny Mr. Smith his rights to confront and cross-examine witnesses against him, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution. *See Crawford v. Washington*, 541 U.S. 36 (2004); *Russeau v. State*, 171 S.W.3d 871, 880-81 (Tex. Crim. App. 2005); *See also Porter v. State*, 578 S.W.2d 742, 746 (Tex. Crim. App. 1978)(business records not admissible if they do "not have the indicia of reliability sufficient to insure the integrity of the fact finding process commensurate with the constitutional rights of confrontation and cross-examination").

XXXI.
The State Should Not Refer To The Complainant As A "Victim"

No one, including the prosecutor or any witness should refer to the complainant as a "victim." Mr. Smith is presumed innocent in this case and will enter a plea of "not guilty" before the jury. Referring to the complainant as a victim is improper and denies him his constitutional presumption of innocence, in violation of the Fourteenth Amendment to the United States Constitution. *Cf. Talkington v. State*, 682 S.W. 2d 674, 675 (Tex. App.–Eastland 1984, pet. ref'd)(improper to refer to complainant as "victim in court's charge).

XXXII.
Unauthenticated Electronic Communications

Purported electronic communications, including text messages, emails, or Facebook communications are inadmissible unless properly authenticated. The proponent of such evidence must make a *prima facie* case of authoriship before the trial court, which serves as the gatekeeper, before same can be admitted before the jury. *See Tienda v. State*, 2012 WL 385381(Tex. Crim. App. 2012).

XXXIV.
All Evidence Illegally Seized At 7200 Burns Lane

Mr. Smith has filed a motion to suppress physical evidence and a supplemental motion to suppress physical evidence in which he has demonstrated that the evidence seized from 7200 Burns Lane, and subsequently, from computers taken from that address were illegally seized, in violation of the Fourth and Fourteenth Amendments to the United States Constitution, Article I, § 9 of the Texas Constitution, and articles 18.02 and 38.23 of the Texas Code of Criminal Procedure. Accordingly, these items should be suppressed, and neither testimony nor photographs of these items should be admitted.

XXXV.
The Discovery Of Non-Criminal Materials At 7200 Burns Lane

On January 24, 2018, officers with the San Antonio Police Department obtained and executed a search warrant on a residence at 7200 Burns Lane and photographed or

seized a large amount of non-criminal material, including photographs, books, videotapes, CDs, DVDs, floppy disks, cards, notes, writings, audio cassettes, a pistol, ammunition, a stun gun, and video games. These non-criminal materials are irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. If relevant to anything, they are relevant only to character conformity, and therefore inadmissible under Rule 404(b). And they are unfairly prejudicial, confusing and misleading, and therefore inadmissible under Rule 403, 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.

XXXVI.
Gang-Related Activity, Murder, Drugs, And A Neighborhood Living In Fear

At the motion to suppress hearings, officers Vasquez and Flores both testified that they are members of the gang unit, and that they were in the area where they arrested Mr. Smith because, among other things, they were investigating gang-related activity. Officer Vasquez mentioned murders, drugs, and said that the neighborhood was living in fear. In fact, as officer Vasquez admitted, Mr. Smith is not a gang member, and he was not engaged in gang activity that night. The state cannot prove beyond a reasonable doubt that Mr. Smith perpetrated any gang-related behavior. Mr. Smith has not been convicted of any offense concerning these transactions, as required by Rule 609 of the Texas Rules of Evidence. These transactions are irrelevant and

therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. If relevant to anything, they are relevant only to character conformity, and therefore inadmissible under Rule 404(b). These transactions are unfairly prejudicial, confusing and misleading, and therefore inadmissible under Rule 403.

XXXVII.
Testimonial Aids Should Be Prohibited

The complainant should be prohibited from bringing anything to the witness stand with her when she testifies, such as animals, stuffed animals, or dolls. Such materials would arouse sympathy from the jury in violation of Rule 403 of the Texas Rules of Evidence, 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.

XXXVIII.
Prior Pleas, Plea Discussions, And Related Statements

Mr. Smith objects to any suggestion by any person, direct or indirect, that he entered or attempted to enter into a plea bargain with the state. or that he had any plea discussions, written or oral, or that he made any statements, written or oral, in connection with plea bargaining, or that he withdrew from a plea bargain in this case. TEX. R. EVID. 410 strictly prohibits any mention of such matters. Additionally, any mention of such matters would be irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence, and would also be unfairly prejudicial,

confusing and misleading, and therefore inadmissible under Rule 403.

