

NO. 100000

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

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

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that the information 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, and 21.11 of the Texas Code of Criminal Procedure for the following reasons:

I.

The indictment in the present case purports to allege the offense of prostitution.

II.

Deviate sexual intercourse is statutorily defined as any "contact between the genitals of one person and the mouth or anus of another." TEX. PENAL CODE Section 43.01(1).

III.

Although there are at least four different ways deviate sexual intercourse could be performed under § 43.01(1), the information does not specify what type of deviate sexual intercourse the State will rely on to prove its accusation. That is, the information does not state whether the contact Defendant allegedly offered to engage in was to have been contact

between Defendant's genitals and the complainant's mouth, or Defendant's genitals and the complainant's anus, or between complainant's genitals and Defendant's mouth, or between complainant's genitals and Defendant's anus.

IV.

Because of these defects:

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

Respectfully submitted:

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CERTIFICATE OF SERVICE

I 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 1st 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 Information, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING