

NO. 000000

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

**DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that the indictment 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 indictment is defective because:

1. Neither paragraph A nor paragraph B specifies the manner and means whereby defendant allegedly financed or invested funds;
2. Neither paragraph A nor paragraph B alleges with whom or with what entity the funds were invested;
3. Neither paragraph A nor B defines "financed and invested," and without such definition, the terms are vague, imprecise and overbroad;
4. Neither paragraph A nor paragraph B alleges how or in what manner the funds were intended to further the commission of the possession of more than 50 pounds of marijuana;
5. The phrases "further the commission of" are undefined, and without definition are vague, imprecise and overbroad;
6. Neither paragraph A nor paragraph B alleges how much money was purportedly invested and financed;

7. The statute requires that *defendant* invest funds that he knows or believes is intended to further commission of an offense. Paragraph A, although it names only the defendant, does not allege that he knew or believed, but that "each of them knew and believed." By failing to allege that defendant knew or believed, paragraph A does not allege the commission of an offense.

## II.

Both paragraph A and B allege, in single paragraphs, that defendant financed and invested funds . . ." If these words are defined according to common definitions, defendant cannot be guilty of both financing and investing funds. That is, the indictment attempts to charge defendant with two different offenses in single paragraphs, in violation of article 21.24(b) of the Texas Code of Criminal Procedure.

## III.

Because of these defects:

1. The indictment 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 indictment does not state "[e]verything . . . which is necessary to be proved", in violation of TEX. CODE CRIM. PROC. ANN. Art. 21.03.
4. The indictment 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 indictment 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 indictment in the above-numbered and entitled cause.

Respectfully submitted:

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Attorney for Defendant

### **CERTIFICATE OF SERVICE**

I certify that a copy of defendant's Motion To Set Aside The Indictment has been delivered to the District Attorney's Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on this the 1st day of April, 2018.

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MARK STEVENS

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JOE SMITH	)	BEXAR COUNTY, TEXAS

**ORDER**

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2018, came on to be considered Defendant's Motion to Set Aside the Indictment, and said Motion is hereby

(GRANTED) (DENIED)

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JUDGE PRESIDING