(GRANTED) (DENIED)

XXXIX.
Strong And Early Admonitions About Publicity Are Needed

During the trial of Mark Garcia, the local media regularly noted that Mr. Smith had first accepted, then later withdrawn from a plea bargain. Counsel expects similar reporting during Mr. Smith's trial. Such coverage, if consumed by any juror, would impair Mr. Smith's constitutional presumption of innocence, and would deny him his right to a fair and impartial trial and due process and due course of law, in violation of the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, §§ 10, 13 and 19 of the Texas Constitution. We request that this Court give a strong admonishment to the jury panel, at the very beginning of the voir dire process, that they are not to read or listen to any accounts of this trial in the media, or anywhere else, and that they are not to seek out or receive any information in oral, written or electronic form, at any time before or during this trial. We further request that similar and regular admonishments be given throughout the trial, and at the close of every day of trial.

(GRANTED) (DENIED)

XXXX.
Alleged Nicknames

At the trial of Mark Garcia, unsubstantiated allegations were made that Mr.

Smith has been known by derogatory nicknames. He objects to any suggestion by anyone at this trial that he has been known by derogatory nicknames. These nicknames are irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. If relevant to anything, they are relevant only to character conformity, and therefore inadmissible under Rule 404(b). Furthermore, they are unfairly prejudicial, confusing and misleading, and therefore inadmissible under Rule 403.

(GRANTED) (DENIED)

XXXXI.
Allegations Of Gang Involvement

From discovery and reviewing the witness lists, the defense believes that state might attempt to offer evidence that Mr. Smith is, or that he has in the past been, associated with gangs. The state cannot prove beyond a reasonable doubt that Mr. Smith is or has been involved with any gangs or gang-related behavior. Mr. Smith has not been convicted of any offense concerning gangs, as required by Rule 609 of the Texas Rules of Evidence. These allegations are irrelevant and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. If relevant to anything, they are relevant only to character conformity, and therefore inadmissible under Rule 404(b). These allegations are unfairly prejudicial, confusing and misleading, and therefore inadmissible under Rule 403.

(GRANTED) (DENIED)

XXXXII.
Handcuffs

Mr. Smith was handcuffed, arrested, and taken to an interrogation room at the San Antonio Police Department. He was forced to remain in handcuffs throughout most of the interview, which was videotaped by the police department. Showing Mr. Smith in handcuffs will impair his presumption of innocence, in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and the Due Course of Law Clause of Article I, §§ 10, 13 and 19 of the Texas Constitution. *Cf. Shaw v. State*, 846 S.W. 2d 482, 487 (Tex. App. -- Houston [14th Dist.] 1993, pet. ref'd)(reversible error to shackle defendant in jury's presence, absent compelling need to do so). *See also Estelle v.* Williams, 425 U.S. 501 (1976); *Long v. State*, 823 S.W.2d 259, 283 (Tex. Crim. App. 1991); *Cooks v. State*, 844 S.W. 2d 697, 722-23 (Tex. Crim. App. 1992). Additionally, this evidence is irrelevant, and therefore inadmissible under Rules 401 and 402 of the Texas Rules of Evidence. Finally, whatever arguable relevance this portion of the videotape has is substantially outweighed by its potential to unfairly prejudice Mr. Smith, and therefore inadmissible under Rule 403 of the Texas Rules of Evidence.

XXXXIII.
Miscellaneous Irrelevant And Prejudicial Evidence

The defense knows from discovery that various items of evidence have been examined in this case. Several things have been disclosed to the defense that apparently

have no even arguable connection to this alleged offense. Admission of these unrelated items would violate Rules 401, 402, and 403 of the Texas Rules of Evidence, and we object:

1. A baseball bat discovered in a room long after Mr. Smith had been in the room.
2. A .380 caliber handgun, with ammunition, found in Mr. Smith's home, and an unidentified metal fragment found in the trailer at 9394 S. W.W. White Road.
3. Various ordinary household items purchased at Home Depot on November 16, 2017.
4. Information that Mrs. Smith was going to inherit a sum of money from the death of a relative.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of Defendant's Objections To Evidence Pursuant To Rule 103(a)(1) has been delivered to the Bexar County District Attorney's Office on this the

14th day of July, 2018.

_____
MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered Defendant's Objections To Evidence Pursuant To Rule 103(a)(1), and said Objections are hereby granted or denied as indicated in the motion.

_____
JUDGE PRESIDING