

CAUSE No. 2022-CI-XXXXX

CITY OF SAN ANTONIO

§
§
§
§
§
§
§
§
§
§

IN THE DISTRICT COURT

V.

PROPERTY OWNER, BUSINESS,
AND THE PLACE AND PREMISES
LOCATED AT ADDRESS, SAN
ANTONIO, BEXAR COUNTY, TEXAS

131st JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

CITY OF SAN ANTONIO BENCH BRIEF

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes **CITY OF SAN ANTONIO**, Plaintiff (hereinafter “City”), in support of its cause of action pursuant to Chapter 125, Civil Practice and Remedies Code, the City would respectfully show unto the Court as follows:

I. CHAPTER 125 – COMMON NUISANCE

Place to which persons habitually go for purposes of offenses such as discharge/reckless discharge of weapons, unlawful carrying of a weapon, and/or narcotics activity, and owner/operator knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity.

II. KEY COMPONENT

LOCATION IS THE DRAWING CARD FOR ACTIVITY

III. ELEMENTS

- 1) Criminal activity *frequently occurs* at place or place is *frequently used* for activity
 - Three (3) occurrences sufficient to declare a place a common nuisance (formerly called public nuisance)
 - *A.C. Morgan v. State*, 596 S.W.2d 220 (Tex.App. – Houston [14th Dist.] 1980)
 - Eleven (11) occurrences found sufficient to declare place a common nuisance
 - *Deblo, Inc. v. State*, 654 S.W.2d 807 (Tex.App. – Houston [14th Dist.] 1983, r’hring denied)

- 2) Evidence of the **General Reputation** of the place is admissible to show the existence of the common nuisance. **§125.004(c)**
- *Testimony of officers*
 - *Testimony of citizens*
- 3) Defendant *knowingly tolerated* activity
- Proof that *activity frequently occurred* or place frequently used is prima facie evidence that defendant knowingly tolerated activity. **§125.004(a)**
 - Evidence that persons have been arrested for or convicted of offenses for an activity described by Section 125.0015 in the place involved is admissible to show knowledge on the part of the defendant with respect to the act that occurred.
 - Oral evidence is admissible to show that the offense for which a person was arrested or convicted was committed at the place involved. **§125.004(b)**
 - Do not have to prove defendant had actual knowledge of, participated in, or had been present during the illegal activities.
 - *Moore v. State*, 107 Tex. 490, 181 S.W. 438 (1915)
 - *Benton v. City of Houston*, 605 S.W.2d 679 (Tex. App. – Houston [1st Dist] 1980, no writ)
 - *Rogers v. City of Abilene*, 704 S.W.2d 145 (Tex.App. – Eastland 1986, no writ)
 - *Dodd v. State*, 193 S.W.2d 569 (Tex.App. – Dallas 1945, reh'g denied)
- 4) Defendant's calls for police service may not be used against defendant; however, this has no bearing on actual criminal acts occurring from location. Posting signs prohibiting criminal activity is insufficient. **§125.004(d)**

Respectfully submitted,

OFFICE OF THE CITY ATTORNEY
ANDREW SEGOVIA
City Attorney
401 S. Frio
San Antonio, Texas 78207

/s/ Savita Rai

SAVITA RAI
Assistant City Attorney
Texas Bar Number: 24013368
SAMUEL ADAMS
Texas Bar Number: 24003680

Assistant City Attorney
Telephone Number: (210) 207-7355
Facsimile Number: (210) 207-7358

Attorneys for Plaintiff, CITY OF SAN ANTONIO

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following on March 10, 2022:

ATTORNEY
Address
San Antonio, Texas 78232
[email](#)
Attorney for defendant

- E-FILE
- CMRRR
- Electronic Mail

/s/ Savita Rai

SAVITA RAI