

NO. 2018-CR-0000

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

**DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT**

TO THE HONORABLE JUDGE OF SAID COURT:

John 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 wholly fails to specify the property or pecuniary interest that was alleged to be affected.

II.

The indictment does not allege a "person" who defendant allegedly intended to defraud and harm, as required by the statute. The "Texas Municipal League" is not a person.

III.

The indictment does not allege a "person" whose property or pecuniary interest was affected, as required by the statute. The "Texas Municipal League" is not a person.

IV.

The statute does not define the "deception."

V.

The indictment does not describe or specify what relationship exists between Axia Services, Inc. and the Texas Municipal League.

VI.

The indictment alleges the document in question affected the "property . . . interest of Texas Municipal League." Although "property" is defined in two different ways by § 32.01(2) of the Texas Penal Code, the indictment does not specify which of the two definitions the state intends to rely upon for conviction.

VII.

The word "harm" has multiple definitions under § 1.07(16) of the Texas Penal Code. However, "harm" is not defined in our indictment, nor does the indictment specify which of the statutory definitions of harm the state contends was suffered or intended to be suffered in this case.

VIII.

The phrase "intent to defraud" is not defined in the indictment or in the Texas Penal Code. As such, the phrase is unconstitutionally vague and does not give a person of ordinary intelligence adequate notice of forbidden conduct.

IX.

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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**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 14th 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)

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JUDGE PRESIDING