

A Few Good Motions

Mark Stevens

**1st Annual Fiesta
Advanced Criminal Law Course
Airport Hilton
San Antonio, TX**

April 5, 2019

mark@markstevenslaw.com

A. Begin At The Beginning

Contract

Notice of Appearance of Counsel

MARK STEVENS
Lawyer
Tower Life Building, Suite 1920
310 S. St. Mary's Street
San Antonio, Texas 78205

BOARD CERTIFIED—CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

OFF: (210) 226-1433
FAX: (210) 226-4708
mark@markstevenslaw.com

April 1, 2018

Re: State of Texas vs. Joe Smith, No. 2018-CR-1000
Charge: Murder

Dear Joe:

Thank you for the opportunity to represent you in this matter. I want to maintain a good working relationship with you as the matter proceeds, so I am writing you to discuss the two areas in which problems between attorneys and clients most frequently arise, a lack of communication, and fee agreement.

To avoid any problems with communication, I will attempt to keep you informed of developments in your case as they arise. However, you should never feel that you have to wait for my call. If at any time you have a question regarding your case, please feel free to call and discuss your concern. The best way to reach me during business hours is at the office: 210-226-1433. You can also call or text me on my cell phone: 210-240-4535. My email is mark@markstevenslaw.com.

To avoid any misunderstanding regarding attorney's fees, this letter will also confirm the agreement which has been reached in your case, and our obligation to you in the course of the representation.

The fee in this case is structured to correspond to the major points of opportunity for disposing of your case:

1. An initial fee of \$xx,xxx.00 will be payable immediately. This will be my fee to handle your case if a contested trial is not required. If this case can be resolved without a trial at all, either by dismissal or plea bargain, this will be the only fee required.
2. If a contested trial is required, an additional fee of \$xx,xxx.00 will be due no later than 30 days before the trial is scheduled to start, and will be

Sample 1

NO. 2019-CR-000000

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

NOTICE OF APPEARANCE AS RETAINED COUNSEL

TO THE HONORABLE JUDGE OF SAID COURT:

Mark Stevens has been retained to represent Joe Smith in this case.

Respectfully submitted:

MARK STEVENS
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205-3192
(210) 226-1433
State Bar No. 19184200
mark@markstevenslaw.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of defendant's Appearance of Counsel was delivered to the District Attorney's Office, Bexar County Justice Center, 101 W. Nueva, San Antonio, Texas, on March 12, 2019.

MARK STEVENS

Sample 2

B.

Discovery

After Michael Morton.

Discovery

Before Michael Morton

Defendant's Motion For Discovery And Other Relief

2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 175TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**DEFENDANT'S MOTION FOR DISCOVERY
AND OTHER RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves for the following relief:

**I.
Request For Court Reporter**

Defendant requests that the official court reporter make a full record of all proceedings that occur in Court, as required by Rule 13.1 of the Texas Rules of Appellate Procedure.

(GRANTED) (DENIED)

**II.
Request For Pre-Trial Hearing**

Defendant requests that this Court set a pre-trial hearing and hear all motions filed by the defense prior to the selection of the jury, as permitted by article 28.01 of the Texas Code of Criminal Procedure.

(GRANTED) (DENIED)

Sample 3

Defendant's Motion For Discovery And Other Relief

Other Relief. . .

NO. 000000

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

DEFENDANT'S MOTION FOR DISCOVERY AND OTHER RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

I. Request For Court Reporter

Defendant requests that the official court reporter make a full record of all proceedings that occur in Court, as required by Rule 13.1 of the Texas Rules of Appellate Procedure.

(GRANTED) (DENIED)

II. Request For Pre-Trial Hearing

Defendant requests that this Court set a pre-trial hearing and hear all motions filed by the defense prior to the selection of the jury, as permitted by article 28.01 of the Texas Code of Criminal Procedure.

(GRANTED) (DENIED)

III. Discovery

I. Pursuant to article 39.14(a) of the Texas Code of Criminal Procedure, and Rules 612 and 615 of the Texas Rules of Evidence, defendant requests that the state, as soon as

- Request For Court Reporter
- Request For Pretrial Hearing
- Motion In Limine
- Motion To Voir Dire Experts
- Motion For *Daubert* Hearing
- Motion For Identification Hearing

Discovery

After Michael Morton

2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 175TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

REQUEST THAT THE STATE PRODUCE AND PERMIT INSPECTION AND ELECTRONIC DUPLICATION, COPYING, AND PHOTOGRAPHING OF MATERIALS PURSUANT TO ARTICLE 39.14(a) OF THE TEXAS CODE OF CRIMINAL PROCEDURE

TO THE BEXAR COUNTY DISTRICT ATTORNEY::

Joe Smith requests that the State of Texas produce and permit the inspection and the electronic duplication, copying, and photographing by counsel, of the following, as required by article 39.14(a) of the Texas Code of Criminal Procedure:

1. All offense and crime scene reports.
2. All written and recorded statements of the defendant.
3. All written and recorded statements of all witnesses.
4. All documents, papers, books, accounts, letters, photographs, videotapes, electronic recordings, cell phone records, text messages, voice mails, emails, social media content, objects and other tangible things that constitute or contain evidence material to any matter involved in the action that are in the possession, custody, or control of the state or any person under contract with the state, except as prohibited by article 39.15 of the Texas Code of Criminal Procedure, or section 264.408 of the Texas Family Code.
5. The following designated documents and materials:
 - a. All notes, calculations, diagrams, measurements, logs, photographs, videotapes, and reports made by experts and relied upon by the State of Texas in this case.
 - b. All lab and toxicology reports in the possession of the prosecutors handling

Sample 4

2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 175TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION FOR DISCOVERY AND OTHER RELIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves for the following relief:

**I.
Request For Court Reporter**

Defendant requests that the official court reporter make a full record of all proceedings that occur in Court, as required by Rule 13.1 of the Texas Rules of Appellate Procedure.

(GRANTED) (DENIED)

**II.
Request For Pre-Trial Hearing**

Defendant requests that this Court set a pre-trial hearing and hear all motions filed by the defense prior to the selection of the jury, as permitted by article 28.01 of the Texas Code of Criminal Procedure.

(GRANTED) (DENIED)

Sample 3

Motion For Discovery And Other Relief

p. 2

Michael Morton Act

Sample 3

practicable, produce and permit the inspection and electronic duplication, copying and

photographing of the following:

a. Any offense reports.

(GRANTED)

(DENIED)

b. All written and recorded statements of the defendant.

(GRANTED)

(DENIED)

c. All written and recorded statements of all witnesses.

(GRANTED)

(DENIED)

d. All documents, papers, books, accounts, letters, photographs, videotapes, COBAN recordings, body cam recordings, dash-mounted video recordings, security videotapes, electronic recordings, cell phone records, cell phone dumps and extractions, text messages, voicemails, emails, social media content, objects and other tangible things that constitute or contain evidence material to any matter involved in the action that are in the possession, custody, or control of the state or any person under contract with the state.

(GRANTED)

(DENIED)

2. Defendant moves that the Court order the prosecutor to provide a list of all witnesses the state intends to call at trial. We further request that this list be in writing and that it be provided no later than 30 days before trial commences. *See Young v. State*, 547 S.W. 2d 23, 27 (Tex. Crim. App. 1977).

(GRANTED)

(DENIED)

3. Pursuant to article 39.14(b) of the Texas Code of Criminal Procedure, defendant moves that the Court order the state to disclose no later than 20 days before commencement

C.

3 More I File In Every Case.

- **Request For Notice Of Intent To Offer Extraneous Conduct Under Rule 404(b) . . . Rule 609(f) . . . And Article 37.07**
- **Motion To Determine Admissibility Of Written Or Oral Statements Of Defendant**
- **Motion To Suppress Physical Evidence**

Request For Notice Of Intent To Offer Extraneous Conduct Under Rule 404(b) . . . Rule 609(f) . . . And Article 37.07

2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 175TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

REQUEST FOR NOTICE OF INTENT TO OFFER EXTRANEIOUS CONDUCT UNDER RULE 404(b) AND EVIDENCE OF CONVICTION UNDER RULE 609(f) AND EVIDENCE OF AN EXTRANEIOUS CRIME OR BAD ACT UNDER ARTICLE 37.07

TO THE BEXAR COUNTY DISTRICT ATTORNEY'S OFFICE:

I.

