

NO. 000000

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

DEFENDANT'S MOTION TO SET ASIDE THE INFORMATION

TO THE HONORABLE JUDGE OF SAID COURT:

Jose 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, 21.09 and 21.11 of the Texas Code of Criminal Procedure for the following reasons:

I.

The information is defective because it alleges “cock fighting knives without describing same by name, kind, number and ownership, in violation of article 21.09 of the Texas Code of Criminal Procedure. Nor does the information allege that possession of these items “is not otherwise an offense,” or that they were “specially designed, made, or adapted for use in the commission of an offense,” pursuant to § 16.01 (b) of the Texas Penal Code.

II.

The information alleges the intent to use the knives in the commission of the offense of “animal cruelty.” There is no such offense under the Texas Penal Code.

III.

The information does not adequately allege the manner and means by which this offense was allegedly committed. *Haecker v. State*, 571 S.W. 2d 920, 922 (Tex. Crim. App. 1978)(information for animal cruelty must allege manner and means by which defendant tortured the animal).

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 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 29th 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 Information, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING