

NO. 000000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 218TH JUDICIAL DISTRICT
RAUL BROWN) KARNES COUNTY, TEXAS

DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Raul Brown 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 purports to allege the offense of “implements for escape,” described in the caption as a third degree felony.

II.

The indictment alleges that defendant had the intent to facilitate the “escape” of others, and that he provided an instrument “useful for escape.” This word “escape” has various statutorily defined meanings in Texas. *See* TEX. PENAL CODE ANN. 38.01 (2). The indictment here is defective because it fails to specify which of the several enumerated statutory definitions of “escape” the state will attempt to rely on to prove its case against the defendant. *See Olurebi v. State*, 870 S.W. 2d 58, 62 (Tex. Crim. App. 1994)(where “there are two ways for a credit card to be ‘fictitious’ under Section 32.31(b)(2), a trial court should grant a motion to quash an indictment that fails to

adequately notify the defendant of the manner in which the card is fictitious); *Drumm v. State*, 560 S.W. 2d 944, 945-46 (Tex. Crim. App. 1977)(information should be quashed because it failed to allege which subsection of the statute the state intended to rely upon); *White v. State*, 50 S.W. 3d 31, 39 (Tex. App.--Waco 2001, pet. ref'd)(trial court erred in denying motion to quash information which failed to specify which statutory definition of abuse the state intended to prosecute appellant for failing to report).

III.

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 _____
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Attorney for Defendant

CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion To Set Aside The Indictment has been mailed to the District Attorney's Office, 21 Courthouse, Circle Drive, Jourdanton, TX 78026, on this the _____ day of August, 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