Pursuant to Rule 404(b) of the Texas Rules of Evidence, defendant requests the state to give reasonable notice in advance of trial of its intent to introduce in its case-in-chief evidence of crimes, wrongs, or acts other than that arising in the same transaction.

II.

Pursuant to Rule 609(f) of the Texas Rules of Evidence, defendant requests that the state give sufficient advance written notice of its intent to use evidence of a conviction against the following witnesses:

Joe Smith

III.

Pursuant to Article 37.07, § 3(g) of the Texas Code of Criminal Procedure, defendant requests that the state give reasonable notice of intent to introduce against the defendant evidence of an extraneous crime or bad act at the punishment phase of the trial.

Sample 5

Motion To Determine Admissibility of Written Or Oral Statements Of Defendant

2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 399TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

MOTION TO DETERMINE THE ADMISSIBILITY OF WRITTEN OR ORAL STATEMENTS OF DEFENDANT

I.

Joe Smith requests the Court to determine, outside the presence of the jury,

United States Constitution; and Article I, § 10 of the Texas Constitution, and *Miranda v. Arizona*, 384 U.S. 436 (1966), and its progeny;

- lawfully, under the Fourth and Fourteenth Amendments to the United States Constitution; Article I, § 9 of the Texas Constitution; and article 38.23 and chapter 14 of the Texas Code of Criminal Procedure;
- consistent with his right to counsel and to remain silent, guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United Constitution and Article I, § 10 of the Texas Constitution.

II.

Defendant requests the Court to instruct the prosecution to ask no question in the

1

But what if he didn't make any statements?

Sample 6

Motions To Suppress Physical Evidence

General

NO. CR2018-00

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 207TH DISTRICT COURT
JOE SMITH) COMAL COUNTY, TEXAS

MOTION TO SUPPRESS EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to suppress all evidence obtained as a result of his seizure and arrest, and the search of his person and vehicle, and for good cause shows the following:

I.

On or about January 7, 2018, officers from the Texas Department of Public Safety seized defendant at 100 Elm Street, New Braunfels, Texas.

II.

There was no reasonable suspicion to seize the defendant. The search of the vehicle and the defendant's person was conducted without warrant, reasonable suspicion, probable cause, or valid consent. Nor was there probable cause to arrest the defendant. Accordingly, the stop of the vehicle, the seizure and arrest of the defendant, and the search of defendant's person and vehicle, violated the Fourth and Fourteenth Amendments to the United States Constitution, Article I § 9 of the Texas Constitution, Article 38.23 of the Texas Code of Criminal Procedure, and Chapter 14 of the Texas Code of Criminal Procedure.

Sample 7

Specific

NO. B10000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 198TH DISTRICT COURT
JOE SMITH) KERR COUNTY, TEXAS

MOTION TO SUPPRESS EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to suppress all evidence obtained as a result of his seizure and arrest, and the search of his person, and for good cause shows the following:

I.

On or about March 13, 2016, at approximately 2:00 pm, officers with the Kerrville Police Department, including B. Brown, J. White, and Jim Jones, were dispatched to the H.E.B. #1, 300 Main St., Kerrville Texas, "regarding some suspicious people who might be intoxicated."¹ Mr. Smith exited the store, alone, in broad daylight, while the store was open for business. He was observed to be "moving very slow and to be unsteady on [his] feet" and was deprived of his freedom of movement by the officers, who acted without a warrant to search or arrest him. The officers detected what they described as "the odor of an alcoholic beverage emitting from [his] breath and or person . . . eyes [that were] glassy and blood shot . . . speech [that] was slow and lethargic and he was unsteady on his feet." According to an officer, at some point Mr. Smith allegedly said he had been mixing a prescription medication with alcohol, and a Horizontal Gaze Nystagmus test revealed six

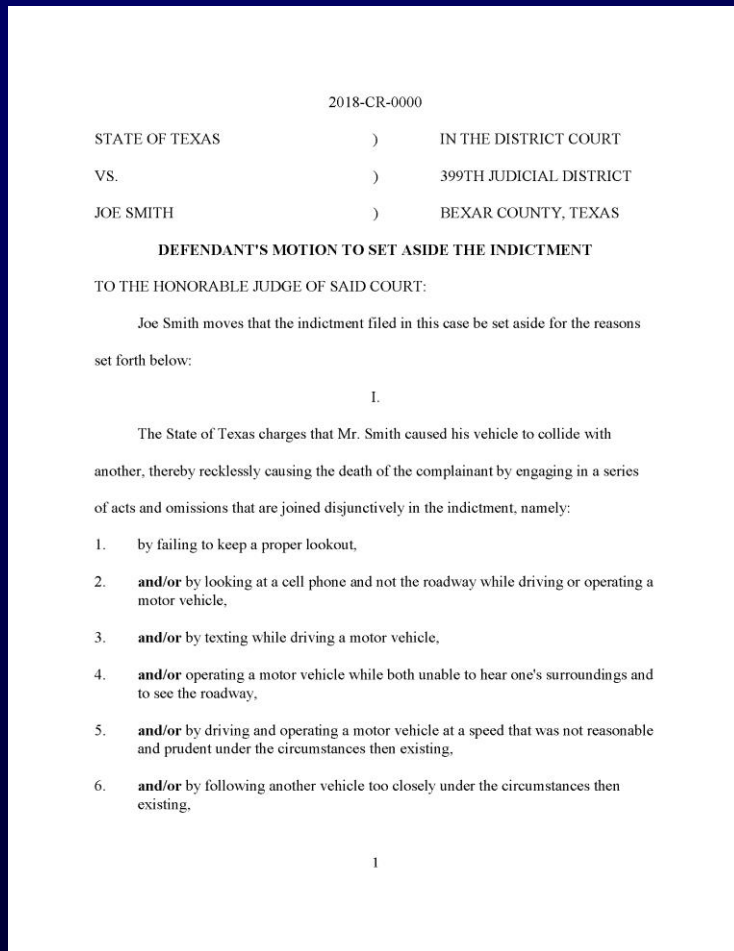
¹ All quoted references are from the report of officer Jones.

Sample 8

D.

**Dismissal Is (Almost)
Always A Good Thing**

Manslaughter



Sample 9

Defendant recklessly caused death by:

- “by failing to keep a proper lookout”
- **and/or by looking at a cell phone and not the roadway while driving or operating a motor vehicle,**
- **and/or by texting while driving a motor vehicle,**
- **and/or by . . . [unable to hear] . . . ,**
- **and/or by driving and operating a motor vehicle at a speed that was not then reasonable and prudent under the circumstances then existing”**

Manslaughter

and/or by driving and operating a motor vehicle at a speed that was not then reasonable and prudent under the circumstances then existing”

2018-CR-0000
STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 399TH 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 for the reasons set forth below:

I.

