

NO. 18-00000

STATE OF TEXAS	)	IN THE DISTRICT COURT
VS.	)	81ST/218TH JUDICIAL DISTRICT
JOE SMITH	)	WILSON COUNTY, TEXAS

**DEFENDANT'S MOTION TO DETERMINE WHETHER  
EXCULPATORY EVIDENCE WAS PRESENTED TO THE GRAND JURY**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to determine whether exculpatory evidence was presented to the grand jury that indicted him, and for good cause, shows the following:

I.

It is the duty of the attorney representing the state to examine witnesses before the grand jury, to advise the grand jury as to the proper mode of interrogating these witnesses, and to advise the grand jury upon matter of law relating to the case before it. TEX. CODE CRIM. PROC. ANN. arts. 20.03, 20.04, 20.05.

II.

It is the duty of the grand jury to "diligently inquire into" matters, TEX. CODE CRIM. PROC. ANN. art. 19.34, and to vote as to the presentment of an indictment "[a]fter *all the testimony which is accessible* to the grand jury shall have been given in respect to any criminal accusation. . . ."TEX. CODE CRIM. PROC. ANN. art. 20.19 (emphasis supplied).

III.

The Texas Constitution guarantees the right to prosecution on indictment of a grand jury. TEX. CONST. Art. I, § 10. Texas prosecutors have the duty to seek justice, and may

not suppress facts or secret witnesses "capable of establishing the innocence of the accused." TEX. CODE CRIM. PROC. ANN. art. 2.01. Even if the federal Constitution does not require the presentation of exculpatory evidence, it is clear that the Texas Constitution can provide greater protection. Mr. Smith submits that the Texas Constitution and Texas law impose on Texas prosecutors at least a limited duty to present exculpatory evidence to a Texas grand jury before seeking an indictment *See In re Grand Jury Proceedings 198.GJ.20*, 129 S.W. 3d 140, 145 (Lopez, C.J. dissenting).

#### IV.

There was ample exculpatory evidence in this case that was in the state's possession when this indictment was sought. It is unknown whether the state presented any of this exculpatory evidence to the grand jury that indicted Mr. Smith. If it did not, the state violated Mr. Smith's rights to due process and due course of law, guaranteed by the Texas and United States Constitutions, as well as article 2.01, 19.34, and 20.19, by failing to present exculpatory evidence to the grand jury which subsequently decided to indict defendant.

#### V.

This Court should determine what exculpatory evidence was in the state's possession at the time it indicted Joe Smith, and whether this evidence was presented to the grand jury. This determination could be made *in camera*. If exculpatory evidence was

possessed by the state and was not presented to the indicting grand jury, this indictment should be dismissed.

Respectfully submitted:

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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I certify that a copy of Defendant's Motion To Determine Whether Exculpatory Evidence Was Presented To The Grand Jury was mailed to the District Attorney's Office; 1327 3rd Street; Floresville, Texas 78114 on this the 7th day of February, 2018.

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MARK STEVENS

**ORDER**

On this the \_\_\_\_ day of \_\_\_\_\_, 2018, came to be considered Defendant's Motion To Determine Whether Exculpatory Evidence Was Presented To The Grand Jury, and said motion is hereby

(GRANTED)

(DENIED)

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JUDGE PRESIDING