

NO. 0000000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) _____ JUDICIAL DISTRICT
JOE SMITH) KARNES 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 the indictment insufficiently identifies the governmental record as a "Kenedy Independent School District purchase order." This allegation does not give defendant or his counsel adequate nature of the charges against defendant so as to permit him to prepare a defense. Nor does it provide specification which would permit defendant to plead either a conviction or an acquittal in bar of a subsequent prosecution for the same alleged offense. The clearest proof that this is so requires only a comparison of the indictments in cause numbers 02-04-00000-CRK with 02-04-00000-CRK. Except for the defendant's cause number, these two charging instruments are identical mirror images of one another. If these two indictments purport to charge two different crimes, it is impossible to know it from the face of the pleadings. If these two indictments do in fact charge different offenses, the state must plead more specifically in order that defendant may know with what offenses he is charged.

II.

The indictment alleges that a governmental record was falsely altered and entered, but it does not specify which of four statutorily defined "governmental record" the state contends was altered or entered. Because the statute enumerates four different "governmental records," the indictment should specify which type of governmental record the state contends was falsely tendered or altered.

III.

The punishment range for making a false alteration or entry in a governmental record varies greatly depending on what type of record is approved. For some records, the offense is a misdemeanor, over which this Court would not even have jurisdiction. For other records, depending on the record allegedly involved, the offense could be a state jail, a third or a second degree felony. The indictment in this case is insufficient on its face to invoke the jurisdiction of this Court, or to inform defendant or his counsel of what offense he must defend against, or what punishment range he faces.

IV.

The indictment alleges that defendant did "make" a false alternation of or false entry in a governmental record, but it fails to allege the manner and means of the entry or alteration.

V.

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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By _____
MARK STEVENS

Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion To Set Aside The Indictment has mailed to the District Attorney's Office, Karnes County, Circle Dive, No. 21, Jourdanton, Texas 78026, on this the ____ day of May, 2018.

MARK STEVENS

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)

JUDGE PRESIDING