The State of Texas charges that Mr. Smith caused his vehicle to collide with another, thereby recklessly causing the death of the complainant by engaging in a series of acts and omissions that are joined disjunctively in the indictment, namely:

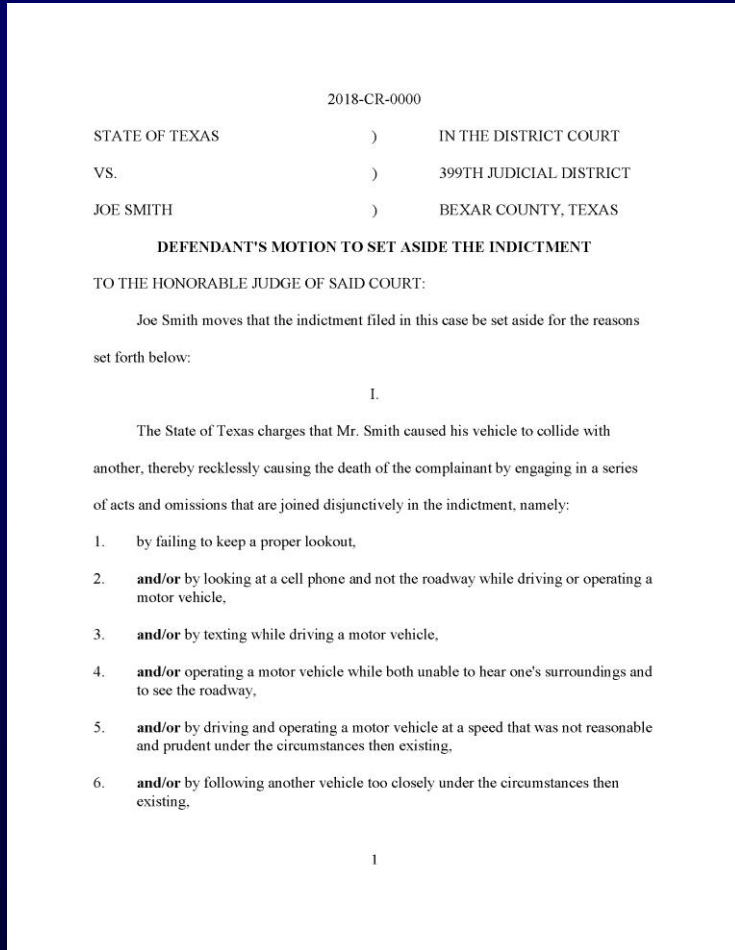
1. by failing to keep a proper lookout,
2. **and/or** by looking at a cell phone and not the roadway while driving or operating a motor vehicle,
3. **and/or** by texting while driving a motor vehicle,
4. **and/or** operating a motor vehicle while both unable to hear one's surroundings and to see the roadway,
5. **and/or** by driving and operating a motor vehicle at a speed that was not reasonable and prudent under the circumstances then existing,
6. **and/or** by following another vehicle too closely under the circumstances then existing.

Sample 9

- *Hunter v. State*, 576 S.W. 2d 395, 399 (Tex. Crim. App. 1979)(not always impermissible to plead disjunctively).

- But . . .

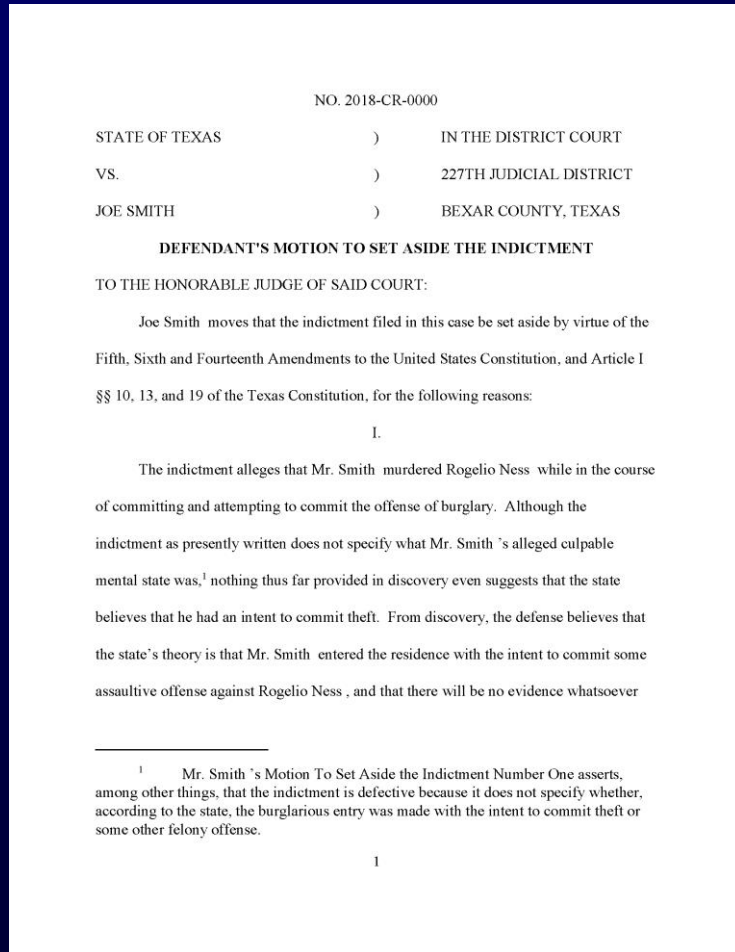
Manslaughter



Sample 9

- ***Flores v. State, 536 S.W. 3d 560, 572 (Tex. Crim. App. 2017)***
- We agree with Flores that the amended indictment did not allege with reasonable certainty the act or acts relied upon to constitute recklessness.
- **Driving “at an excessive rate of speed above the posted speed limit” is not inherently reckless behavior.**
- **Circumstances exist under which one could be driving at an excessive speed above the posted speed limit and not be engaging in reckless driving.**

Capital Murder



**Capital murder
during the course of
committing or
attempting to commit
burglary**

**The state will have to
use the act of murder
twice:
first to prove the
burglary;
second to prove the
capital murder.**

Sample 10

Bootstrapping

Delivery of a Dangerous Drug

CAUSE NO. 0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 216TH DISTRICT COURT
JOE SMITH) GILLESPIE COUNTY, TEXAS

MOTION TO SET ASIDE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to quash the indictment in this case for the following reasons:

I.

The Indictment

The indictment in this case alleges, in pertinent part, that Mr. Smith “did . . . intentionally or knowingly deliver or offer to deliver to Mike Jones a dangerous drug, specifically 25B-NBOMe”

II.

The Statutory Provisions At Issue

- “A person commits an offense if the person delivers or offers to deliver a dangerous drug.” TEX. HEALTH & SAFETY CODE §483.042(a).
- “‘Dangerous drug’ means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V, or Penalty Groups I through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend:
 - (A) ‘Caution: federal law prohibits dispensing without prescription’ or ‘Rx only’ or another legend that complies with federal law; or
 - (B) ‘Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.’” TEX. HEALTH & SAFETY CODE §483.001(2).

1

TEX. HEALTH & SAFETY CODE §483.042(a)

“A person commits an offense if the person delivers or offers to deliver a dangerous drug.”

Sample 11

Delivery of a Dangerous Drug

TEX. HEALTH & SAFETY CODE §483.042(a)

“Dangerous drug” means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V, or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act).

CAUSE NO. 0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 216TH DISTRICT COURT
JOE SMITH) GILLESPIE COUNTY, TEXAS

MOTION TO SET ASIDE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to quash the indictment in this case for the following reasons:

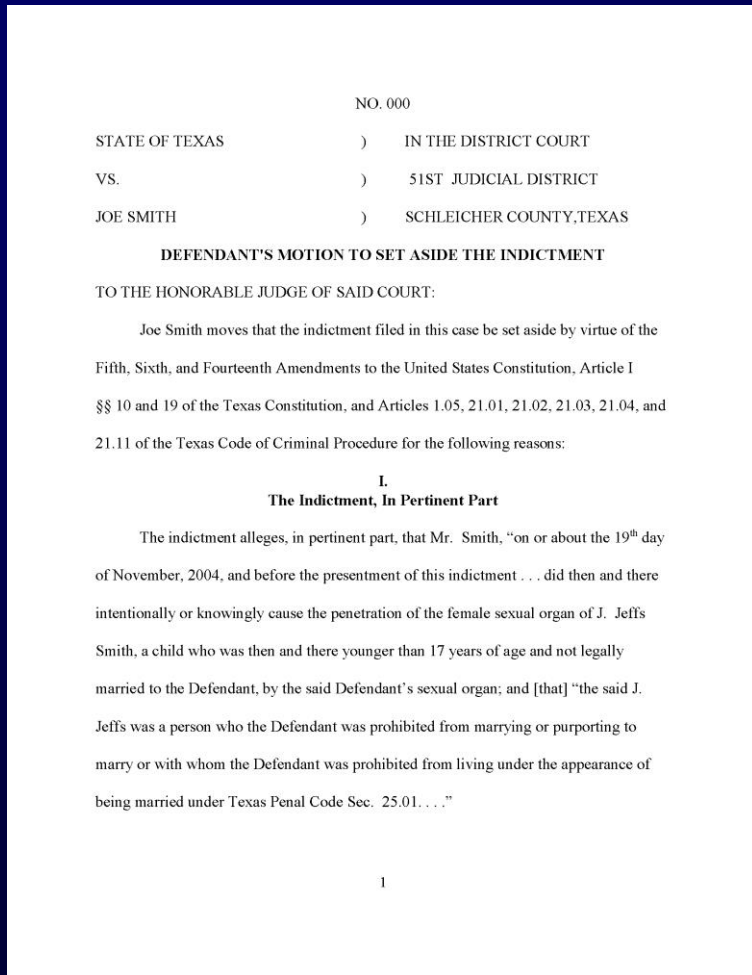
I. The Indictment

The indictment in this case alleges, in pertinent part, that Mr. Smith “did . . . intentionally or knowingly deliver or offer to deliver to Mike Jones a dangerous drug, specifically 25B-NBOME”

II. The Statutory Provisions At Issue

- “A person commits an offense if the person delivers or offers to deliver a dangerous drug.” TEX. HEALTH & SAFETY CODE §483.042(a).
- “‘Dangerous drug’ means a device or a drug that is unsafe for self-medication and that is not included in Schedules I through V, or Penalty Groups 1 through 4 of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend:
 - (A) ‘Caution: federal law prohibits dispensing without prescription’ or ‘Rx only’ or another legend that complies with federal law; or
 - (B) ‘Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian.’” TEX. HEALTH & SAFETY CODE §483.001(2).

Sexual Assault



The indictment alleged the sexual assault of a child younger than 17 who the defendant was prohibited from marrying. **TEX. PENAL CODE ANN. § 22.011(a)(2).**

• **“on or about November 19, 2004”**

a first degree felony

The effective date of that statute was **September 1, 2005**

The crime became a second degree felony, not a first degree felony.

Sample 12

Shoplifting

Particularly useful before
Bexar County created a
pretrial diversion statute.

NO. 000000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER ONE
JO SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO SET ASIDE THE INFORMATION

TO THE HONORABLE JUDGE OF SAID COURT:

Jo Smith moves that the information 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 information alleges that Ms. Smith unlawfully appropriated "fourteen (14) Health or Beauty item(s), Three (3) Clothing item(s), One (1) Household item(s) and Four (4) Fashion Accessories or Jewelry item(s) . . . which had a value of Fifty Dollars (\$50.00) or more but less than Five Hundred Dollars (\$500.00)," on October 7, 2017, from the owner, Wal-Mart. The information is defective because it fails to sufficiently identify or describe the property allegedly stolen. *See Swabado v. State*, 597 S.W. 2d 361, 363 (Tex. Crim. App. 1980); *Amaya v. State*, 551 S.W. 2d 385, 387 (Tex. Crim. App. 1977); *See also* TEX. CODE CRIM. PROC. ANN. art. 21.09.

II.

I

Sample 13

E.

**You need a strategy
for dealing with
extraneous
misconduct**

The good and the bad.

Request For Notice Of Intent To Offer Extraneous Conduct Under Rule 404(b) . . . Rule 609(f) . . . And Article 37.07

NO. 200.000
STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 186th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**REQUEST FOR NOTICE OF INTENT TO OFFER EXTRANEIOUS
CONDUCT UNDER RULE 404(b) AND EVIDENCE
OF CONVICTION UNDER RULE 609(f)
AND EVIDENCE OF AN EXTRANEIOUS
CRIME OR BAD ACT UNDER
ARTICLE 37.07**

TO THE BEXAR COUNTY DISTRICT ATTORNEY'S OFFICE:

I.

Pursuant to Rule 404(b) of the Texas Rules of Evidence, defendant requests the state to give reasonable notice in advance of trial of its intent to introduce in its case-in-chief evidence of crimes, wrongs, or acts other than that arising in the same transaction.

II.

Pursuant to Rule 609(f) of the Texas Rules of Evidence, defendant requests that the state give sufficient advance written notice of its intent to use evidence of a conviction against the following witnesses:

JOE SMITH

III.

Pursuant to Article 37.07, § 3(g) of the Texas Code of Criminal Procedure, defendant requests that the state give reasonable notice of intent to introduce against the defendant evidence of an extraneous crime or bad act at the punishment phase of the trial.

Sample 5

Rule 404(b)

“provided that, upon timely REQUEST by the accused . . . reasonable notice is given in advance of trial of intent to introduce”

Espinosa v. State

Request, not motion

Umoja v. State

Friday before Monday is not reasonable.

Motion In Limine

NO. 0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 437TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

MOTION IN LIMINE (General)

Joe Smith moves this Court before trial in limine for an order instructing the District Attorney, his representatives and witnesses to refrain from making any direct or indirect reference whatsoever, at trial before the jury to all extraneous crime or misconduct evidence which is not alleged in the indictment, unless it can be shown to the Court, outside the presence of the jury by sufficient proof that defendant perpetrated such conduct, that this evidence is relevant to a material issue in the case, other than character conformity, and that its probative value outweighs its potential for prejudice.

If the prosecutor is allowed to allude to, comment upon, inquire about, or introduce evidence concerning, any of the above matters, ordinary objections during the course of trial, even sustained with proper instructions to the jury, will not remove the harmful effect of same in view of its highly prejudicial content.

WHEREFORE, PREMISES CONSIDERED, defendant prays that this Court order and instruct the district attorney, his representatives and witnesses, not to elicit or give testimony respecting, allude to, cross-examine respecting, mention, or refer to any of the above matters until a hearing has been held outside the presence of the jury at which time this Court can determine the admissibility of these matters.

- **standard**
- **very general**
- **does not
preserve error**

Sample 14

Every single thing I don't want the jury to hear goes here

NO. 000000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER ONE
JO SMITH) BEXAR COUNTY, TEXAS

**DEFENDANT'S OBJECTIONS TO EVIDENCE
PURSUANT TO RULE 103(a)(1)**

TO THE HONORABLE JUDGE OF THE COURT:

Jo Smith objects prior to trial, under Rule 103(a)(1) of the Texas Rules of Evidence, to certain evidence she believes the state may offer at trial.

I. Rule 103(a)(1)

Rule 103(a)(1) of the Texas Rules of Evidence provides that : "When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when it is admitted before the jury without the necessity of repeating those objections." In this document, the defense objects to evidence discussed herein under Rule 103(a)(1).

II. Extraneous Misconduct

Jo Smith moves to exclude all extraneous crime or misconduct evidence which is not alleged in the indictment in this case, unless it can be shown by sufficient proof that she perpetrated such conduct. In deciding whether to admit such evidence, this Court "must, under rule 104(b) (of the Texas Rules of Evidence), make an initial determination

Sample 15

- Extraneous misconduct
 - Strong warning about googling
 - To prevent the prosecutor from voir diring about disjunctive allegations
 - Invocation of right to lawyer
 - Polygraphs
 - CPS findings
- etc**

2011-CR-0000

STATE OF TEXAS)
VS.)
JOE SMITH)

IN THE DISTRICT COURT
290th JUDICIAL DISTRICT
DENTON COUNTY, TEXAS

**DEFENDANT'S OBJECTIONS
TO ADMISSIBILITY OF VIDEOTAPE OF
JOE SMITH ON MARCH 17, 2011**

TO THE HONORABLE JUDGE OF THE 290TH JUDICIAL DISTRICT COURT:

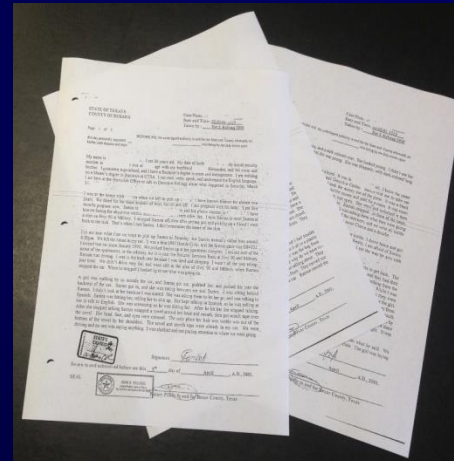
Introduction

The law permits the introduction of a defendant's oral statements if certain conditions are satisfied. First and foremost, before "the defendant's statement" can be admitted against him, it must at least be his statement. In this case, although Mr. Smith does make some statements himself on this videotape, as we show in detail in this motion, other statements on the videotape were spoken – either directly or indirectly – by others – including the interrogating officer, and other unidentified persons. The statements identified in this motion are wholly irrelevant to Mr. Smith, or unfairly prejudicial to him, or both, and are inadmissible for various other reasons, including that they are hearsay and deny him the constitutional right to confront and cross-examine witnesses against him, and that they refer to inadmissible extraneous misconduct, to comments on credibility.

This motion points out in detail that evidence that the defense has so far been able

SAMPLE 16

If there is a lot of bad stuff, are you winning when you keep some of it out?



Suppression within suppression

2011-CR-0000
STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 290th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**DEFENDANT'S OBJECTIONS
TO ADMISSIBILITY OF VIDEOTAPE OF
JOE SMITH ON MARCH 17, 2011**

TO THE HONORABLE JUDGE OF THE 290TH JUDICIAL DISTRICT COURT:

Introduction

The law permits the introduction of a defendant's oral statements if certain conditions are satisfied. First and foremost, before "the defendant's statement" can be admitted against him, it must at least be his statement. In this case, although Mr. Smith does make some statements himself on this videotape, as we show in detail in this motion, other statements on the videotape were spoken – either directly or indirectly – by others – including the interrogating officer, and other unidentified persons. The statements identified in this motion are wholly irrelevant to Mr. Smith, or unfairly prejudicial to him, or both, and are inadmissible for various other reasons, including that they are hearsay and deny him the constitutional right to confront and cross-examine witnesses against him, and that they refer to inadmissible extraneous misconduct, to comments on credibility.

This motion points out in detail that evidence that the defense has so far been able

SAMPLE 16

- Handcuffs
- Hearsay/confrontation
- Extraneous misconduct
- Comments on credibility
- Polygraph
- Self-serving, unqualified experts, argumenative

Suppression within suppression

- She's also mentioned to me how when you guys first got together, the children were not living with her, things were a lot different.
- Because now its two single people without kids, that are able to go do things like go to the Gruene Dance Hall, and get drunk, and you beat the hell out of her at two o'clock in the morning.
- She actually gave me the date of that.

SAMPLE 16

**You need a strategy
for dealing with
extraneous
misconduct**

The good and the bad.

**When could extraneous
misconduct be good for a
defendant?**

**If you ever have a
case where the
complainant has a
longer rap sheet than
your defendant,
do two things.**

NO. 000000

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

**MOTION FOR DISCOVERY OF THE ARREST AND
CONVICTION RECORDS AND EVIDENCE ADMISSIBLE
UNDER RULE 404(a)(2) OF THE TEXAS RULES OF EVIDENCE
CONCERNING THE DECEASED, TOM JONES**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith seeks discovery of the arrest and conviction records and all evidence admissible under Rule 404(a)(2) of the Texas Rules of Evidence concerning the deceased, Tom Jones, and shows the following in support of this request:

I.

Evidence of the following admissible pursuant to Rule 609 of the Texas Rules of Evidence; the Sixth and Fourteenth Amendments to the United States Constitution; and, Article I, § 10 of the Texas Constitution:

1. final felony convictions;
2. felony convictions for which probation has not been satisfactorily completed;
3. final misdemeanor convictions involving moral turpitude;
4. misdemeanor convictions involving moral turpitude for which probation has not been successfully completed;
5. offenses pending between the date of this offense and trial, which might have a bearing on the witness's motive to testify, including juvenile cases, felonies and misdemeanor cases, convictions, probations or deferred adjudications. *See Davis v. Alaska*, 415 U.S. 308 (1974).

Motion For Discovery Of The Arrest And Conviction Records And Evidence Admissible Under Rule 404(a)(2) Of The Texas Rules Of Evidence Concerning The Deceased

Sample 17

Tex. R. Evid. 404(a)(2)

The DA's Files

NO. 2016-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 226th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**MOTION TO INSPECT THE PROSECUTION FILES OF THE DECEASED
IN POSSESSION OF BEXAR COUNTY
DISTRICT ATTORNEY'S OFFICE**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to inspect all prosecution files in the possession of the Bexar County District Attorney's Office concerning the deceased, John Jones, and shows the following in support of this request:

I.

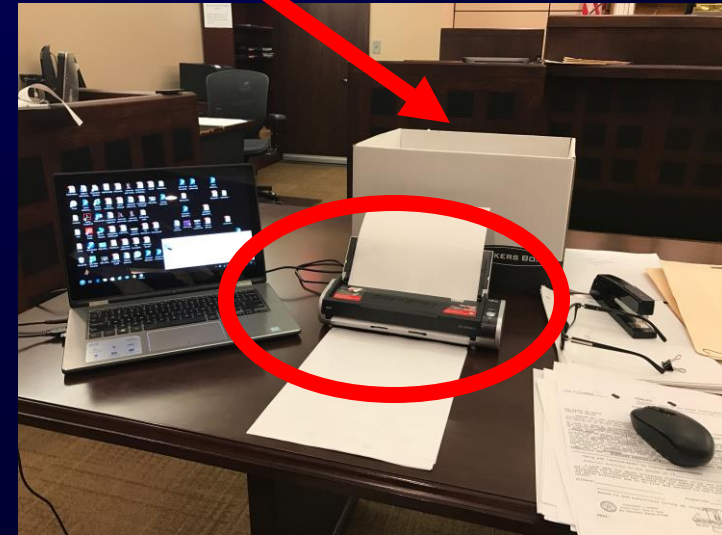
Mr. Smith has been indicted for the murder of John Jones. Several days before he was shot, Mr. Jones had given a forged check to purchase a car from Mr. Smith. Mr. Smith reported the theft to the San Antonio Police Department, and, on April 19, 2016, Mr. Jones drove by, and Mr. Smith called the police again, and followed Mr. Jones. Jones fled, rammed into Mr. Smith's car, and then tried to run over Mr. Smith.

John Jones, SID Number 522851, has an extensive arrest and conviction record in Bexar County for a variety of violent and theft-related offenses, including burglary, attempted burglary, assault, forgery, and evading arrest, and the District Attorney's Office has files in the following each of these cases:

1.

Cause Number	Judicial Number	Offense
2014-CR-9464	1659630	evading arrest
2012-CR-7784	1527709	forgery
2012-CR-7783	1527708	forgery
2006-CR-7833W	1181950	burglary
2006-CR-7832W	1181951	burglary of a building
2006-CR-7830W	1176426	forgery
2001-CR-3740	912792	forgery
2001-CR-1341W	903822	forgery
2000-CR-5998	879012	forgery
2000-CR-5997	874023	forgery
2000-CR-5829	879012	forgery
2000-CR-5828	874023	forgery
1992-CR-3310	539626	burglary of a habitation
1992-CR-2753A	537334	attempted burglary
1992-CR-2648	537286	burglary of a habitation
1992-CR-2647	537288	burglary of a habitation
1992-CR-1440	532306	burglary of a habitation
470544	1655029	theft
470543	1655028	evading arrest
391979	1520313	assault bodily injury family
778298	903817	resisting arrest
778297	903816	assault bodily injury

Sample 18



F.

**You need a strategy
for dealing with
experts.**

Designating Experts (Yours and Theirs)

2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 175TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

REQUEST FOR DISCLOSURE OF NAMES AND ADDRESSES OF EACH PERSON THE STATE MAY USE AT TRIAL TO PRESENT EVIDENCE UNDER RULES 702, 703 AND 705 OF THE TEXAS RULES OF EVIDENCE

TO THE BEXAR COUNTY DISTRICT ATTORNEY:

Joe Smith files this request prior to the 30th day before the date that jury selection in this trial is scheduled to begin and requests that the State provide to his lawyer notice of the name and address of each person it may use at trial to present evidence under Rules 702, 703, and 705 of the Texas Rules of Evidence, in either hard copy form or by electronic means, not later than the 20th day before the date that jury selection begins, as required by article 39.14(b) of the Texas Code of Criminal Procedure.

Respectfully submitted:

/s/
MARK STEVENS
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205-3192
(210) 226-1433
State Bar No. 19184200

Attorney for Defendant

MARK STEVENS

Lawyer
Tower Life Building, Suite 1920
310 S. St. Mary's Street
San Antonio, Texas 78205

BOARD CERTIFIED—CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

Ofc: (210) 226-1433
Fax: (210) 223-8708
mark@markstevenslaw.com

March 9, 2019

Ms. Betty Jones
Assistant District Attorney
Bexar County District Attorney's Office
101 W. Nueva St.
San Antonio, TX 78205

Re: *State of Texas vs. Joe Smith*, No. 2019-CR-0000

Dear Ms. Smith:

This letter will advise you, pursuant to article 39.14(b) of the Texas Code of Criminal Procedure, that, at the present time, the defense may call the following persons at trial to present evidence under Rule 702, 703 and 705 of the Texas Rules of Evidence:

Robert C. Benjamin
Dept. Of Biological Sciences
University of North Texas
P.O. Box 305220
Denton, Texas 76253

Charles A. Weaver, III
Department of Psychology & Neuroscience
Baylor University
Box 97334
Waco, TX 76798

Sincerely,

Mark Stevens

Sample 19

Sample 20

**I ain't got no money.
That's why I called
you.**

Sample 21

NO. 2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 227TH JUDICIAL DISTRICT
MARY SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S EX PARTE MOTION TO PROVIDE FUNDS FOR ASSISTANCE FROM AN EXPERT ON DOMESTIC VIOLENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Mary Smith moves this Court *ex parte* pursuant to the Sixth, Eighth and Fourteenth Amendments of the United States Constitution, Article I, §§ 3, 3a, 10, 13 and 19 of the Texas Constitution, and article 26.05(a) of the Texas Code of Criminal Procedure, to provide funds for an expert on domestic violence to assist in the preparation of her defense, and for good cause shows the following:

I.

Ms. Smith is charged with murder and she is indigent. She cannot afford to hire an expert to assist in the preparation of her defense. Because of her indigency, trial counsel and an investigator were appointed by this Court.

II.

Phil Thompson is a licensed professional counselor in Texas, and has been the Clinical Director at Family Violence Prevention Services, Inc., in San Antonio since 2017. Mr. Thompson interviewed Ms. Smith in the Bexar County Adult Detention Center on May 23, 2018. Mr. Thompson believes that Ms. Smith has been the victim of

**Defendant's Ex Parte Motion
To Provide Funds For An Expert
On Domestic Violence**

***Ake v. Oklahoma*, 470 U.S. 68
(1985)**

***DeFreece v. State*, 848 S.W. 2d
150 (Tex. Crim. App.), cert.
denied, 510 U.S. 905 (1993)**

***Rey v. State*, 897 S.W.2d 333
(Tex. Crim. App. 1995)**

***Ex parte Briggs*,
187 S.W.3d 458, 469
(Tex. Crim. App. 2005)**

Defendant's Ex Parte Motion For Access To Mental Health Expert While A Prisoner In County Jail

NO. _____

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) ____ JUDICIAL DISTRICT
JOE SMITH) COMAL COUNTY, TEXAS

**DEFENDANT'S *EX PARTE* MOTION FOR ACCESS
TO MENTAL HEALTH EXPERT
WHILE A PRISONER
IN THE COMAL COUNTY JAIL**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith files this Defendant's *Ex Parte* Motion For Access To Mental Health Expert While A Prisoner In The Comal County Jail, and, for good cause shows the following:

I.

Mr. Smith is presently confined in the Comal County Jail where he is charged with aggravated assault against a peace officer. He is presently held in lieu of bond set at \$1,000,000.00, which he is financially unable to post.

II.

Undersigned counsel are not trained at or competent to accurately diagnose mental health issues, but they do have at least a lay person's familiarity with same. And as practicing lawyers they know the legal standards for sanity, competency, and the admissibility of exculpatory and mitigating evidence. Counsel have met with Mr. Smith on multiple occasions and have talked to family members who have known him well and for all his life. Based on their own experience, and their observation and conversations with others, counsel believe that it is immediately necessary, from both a medical and a legal perspective,

Sample 22

G.

**What can you do when
the State searches
your client's cell and
listens to his phone
calls?**

Motion To Suppress Evidence Obtained As A Result Of Warrantless Search Of Joe Smith's Cell

NO. 2017-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 175TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

MOTION TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF A WARRANTLESS SEARCH OF JOE SMITH'S JAIL CELL

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to suppress all evidence obtained as a result of the warrantless search of his jail cell at the Bexar County Adult Detention Center on December 1, 2016, and for good cause shows the following:

I.

**Joe Smith Is A Presumptively Innocent Citizen Who Presently Lives
In The Bexar County Adult Detention Center,
But Only Because He Cannot Afford Bond**

Joe Smith's indictment alleges murder. He is presently a pretrial detainee – presumptively innocent under our Constitution – who resides at the Bexar County Adult Detention Center because he has been financially unable to make bond, which has been set in the amount of \$100,000.

II.

**Solely To Prepare For Trial The Prosecutor Seized
Mr. Smith's Personal And Private Property
Without Warrant Or Probable Cause**

Mr. Smith's case is set for trial on June 1, 2017. Lead prosecutor Mary Johnson

Sample 23

In preparation for an upcoming trial, I request that you conduct a cell search of inmate Joe Smith's cell/housing area and that you seize and provide the following:

Original, non-privileged correspondence, to include: any/all writings, notes, correspondence (inmate and outside mail), drawings, poetry and any contraband found during the search.

**State v. Granville,
423 S.W. 3d 399
(Tex. Crim. App. 2014)**

Motion To Designate Those Calls That Will Be Offered Into Evidence

In re State ex rel. Skurka,
512 S.W.3d 444
(Tex. App.–Corpus Christi
2016, no pet.)

Tex. R. Evid. 611(a):

“The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; [and] (2) avoid wasting time”

NO. 2017-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 175TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

MOTION TO DESIGNATE THOSE JAIL CALLS THAT WILL BE OFFERED INTO EVIDENCE

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves that the state be ordered to designate those jail calls that it will offer into evidence and for good cause shows the following:

I.

The state has provided counsel for Mr. Smith copies of 3,334 recorded conversations of calls made to and from him while incarcerated in the Bexar County Adult Detention Center. If counsel for Mr. Smith listens to 10 phone calls per day, seven days per week, it will take him almost a year to listen to them all. This is an unreasonable burden on counsel, and will prevent him from devoting time sufficient for him to render effective assistance of counsel.

II.

It is clear that the state will not offer all 3,334 recorded conversations into evidence. The state should be required to designate which of these calls it will actually attempt to introduce at trial.

Sample 24

H.

**Could the DA really
indict a ham
sandwich?**

MOTION TO ORDER THE STATE TO PRESENT ALL EXCULPATORY EVIDENCE IN ITS POSSESSION TO THE BEXAR COUNTY GRAND JURY

NO. _____

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

MOTION TO ORDER THE STATE TO PRESENT ALL EXCULPATORY EVIDENCE IN ITS POSSESSION TO THE BEXAR COUNTY GRAND JURY

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves this Court to order the State of Texas to present all exculpatory evidence in its possession to the Bexar County Grand Jury, and for good cause, shows the following:

I.

