

NO. 60000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER FOUR
JOE SMITH) BEXAR COUNTY, TEXAS

**OBJECTION TO READING THE ENHANCEMENT
PARAGRAPH TO THE JURY OR OTHERWISE MENTIONING
DEFENDANT'S PRIOR CONVICTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith objects, pursuant to Rule 103(a)(1) of the Texas Rules of Evidence, to the State reading the enhancement portion of the information to the jury or otherwise mentioning or offering evidence that he has previously been convicted of driving while intoxicated.

I.

Article 36.01(a)(1) of the Texas Code of Criminal Procedure prohibits the state from reading a non jurisdictional enhancement paragraph at the guilt-innocence of the trial. Mr. Smith has elected to have the Court decide his punishment so the question of enhancement will never be relevant to the jury.

II.

Nor should the state be able to offer evidence or mention in any way whatsoever before the jury that Mr. Smith has been previously convicted of driving while intoxicated. This evidence is irrelevant and therefore not admissible under Rules 401 and 402 of the Texas Code of Evidence. Additionally, if relevant at all, this evidence goes only to propensity and is therefore not admissible under Rule 404(b) and, whatever marginal

relevancy evidence, its probative value is substantially outweighed by its potential for prejudice.

III.

Nor is the evidence admissible for impeachment under Rule 609 because driving while intoxicated is not a crime of moral turpitude.

WHEREFORE, PREMISES CONSIDERED, defendant prays that this Honorable Court grant defendant's Motion Objecting To Reading The Enhancement Paragraph To the Jury or Otherwise Mentioning Defendant's Prior Conviction.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that defendant's Objection To Reading The Enhancement Paragraph To the Jury or Otherwise Mentioning Defendant's Prior Conviction has been delivered to the District Attorney's Office; Justice Center; 300 Dolorosa; San Antonio, Texas, on this the 26th day of April, 2019.

MARK STEVENS

ORDER

On this the _____ day of _____, 2019, came to be considered Defendant's Objection To Reading The Enhancement Paragraph To the Jury or Otherwise Mentioning Defendant's Prior Conviction, and it appears to the Court that this Motion should be

(GRANTED)

(DENIED)

JUDGE PRESIDING