

NO. 22-0000-CR

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 454TH JUDICIAL DISTRICT
JOE SMITH) MEDINA 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 that the Court determine whether exculpatory evidence available to the Attorney General's Office was presented to the grand jury that indicted him. If not, this indictment should be dismissed.

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, when sent for by the grand jury, to give advice on any matter of law or on any question regarding the discharge of the grand jury's duties. TEX. CODE CRIM. PROC. arts. 20A.151 and 20A.257.

II.

It is the duty of the grand jury to "inquire into all offenses subject to indictment" of which it has knowledge or is informed, TEX. CODE CRIM. PROC. ANN. arts. 20A.051, and to vote as to the presentment of an indictment "[a]fter *all the testimony accessible* to the grand jury has been given with respect to any criminal accusation. . ." TEX. CODE CRIM. PROC. arts. 20A.301 (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. *Heitman v. State*, 815 S.W.2d 681, 682 (Tex. Crim. App. 1991). 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.

Counsel have been provided a large amount of discovery, but it is presently unknown whether there is more to come. From that discovery we have seen, there was significant exculpatory evidence and information – both legal and factual – that was in the State's possession when this indictment was sought, including the following:

- From reading the discovery so far disclosed, counsel can see no way that the State can prove its case against Mr. Smith without (1) presenting evidence that purportedly incriminates Mr. Smith from one or more persons who are accomplices as a matter of law; and (2) corroborating that testimony with other evidence that tends to connect Mr. Smith with commission of the offenses committed, and that does more than merely show the commission of some offense. TEX. CODE CRIM. PROC. ANN. art. 38.14.

- Each of the other three indicted persons have repeatedly told investigators in recorded interview that they committed no crimes, and two – Mary Johnson and Linda Jones – told the investigators that they knew of no wrongdoing on Mr. Smith's part. In Ms. Johnson's opinion, Mr. Smith was an honest, hardworking, great person who is loved by many people in Medina County because he helps a lot of people, and he would never do anything underhanded.
- Each of the three indicted, alleged collaborators volunteered to help Mr. Smith's campaign, and none were paid anything for the work they did.
- According to Sergeant Williams, mentally ill persons, including those who are diagnosed with schizophrenia and bipolar disorder, can vote unless they have been declared ineligible to vote, and none of the voters named in the indictment have been so declared ineligible.
- Others campaigning for political office in Medina County have visited the residential facilities in question here, and residents from those facilities have voted in past elections. Mr. Smith was lawfully entitled to visit each residential facility in question, to speak to the residents, to explain his credentials and qualifications, to hand out campaign materials, and to ask the residents for their votes; and he did all that before the ballot of any resident voter named in the indictment was sought or submitted.
- No voter has reported that Mr. Smith possessed any ballot or carrier envelope, or that he unlawfully assisted anyone with voting, or that Mr. Smith collaborated with anyone in the commission of any election law offense, or that he was present when any voter voted, or that he instructed, encouraged, or counseled any person to violate any election law.
- No certified handwriting expert has identified any of the voting documents in this case as forged, or marked, or signed illegally by another, or alleged that such documents were in anyway created in violation of Texas election laws.

V.

It is unknown whether the State presented any of this exculpatory evidence and information 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 articles 2.01, 20A.151 and 20A.257, 20A.051, and 20A.301 of the Texas Code of Criminal Procedure, by failing to present exculpatory evidence to the grand jury which subsequently decided to indict.

VI.

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:

/s/ Mark Stevens

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CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion has been electronically delivered to the Texas Attorney General's Office on March 13, 2023

/s/ Mark Stevens

MARK STEVENS

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ORDER

On this the ____ day of _____, 2022, 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)

JUDGE PRESIDING