Counsel believe that the Bexar County District Attorney will present evidence to the Bexar County Grand Jury on this date concerning a shooting on August 1, 2016 involving Deputy Joe Smith and Deputy Robert Brown.

II.

It is the duty of the attorney representing the state to inform the grand jury "of offenses liable to indictment," 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 matters of law relating to the case before it. TEX. CODE CRIM. PROC. arts. 20.03, 20.04, 20.05.

Sample 25

*In re Grand Jury
Proceedings 198.GJ.20,
129 S.W. 3d 140, 145
(Lopez, C.J., dissenting)*

I.

**Do you want your jury
to compromise?**

If not, then sever.

NO. 05-0000-CR

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 25TH JUDICIAL DISTRICT
JOE SMITH) GUADALUPE COUNTY, TEXAS

MOTION TO SEVER COUNTS

TO THE HONORABLE JUDGE OF SAID COURT:

Mr. Smith moves to sever Counts I, II, and III of the indictment from each other pursuant to § 3.04(a) of the Texas Penal Code.

Respectfully submitted:

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(210) 226-1433
mark@markstevenslaw.com
State Bar No. 19184200

MARK STEVENS

Attorney for Defendant

1

Sample 26

NO. A 1
A 2
A 3

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 437TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

OBJECTION TO CONSOLIDATION AND JOINDER AND MOTION FOR SEVERANCE

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith objects to consolidation and joinder of cause numbers A 1, A 2, and A 3, and moves that trial on these causes be severed and shows the following:

I.

On March 15, 2018, the assistant district attorney filed the State's Notice Of Consolidation Of Prosecution concerning cause numbers A 1, A 2, and A 3, pursuant to § 3.02 of the Texas Penal Code.

II.

Section 3.04(a) of the Texas Penal Code grants to the defense a mandatory severance of cases the state seeks to join under § 3.02. By this motion, the defense objects to consolidation and joinder of cause numbers A 1, A 2, and A 3.

III.

In addition to his mandatory right to sever under § 3.04(a), defendant further objects that joinder of cause numbers A 1 and A 2, on the one hand, with cause number A

1

Sample 27

NO. 0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 290TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

MOTION FOR SEVERANCE AND NOTICE OF ORDER OF TRIALS

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith has been indicted in at least six different indictments, each of which charge one or more crimes. Under § 3.04 of the Texas Penal Code he has an absolute right to separate trials on these indictments. He moves for separate trials and also that the state notify him which case the state intends to try first, at least 7 days before trial is to commence.

Respectfully submitted:

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310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205
(210) 226-1433
mark@markstevenslaw.com
State Bar No. 19184200

Attorney for Defendant

Sample 28

Severing Defendants

NO. 0000
STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 437th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

MOTION TO SEVER DEFENDANTS

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves the Court to sever the trial on his indictment from the trial on the indictment against co-defendant, John Jones, and for good cause shows the following:

I.

There is a previous admissible conviction against the co-defendant John Jones, and there is no previous admissible conviction against defendant Smith. See TEX. CODE CRIM. PROC. ANN. art. 36.09.

II.

A joint trial would be prejudicial to this defendant because the co-defendant has made written and oral statements incriminating defendant. If defendant and co-defendant are jointly tried, and if co-defendant's statements are admitted into evidence, and if co-defendant does not testify, defendant will be denied his rights of confrontation and cross-examination, guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, Article I, § 10 of the Texas Constitution, and article 1.05 of the Texas Code of Criminal Procedure. See *Bruton v. United States*, 391 U.S. 123 (1968).

WHEREFORE, PREMISES CONSIDERED, defendant prays that the trial of the

NO. 0000
STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 437th JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

DEFENDANTS' AGREEMENT AS TO ORDER OF TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Joe Smith and co-defendant John Jones, through their undersigned counsel, hereby agree that, pursuant to Article 36.10 of the Texas Code of Criminal Procedure, if the motion to sever filed by defendant Smith is granted, the co-defendant, Jone will be tried first, and for good cause show the following:

I.

If the cases are severed, and defendant Smith is tried first, co-defendant Jones will invoke his constitutional privilege not to testify in behalf of defendant. This will deprive defendant of his rights to compulsory process, guaranteed by the Sixth and Fourteenth Amendments of the United States Constitution, Article I, § 10 of the Texas Constitution, as well as his rights to due process and due course of law, guaranteed by the Texas and United States Constitutions. If co-defendant Jones is tried first, on the other hand, the privilege against self-incrimination will be no impediment to his testifying in behalf of defendant Smith.

II.

Article 36.10 of the Texas Code of Criminal Procedure permits the defendants to agree on the order of trial. This document is evidence of that agreement.

Sample 29

Sample 30

J.

**But what your client
really wants. . .**

... is immediate freedom.

A writ, not a motion.

An affidavit, not a witness.

NO. 2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 227TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**APPLICATION FOR WRIT OF HABEAS CORPUS
SEEKING BAIL REDUCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith makes this Application for Writ of Habeas Corpus Seeking Bail Reduction, and, for good cause shows the following:

I.

Defendant is illegally confined and restrained of his liberty by the Sheriff of Bexar County, Texas in the Bexar County Adult Detention Center in San Antonio, Texas in lieu of a bond in the amount of \$500,000.00. Defendant is charged with the felony offense of murder.

II.

Defendant's confinement and restraint is illegal because his bond is excessive, oppressive and beyond his financial means, in violation of the Eighth and Fourteenth Amendments to the United States Constitution, Article I, §§ 11, 13 and 19 of the Texas Constitution, and articles 1.07 and 17.15 of the Texas Code of Criminal Procedure.

III.

Defendant respectfully requests this Court to grant defendant an evidentiary hearing and, after receiving evidence, to reduce the amount of said bond to a reasonable amount in

Sample 31

NO. CM 000000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 144TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

INMATE'S DECLARATION

BEFORE ME, the undersigned authority, on this day personally appeared Joe Smith, who after being duly sworn stated:

My name is Joe Smith. I am the defendant in case number CM 000000. I am making this declaration with the understanding that it will be offered into evidence at the hearing to reduce my bond, presently scheduled to begin on November 19, 2018. It is also my understanding that this declaration will be offered and used at my bail reduction hearing for the limited purpose under *Simmons v. United States*, 390 U.S. 377 (1968), of showing my financial inability to make bail in the amount it is currently set at, and to assert my constitutional right to reasonable bail, guaranteed me by the Eighth and Fourteenth Amendments to the United States Constitution, and Article I, §§ 11 and 13 of the Texas Constitution, and articles 1.07 and 17.15 of the Texas Code of Criminal Procedure.

I do not have a savings or a checking account. I have cash on hand in the amount of less than \$1.00 and nothing else. I own no stocks or bonds. I have no retirement account. I do not own a home and I am presently unemployed and have not worked since being incarcerated on this case, approximately since October 17, 2018. I do not own a vehicle.

My bond is presently set at \$1,000,000.00. I cannot post a bond in this amount. I am aware that bonding companies typically charge premiums in the amount of 10% of the face-value of the bond, which in my case would be \$100,000.00. And they usually want the balance to be fully collateralized. I do not have this kind of money. Other than the assets I have discussed, I do not own anything else that I could sell for any significant amount of money at all, and I have no ability to borrow any where near this amount.

Sample 32

NO. 0000000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER ONE
JOE SMITH) BEXAR COUNTY, TEXAS

**MOTION TO SUBSTITUTE CASH BOND IN LIEU
OF PERSONAL RECOGNIZANCE**

TO THE HONORABLE JUDGE OF SAID COURT:

On November 18, 2018 Joe Smith was released from the Bexar County Adult Detention Center on a Personal Recognizance. He now moves to substitute in lieu of his personal recognizance bond a cash bond in the amount of One-Thousand Six Hundred Dollars (\$1,600.00).

