

NO. 000000000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 454TH JUDICIAL DISTRICT
JOE SMITH) MEDINA COUNTY, TEXAS

MOTION TO REQUIRE THE STATE TO REVEAL AGREEMENTS

ENTERED INTO BETWEEN THE STATE AND ITS WITNESSES

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves the Court to order the state to reveal any inducements offered by the State which might tend to motivate its witnesses to testify, and shows the following:

I.

Mr. Smith was indicted on February 9, 2021 in Bandera County, Texas in an indictment that alleged in 35 counts various violations of the Texas Election Code. That indictment was dismissed on December 20, 2021. Mr. Smith was indicted on January 7, 2022 in Medina County in an indictment also alleging 35 counts of violations of the Texas Election Code.

Three others – Mary Smith, Jane Doe, and John Thomas – were also indicted in Bandera County on February 9, 2021. Based on recent pleadings by the State, the defense understands that the indictments against Ms. Smith, Ms. Doe, and Mr. Thomas, have not been dismissed. Count 1 of the three indictments pending in Bandera County, and of Mr. Smith’s indictment in the instant case in Medina County, are identical, alleging that the indictees had engaged in Organized Election Fraud; that each were members of a “vote

harvesting organization;” and that they collaborated with each other in carrying on the same various offenses under the Texas Election Code.

In addition to count 1, the indictment of Mary Smith alleged 64 counts of offenses in violation of the Election Code, and the Texas Penal Code.

In addition to count 1, the indictment of Jane Doe alleged 24 counts of offenses in violation of the Election Code, and the Texas Penal Code.

In addition to count 1, the indictment of John Thomas alleged 17 counts of offenses in violation of the Election Code.

In State’s Response To Defendant’s Motion To Dismiss Information And Complaint, signed by Assistant Attorney on January 5, 2022, the prosecutor identifies Ms. Smith, Mr. Thomas, and Ms. Doe, as “accomplices.” [Exhibit L. p. 11] Of course, they are accomplices as a matter of law, by virtue of their indictments. *E.g., Burns v. State*, 703 S.W.2d 649, 651-52 (Tex. Crim. App. 1985). Prosecutor Fuller’s pleading goes on to say this:

All three co-defendants to Defendant’s case – Mary Smith, John Thomas, and Jane Doe – remain indicted in Bandera County, Texas. They have, through counsel, agreed to testify against Defendant, and they have agreed themselves not to pursue dismissal of their own cases until the resolution of the case against Defendant.

Exhibit L, p. 11]

II.

There can be no doubt that prosecutors have offered the three alleged accomplices, either personally, or through their lawyers, inducements for their testimony. Mr. Smith is entitled to discover any inducement offered by the state which might tend to motivate any

of its witnesses to testify in this case, including, but not limited to, plea bargain agreements, fees, expenses, or reward arrangements with witnesses or informants, agreements to dismiss, or reduce or not to bring charges, or any other agreement for leniency in exchange for testimony or cooperation. Such information affects the credibility of the state's witnesses, and Mr. Smith is entitled to it under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the due course of law clause of Article I §§ 13 and 19 of the Texas Constitution, his right to effective assistance of counsel, confrontation and cross-examination, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, article I, § 10 of the Texas Constitution, and articles 1.05 and 1.25 of the Texas Code of Criminal Procedure.

III.

This request includes both formal or express agreements, as well as implied, suggested, insinuated, inferred, or informal agreements. It also includes agreements with the witness, as well as with the witness's spouse, relatives, friends and associations which might tend to motivate the witness to testify for the state in this case. It also includes any agreements made between the state and the witness's lawyers, whether or not the agreement is known to the witness. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972), the Court reversed a conviction where the government failed to disclose to defendant that its star witness had been promised immunity for his testimony. *Giglio*, of course, has been followed in Texas. *E.g.*, *Burkhalter v. State*, 493 S.W. 2d 214, 219 (Tex. Crim. App. 1973).

IV.

Defendant requests the exact and complete nature of the inducement, including aid, assistance, reward, compensation or benefit conferred, and all documents, records, memoranda and notes reflecting any conversations with the witnesses and their attorneys.

V.

Joe Smith respectfully requests the Court to hold a hearing on this motion prior to trial, and that, after hearing this motion, that the court order immediate disclosure to the defense of the materials requested.

Respectfully submitted:

/s/ Mark Stevens

MARK STEVENS

310 S. St. Mary's Street

Tower Life Building, Suite 1920

San Antonio, TX 78205

(210) 226-1433

State Bar No. 19184200

mark@markstevenslaw.com

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion To Require The State To Reveal Agreements Entered Into Between The State And Its Witnesses has been electronically delivered to assistant Attorneys General, on February 3, 2022.

/s/ Mark Stevens
MARK STEVENS

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ORDER

The defendant's Motion To Require The State To Reveal Agreements Entered Into
Between The State And Its Witnesses having been presented to the Court, is hereby

(GRANTED) (DENIED)

PRESIDING JUDGE