

NO. B000000

STATE OF TEXAS ) IN THE CITY OF SAN ANTONIO  
VS. ) MUNICIPAL COURT  
EDWARD SMITH ) BEXAR COUNTY, TEXAS

**DEFENDANT'S MOTION TO SET ASIDE THE COMPLAINT**

TO THE HONORABLE JUDGE OF SAID COURT:

Edward Smith moves that the complaint filed this case be set aside 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 charging instrument fails to allege an offense against the State of Texas in that a necessary element of Public Intoxication has not been alleged. No where in the complaint does Complainant allege Edward Smith was "intoxicated"; instead the complaint alleges that Defendant was "under the influence". Being "intoxicated" is a necessary element to the offense of Public Intoxication. *See* Section 49.02 of the Texas Penal Code. Because the charging instrument has failed to allege an offense against the State of Texas, it should be set aside.

II.

The complaint alleges that defendant acted recklessly, but it does not specify with reasonable certainty the acts relied upon to constitute reckless conduct, in violation of article 21.15 of the Texas Code of Criminal Procedure.

III.

The complaint alleges defendant endangered "others" without specifying who those others are.

IV.

Because of these defects:

1. The Complaint 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 Complaint does not state "[e]verything . . . which is necessary to be proved", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.03.
4. The Complaint 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 Complaint 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 Complaint in the above-numbered and entitled cause.

Respectfully submitted:

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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I certify that a copy of defendant's Motion To Set Aside The Complaint has been delivered to the City Attorney's Office, 401 S. Frio; San Antonio, TX 78207, on this the 17th 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 Complaint, and said Motion is hereby

(GRANTED) (DENIED)

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JUDGE PRESIDING