WHEREFORE PREMISES CONSIDERED, the defendant prays the Court grant this Motion To Substitute Cash Bond In Lieu of Personal Recognizance.

Respectfully submitted,

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State Bar No. 19184200
310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205
(210) 220-1433
mark@markstevenslaw.com
Attorney for Defendant

Sample 33

K.

**Three sentencing
motions.**

Motion For Modification Of Conditions Of Community Supervision

NO. CR2019-000

STATE OF TEXAS)	IN THE DISTRICT COURT
VS.)	207TH JUDICIAL DISTRICT
JOE SMITH)	COMAL COUNTY, TEXAS

**DEFENDANT'S MOTION FOR MODIFICATION OF
CONDITIONS OF COMMUNITY SUPERVISION**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to modify the conditions of his community supervision pursuant to article 42A.051(b) of the Texas Code of Criminal Procedure, and requests that this Court reduce the period of confinement from 180 days to 110 days.

I.

On August 15, 2018, Mr. Smith pled guilty to the offenses alleged in his three-count indictment, and on August 20, the jury sentenced him 10 years imprisonment, but recommended that the sentence be suspended and that he be placed on community supervision. This Court accepted the recommendation but imposed 180 days in the Comal County Adult Detention Center as a condition of community supervision. Mr. Smith was taken into custody immediately and has remained in custody since that time, first in Comal County, and currently in the Jack Black Detention Center in Winters, where he was moved due to overcrowding in Comal County.

II.

Mr. Smith has now served 100 days of the 180 days imposed as a condition of community supervision. By this motion, he respectfully requests that this Court modify his

Sample 34

Motion To Reconsider Sentence

NO. 2018-CR-0000

STATE OF TEXAS)	IN THE DISTRICT COURT
VS.)	187TH JUDICIAL DISTRICT
JOE SMITH)	BEXAR COUNTY, TEXAS

MOTION TO RECONSIDER SENTENCE

TO THE HONORABLE PAT PRIEST, SPECIAL JUDGE FOR THE 187TH JUDICIAL DISTRICT COURT, BEXAR COUNTY, TEXAS:

Joe Smith respectfully requests that this Court reconsider its sentence of November 8, 2018, in light of the following information:

I.
**MR. SMITH'S PUNISHMENT WAS SUBSTANTIALLY MORE SEVERE
THAN THE OTHER DEFENDANTS WHO OFFENDED AGAINST
THE COMPLAINANT**

The complainant in this case told the police that she had had sex with six males she met while chatting on the Internet. She was able to identify five of these persons: Mark Rawley; Tom Oren; Timothy Stong; Mike Ray; and Joe Smith. Each of these men were subsequently charged with sexual offenses against the complainant, and ultimately, all of their cases were resolved by plea bargains. On November 8, 2018, this Court sentenced Joe Smith to 10 years imprisonment. The other four men received much less severe sentences, ranging from seven years deferred adjudication to six years imprisonment. We submit that, considering the totality of circumstances, Mr. Smith should not be punished more severely than the others. Accordingly, we request that this Court reconsider his sentence and reduce it to no more than six years imprisonment.

Sample 35

Motion To Stay Commencement Of Conditions Of Community Supervision Pending Issuance Of Appellate Mandate

NO. 2018-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 226TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**DEFENDANT'S MOTION TO STAY COMMENCEMENT OF TERMS
OF PROBATION PENDING ISSUANCE
OF APPELLATE MANDATE**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith respectfully moves this Honorable Court to stay the commencement of each of the terms of his probation until, and only if, his conviction is affirmed by the Texas Appellate Courts, and their mandates issue, making said convictions final. In support thereof, Defendant shows the following:

I.

Defendant was sentenced by the court to a term of probation and assessed various conditions of probation, one of which was 120 days incarceration in the Bexar County Adult Detention Center.

II.

Defendant filed a Notice of Appeal on October 1, 2018 and intends to file a motion for new trial within 30 days from September 30, 2018, as required by Texas law.

III.

"Where an appeal is taken, the terms of probation do not commence until the mandate of this Court is issued." *DeLorme v. State*, 488 S.W.2d 808, 810 (Tex. Crim. App. 1973);

Sample 36

L.

**Just A Few More
Good Ones**

Motion To Extend Time Limitation For Voir Dire

NO. 000000

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

MOTION TO EXTEND TIME LIMITATION FOR VOIR DIRE

Joe Smith objects to the time limitation set by the court for voir dire and requests additional time to conduct voir dire examination for the following reasons:

I.

Defendant is charged with murder. Defendant has pleaded not guilty to this offense and demanded a jury trial on the issue of guilt or innocence.

II.

The court has determined that each party shall be allotted 45 minutes to voir dire the entire venire.

III.

This time limitation is unreasonable because it does not permit defendant to sufficiently inquire so as to be able to intelligently exercise challenges for cause and peremptory challenges. This time restriction denies defendant the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, § 10 of the Texas Constitution. The restriction also violates defendant's rights to a fair and impartial jury, due process, due course and equal protection of the law, guaranteed by the United States and Texas Constitutions.

Sample 37

Speedy Trial

NO. 00000

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

**MOTION TO SET ASIDE INDICTMENT FOR FAILURE TO AFFORD
CONSTITUTIONAL RIGHT TO SPEEDY TRIAL**

TO THE HONORABLE JUDGE OF SAID COURT:

Joe Smith moves to set aside the indictment in this case pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, Article I, § 10 of the Texas Constitution, and articles 1.03, 1.04 and 1.05 of the Texas Code of Criminal Procedure, for failure to afford him a speedy trial, and shows the following in support:

I.

The information in this case was filed on November 17, 2017.

II.

There are no satisfactory reasons for the delay in bringing defendant to trial.

III.

The defendant has never waived his right to a speedy trial.

IV.

The defendant has been substantially prejudiced because of the failure of the State to afford him a speedy trial, in that the lengthy delay in this case has caused him substantial anxiety and concern.

WHEREFORE, PREMISES CONSIDERED, the defendant respectfully prays that

NO. 0000

STATE OF TEXAS) IN THE COUNTY COURT
VS.) AT LAW NUMBER ONE
ERICA SMITH) BEXAR COUNTY, TEXAS

MOTION FOR SPEEDY TRIAL

TO THE HONORABLE JUDGE OF SAID COURT:

Erica Smith was arrested on this charge more than 8 months ago and has not yet been tried. Ms. Smith is guaranteed the right to a speedy trial under the Sixth and Fourteenth Amendments to the United States Constitution, Article I, § 10 of the Texas Constitution, and article 1.05 of the Texas Code of Criminal Procedure, and she hereby asserts those rights, and demands a speedy trial as soon as the case can be put on this Court's trial docket.

Respectfully submitted:

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310 S. St. Mary's Street
Tower Life Building, Suite 1920
San Antonio, TX 78205
mark@markstevenslaw.com
(210) 226-1433
State Bar No. 19184200

Attorney for Defendant

Sample 39

Sample 38

Defendant's Motion For Continuance

NO. _____

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) _____ JUDICIAL DISTRICT
_____) _____ COUNTY, TEXAS

DEFENDANT'S MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE OF SAID COURT:

_____ moves the Court to continue the trial date in this cause for these reasons:

I.

Written

&

Sworn

Sample 40

Motion For Findings Of Fact And Conclusions Of Law

NO. 2017-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 226TH JUDICIAL DISTRICT
JOE SMITH) BEXAR COUNTY, TEXAS

**REQUEST FOR
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

TO THE HONORABLE JUDGE OF SAID COURT:

On April 4, 2018, this Court heard evidence and denied Joe Smith's Motion to Suppress Evidence. Mr. Smith requests that the Court make findings of fact and conclusions of law concerning its ruling on this motion.

Respectfully submitted:

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State v. Cullen,
195 S.W.3d 696
(Tex. Crim. App. 2006)

Sample 41

