

NO. 2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 226TH JUDICIAL DISTRICT
STEVEN SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO
SET ASIDE THE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Stephen Smith moves that the indictment filed in the above entitled and numbered cause 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, 21.09 and 21.11 of the Texas Code of Criminal Procedure for the following reasons:

I.

The indictment alleges that defendant murdered Fernando Lujan while in the course of committing and attempting to commit the offense of robbery. Under the statute, a person can commit the offense of robbery in two different ways. Tex. Penal Code Ann. § 29.02. The indictment merely alleges robbery without stating the particular type of robbery, the specific acts defendant allegedly committed, or the constituent elements of robbery.

II.

The indictment does not allege a culpable mental state for the component offense of robbery.

III.

The indictment does not state the manner and means by which the alleged robbery was committed.

IV.

The indictment alleges that "defendant did . . . intentionally cause the death of Fernando Lujan and Steven Smith did . . . intentionally cause the death of Fernando Lujan while in the course of committing and attempting to commit the offense of robbery . . ." It can be seen that this indictment charges two separate offenses, murder and capital murder, in the same paragraph, and is thus duplicitous in violation of Tex. Code Crim. Proc. Ann. art. 21.14(b).

V.

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:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Motion has been delivered to the District Attorney's Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on this the 25th day of August, 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