

NO. 2003-CR-0000

STATE OF TEXAS) IN THE DISTRICT COURT
VS.) 226TH JUDICIAL DISTRICT
RICHARD SMITH) BEXAR COUNTY, TEXAS

DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT

TO THE HONORABLE JUDGE OF SAID COURT:

Richard 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.

Paragraph A of the indictment is defective because:

1. It fails to allege the manner and means by which defendant purportedly offered to confer the benefit upon Richard Jones. *E.g.*, *Castillo v. State*, 689 S.W. 2d 443, 449 (Tex. Crim. App. 1984); *Smith v. State*, 658 S.W. 2d 172, 173 (Tex. Crim. App. 1983); *Miller v. State*, 647 S.W. 2d 266, 267 (Tex. Crim. App. 1983); *Jeffers v. State*, 646 S.W. 2d 185, 188 (Tex. Crim. App. 1981); *Ellis v. State*, 613 S.W. 2d 741, 742 (Tex. Crim. App. 1981); *Cruise v. State*, 587 S.W. 2d 403, 405 (Tex. Crim. App. 1979); *Haecker v. State*, 571 S.W. 2d 920, 922 (Tex. Crim. App. 1978).
2. It fails to identify the “information” defendant allegedly sought to have the witness withhold. *See Swabado v. State*, 597 S.W. 2d 361, 363 (Tex. Crim. App. 1980); *Amaya v. State*, 551 S.W. 2d 551 S.W. 2d 385, 387 (Tex. Crim. App. 1977).

II.

Paragraph B of the indictment is defective because:

1. It fails to allege the manner and means by which defendant purportedly

offered to confer the benefit upon Richard Jones. *E.g.*, *Castillo v. State*, 689 S.W. 2d 443, 449 (Tex. Crim. App. 1984); *Smith v. State*, 658 S.W. 2d 172, 173 (Tex. Crim. App. 1983); *Miller v. State*, 647 S.W. 2d 266, 267 (Tex. Crim. App. 1983); *Jeffers v. State*, 646 S.W. 2d 185, 188 (Tex. Crim. App. 1981); *Ellis v. State*, 613 S.W. 2d 741, 742 (Tex. Crim. App. 1981); *Cruise v. State*, 587 S.W. 2d 403, 405 (Tex. Crim. App. 1979); *Haecker v. State*, 571 S.W. 2d 920, 922 (Tex. Crim. App. 1978).

2. It fails to give adequate notice about what Richard Jones was to testify falsely about, or about to whom this false testimony was allegedly to have been given. *See Swabado v. State*, 597 S.W. 2d 361, 363 (Tex. Crim. App. 1980); *Amaya v. State*, 551 S.W. 2d 385, 387 (Tex. Crim. App. 1977).
3. It fails to adequately identify the official proceeding in question. There are a number of proceedings styled "The State of Texas vs. Richard Smith.

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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MARK STEVENS

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 8th day of October, 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