

NO. 2018-CRM-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 1ST JUDICIAL DISTRICT
JOE SMITH) ANDERSON COUNTY, TEXAS

**PETITION FOR DISCLOSURE OF
GRAND JURY INFORMATION**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith petitions for disclosure of grand jury information pursuant to article 20.02(d) of the Texas Code of Criminal Procedure.

**I.
The Facts**

On January 6, 2008, John Jones was duly appointed presiding juror of the grand jury for the 1st Judicial Court. [See Exhibit A, attached] On January 20, 2008, Sandra Brown – a sister of the complainant Javier Brown – wrote a letter to District Attorney Johnson alleging that Mr. Jones was “close to,” and a “political supporter,” and a “compadre” of defendant’s father. [See Exhibit B, attached] Before the letter, the District Attorney’s Office had advised counsel for Mr. Smith that his case would be presented to the grand jury on January 31, 2008. Instead, four days after Ms. Brown’s letter, and at a time when it had originally been scheduled to be in recess, [See Exhibit C, attached], the grand jury met and returned a single indictment — against Joe Smith. The indictment was signed, not by the duly appointed foreperson, but by Ann Fernandez, who had originally been appointed assistant presiding juror. [See Exhibit D, attached]

II.
Article 20.02(d)

Article 20.02(d) of the Texas Code of Criminal Procedure provides that a “defendant may petition a court to order the disclosure of information otherwise made secret by [law].” Disclosure may be ordered, upon “a showing by the defendant of a particularized need.”

III.
**In Texas, The Court, Not The Prosecutor,
Appoints And Replaces The Foreperson**

In Texas, it is the foreperson’s duty to “preside over the sessions of the grand jury, and conduct its business and proceedings in an orderly fashion.” TEX. CODE CRIM. PROC. ANN. art. 20.07. The Court appoints the foreperson when the grand jury is empaneled. TEX. CODE CRIM. PROC. ANN. art. 19.34. If the foreperson becomes absent, unable, or disqualified to act, “*the court* shall appoint in his place some other member of the body.” TEX. CODE CRIM. PROC. ANN. art. 19.39 (emphasis supplied). If the prosecutor learns that a grand juror has become disqualified or disabled, he “shall prepare an order for the court identifying the disqualified or unavailable juror, stating the basis for the disqualification or unavailability, dismissing the disqualified or unavailable juror from the grand jury, and naming one of the alternates as a member of the grand jury.” TEX. CODE CRIM. PROC. ANN. art. 19.26(b).

IV.
Was Foreperson Jones Properly Replaced?

Although it is possible to replace the grand jury foreperson, this can only be done

if he becomes absent, disabled, or disqualified to act, and, if so, replacement can then only be done by the Court. A Texas prosecutor has no authority to replace the foreperson unilaterally. Because grand jury proceedings are secret, the defense has no way of knowing whether there was legal justification to replace Mr. Jones, and whether the replacement was ordered by the Court, in compliance with Texas law. The circumstances in this case suggest a reasonable possibility that Mr. Jones was removed from the grand jury, because of pressure exerted by the complainant's family, and not because he was absent, disabled, or disqualified. It may also be that removal was not by order of the Court. If so, the grand jury that indicted Mr. Smith was illegally constituted, and the indictment should be set aside.

V.

Disclosure Is Justified Under Article 20.02(d)

The best way to determine whether Mr. Jones was properly removed as grand jury foreperson is to ask him about the circumstances of his removal. This line of questions, though, can neither be asked nor answered at the present time, due to the general rules of secrecy that surround the grand jury. TEX. CODE CRIM. PROC. ANN. art. 20.02(a). That inquiry can only be made if the Court grants this petition under article 20.02(d), and we now request that this relief be granted, so that the appropriate inquiry concerning Mr. Jones can be made. The particularized need required under that statute exists here : It is the only way we can show that Mr. Jones was illegally removed as foreperson, and that the resulting indictment against Mr. Smith is therefore illegal.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I certify that a copy of this petition has been mailed to the District Attorney's Office; Anderson County Justice Center; 10 Victoria; Palestine, Texas 78000, on this the 3rd day of July, 2018.

MARK STEVENS

ORDER

On this the _____ day of _____, 2018, came to be considered defendant's Petition For Disclosure Of Grand Jury Information, and said petition is hereby

(GRANTED)

(DENIED)

JUDGE PRESIDING