

NO. 000000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER 11
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 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 information alleges that Mr. Smith intentionally and knowingly entered on property of another, Kids Care Learning Center, without effective consent, and that he had notice entry was forbidden.

II.

The information alleges: "Kings Kids Learning Center". However, Kings Kids Learning Center comprises four (4) different buildings and is located at two (2) different addresses. Kings Kids Learning Center's address is 303 Geneviere Dr., San Antonio, Texas, 78214, while the Omega Church (still operating under the umbrella of the Kings Kids Learning Center) is located at 3737 Roosevelt Ave., San Antonio, Texas, 78214. The information is defective because it fails to allege "the general locality in the county" of the real estate involved, or "the name of the owner, occupant, or claimant thereof", in

violation of TEX. CODE CRIM. PROC. ANN. art. 21.09; *See Franks v. State*, 688 S.W.2d 502, 503 (Tex. Crim. App. 1985)(“Art. 21.09 applies to real estate alleged qua object of the offense, but not to real estate alleged only qua situs of the offense”).

III.

The information is defective because it alleges that entry was made without effective consent, but it does not specify how the consent was not effective, even though the term "effective consent" has multiple statutory definitions. *See Geter v. State*, 779 S.W.2d 403, 406 (Tex. Crim. App. 1989).

IV.

The information is defective because it does not allege what sort of notice the defendant had that entry was forbidden, even though the statute specifies several different forms of notice. *Cf. Geter v. State*, 779 S.W. 2d at 406.

V.

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 defendant's Motion To Set Aside The Information has been delivered to the District Attorney's Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on this the 19th day of September, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2016, came on to be considered Defendant's Motion to Set Aside the Information, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING