

NO. 000000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 186th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

MOTION TO QUASH GRAND JURY SUBPOENA

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to quash the grand jury subpoena issued for him and for good cause shows the following:

I.

Movant was subpoenaed to appear before the Bexar County Grand Jury on November 30, 2018. A copy of that subpoena is attached to this motion.

II.

Undersigned counsel believes that movant is presently the target of a criminal investigation in Bexar County. Because this investigation is pending, counsel has advised movant to invoke his right to remain silent, pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution, if called before the Bexar County Grand Jury. Movant intends to comply with the advice of counsel.

III.

Counsel believes that the grand jury before which movant has been subpoenaed to

testify is also investigating movant for allegedly having violated certain criminal laws in Bexar County. If this is so, it will be unfairly prejudicial to require movant to appear and invoke his constitutional right not to incriminate himself. It is virtually a certainty that a grand jury, whose duty it is to indict persons based on probable cause, would return a true bill after the target of an investigation stands before it and refuses to testify against himself.

IV.

It violates Due Process and Due Course of Law for the State to advise a defendant he has a right to remain silent, then to penalize him when he exercises that right. *Doyle v. Ohio*, 426 U.S. 610 (1976). But that is exactly what will happen should this motion be denied. The state will advise movant of his constitutional right not to testify before the grand jury, he will exercise that right, and then the state will penalize him with an indictment.

V.

Rule 513(b) of the Texas Rules of Evidence is analogous. That rule provides that “[i]n jury cases, proceedings shall be conducted, to the extent practicable, so as to facilitate the making of claims of privilege without the knowledge of the jury.” The rationale behind this rule is clearly to prevent the fact finder from being prejudiced by the invocation of a privilege. Movant submits that the same rationale pertains with respect to the grand jury. To prevent grand jury prejudice and to insure the integrity of the grand

jury system, this Court should quash this grand jury subpoena so that movant is not penalized for exercising a constitutional right.

VI.

Alternatively, if this Court denies this motion, the Court should instruct the District Attorney's Office not to seek an indictment against movant from the same grand jury that hears him invoke his constitutional right. If an indictment is to be sought against movant, it should be sought from another grand jury, which does not hear movant invoke his right to remain silent, and that grand jury should not be informed in any way that the movant previously invoked this constitutional right.

WHEREFORE, premises considered, the defendant prays that the Court quash the grand jury subpoena in this cause.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of movant’s Motion to Quash Grand Jury Subpoena has been delivered to the Bexar County District Attorney’s Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on November 26, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came on to be considered Movant’s Motion to Quash Grand Jury Subpoena, and said Motion is hereby

(GRANTED) (DENIED)

JUDGE PRESIDING