

NO. 2018-CR-0000

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

DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Kevin 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 is defective because it alleges that defendant struck the complainant with a weapon causing him both bodily injury and serious bodily injury, but it does not allege where defendant struck the complainant, nor does it describe the injury. In various versions given by the complainant, he claims to been struck in several places, and to have suffered a variety of injuries. Defendant cannot properly defend himself against a charge that he caused bodily injury and serious bodily injury to another without being informed more about the nature of the alleged injury.

II.

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.

III.

The indictment is internally contradictory. Paragraph A alleges that defendant caused bodily injury to the complainant. Paragraph B alleges that defendant caused serious bodily injury to the complainant. Under the Texas Penal Code these are two different types of injuries. They cannot both be true. Specifically, if paragraph A is true, paragraph B is not true. As can be seen, then, the indictment "contains matter which is a legal defense or bar to the prosecution," which constitutes an exception under article 27.08(3) of the Texas Code of Criminal Procedure.

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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CERTIFICATE OF SERVICE

I certify that a copy of defendant's Motion To Set Aside The Indictment has been delivered to the District Attorney's Office, Bexar County Justice Center, 300 Dolorosa, San Antonio, Texas, on this the 29th day of January, 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