MOTION TO QUASH (SET-ASIDE) COMPLAINT

Cause No(s). TX4F0D0SYSIA

The State of Texas	§ IN THE JUSTICE COURT PRECICT 31
VS.	§ THE HONORABLE FRANCIS J. TRUCHARD
TITUS, MICHAEL JAMES	§ 1117 TRAVIS ST., COLUMBUS, TX 78934
	§ COLORADO COUNTY, TEXAS

MOTION TO QUASH (SET ASIDE) COMPLAINT FOR FAILURE TO PROVIDE SUFFICIENT NOTICE OF CRIMES CHARGED

Defendant Michael James Titus excepts to and moves for an order quashing the Complaint in this case because the Complaint, serving as the original charging instrument violates his rights to receive fair and particularized notice of the charges against him under Texas law, the Texas Constitution, and the Constitution of the United States. In support, Defendant would respectfully show as follows:

I COMPLAINT/AFFIDAVIT

This Complaint/Affidavit alleges that " ...TITUS, MICHAEL JAMES, Defendant, did there and then commit the offense of: SPEEDING-10% OR MORE ABOVE POSTED SPEED (#) (TXTRC 545.351 ; 545.352) AGAINST THE PEACE AND DIGNITY OF THE STATE OF TEXAS".

1) Under Art. 45.011. RULES OF EVIDENCE. "The rules of evidence that govern the trials of criminal actions in the district court apply to a criminal proceeding in a justice or municipal court." Pursuant to these rules the Complaint/Affidavit is vague and alleges no criminal intent, no specific acts related to the location nor any particular circumstances that could be construed as the Breach of the Peace that Defendant Titus is alleged to have committed.

The Complaint cites multiple statutes to the TXTRC with no subsections of either statute listed, included or excluded. While each statute contains particularized subsets of conditions and definitions which may or may not be construed as some violation; these statutes appear to be in direct conflict with each other. TXTRC 545.351(b)(1) clearly precludes "operators" from "driving" "at speeds greater than is reasonable and prudent under the conditions and having regard for actual and potential hazards then existing..." Then following under the same statute in part (c) five conditions appear that define what "actual" and "potential" hazards might be. None of these "actual" or "potential" hazards nor any other actual or

potential hazards of any kind named on the face of the Complaint Affidavit. The other statute listed conversely appears to declare any speed above a "posted speed limit" pursuant to various definitions within subsections of that statute as "...prima facie evidence that the speed is not reasonable and prudent and that the speed is unlawful." The face of the Complaint Affidavit alleges that the "offense" is directly related to "POSTED SPEED" but without reference to how "POSTED SPEED" relates directly to any part of the named statutes. The State is imposing, as an "offense", at least two different standards by reference to statute only, with each standard having very different defining qualities, without specific details as to which (or how many) of the standards and definitions it intends to prove were violated. The Defendant cannot discern if he is subject to either standard or has violated either standard as almost nothing is discernible from the face of the complaint that shows how the allegations relate to the standards.

This lack of disclosure of nature and cause of the offense sets up a direct conflict with the Code of Criminal Procedure Art. 1.03, "...to make the rules of procedure in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. Also in Art. 45.001(1) to provide fair notice to a person appearing in a criminal proceeding before a justice or municipal court and a meaningful opportunity for that person to be heard;" The State, listing as "offenses" multiple statutes containing inherent and obvious conflicts makes the Complaint wholly UNINTELLIGIBLE for purpose of constructing any defense to the charges. The face of the Complaint Affidavit are simply naked allegations by the State, which impair any defense and defeat the Object of the Code of Criminal Procedure under Art. 1.035(5) "To insure a fair and impartial trial;..." The conundrum of vagueness created by the Complaint Affidavit alone defeats any assumption that the Complaint Affidavit is any valid cause for a criminal action by the State against the Defendant.

2) The complaint does not identify or otherwise define Defendant Titus as a Driver or Operator (TXTRC 541), nor does it allege with reasonable certainty that the vehicle itself or Defendant Titus himself are subject to the statutes that were allegedly violated; controlling statutes such as TXTRC 201.904 which specifically identify the activities which can be applied to the State's regulable authority through the use of POSTED SPEED SIGNS are not supported or negated anywhere on the face of the Complaint Affidavit to wit; "Sec. 201.904. SPEED SIGNS. The department shall erect and maintain on the highways and roads of this state appropriate signs that show the maximum lawful speed for commercial motor vehicles, truck tractors, truck trailers, truck semitrailers, and motor vehicles engaged in the business of transporting passengers for compensation or hire (buses)."

Defendant Titus has certain rights afforded by the law of the land in these proceedings under Art. 1.05.; "In all criminal prosecutions ... He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof." The Defendant does not see or understand the nature of, nor the cause of action as any criminal action on the face of the Complaint or in the language of the statutes. The Complaint Affidavit (and the statutes cited) lack any intelligible evidence of a specific crime, and the face of the Complaint Affidavit alone barely gives even a hint of the existence of any probable cause. It is not even suggested on the face of the complaint that the Defendant was actively participating in any regulable activity that subjects the Defendant to any State Transportation Code. Nothing exists on the face of the Complaint Affidavit that shows the Defendant was participating in commerce, trafficking or transportation activities which might allow the State to claim Substantive Due Process authority to subject the Defendant to licensed limitations of an implied consent contract.

3) The statutes named on the Complaint are nowhere in TXTRC identified as OFFENSES (a requirement of TCCP Article 27.08), while the alleged act or acts named in the Complaint look solely to the Complaint Affidavit itself, dated 8th of September (which is well after the date of the alleged offense), and not the TXTRC to construe through accusation alone, any alleged conduct as an "offense". This creates a bit of an ironic conundrum that violates both TCCP Article 21.21(7) "That the offense be set forth in plain and intelligible words" and the Texas Constitution's Ex Post Facto Clause (Art. I, § 10, Cl. 1) where the words on the Complaint Affidavit sound "plain and intelligible" to the ear while the Complaint itself is being used to create an unconstitutional ex post facto offense since no "offense" for these specific allegations existed previous to the Complaint Affidavit. It is only ascertainable by looking outside the Complaint or by future disclosure of State's evidence that any circumstances of alleged criminality or offense can be known.

II. THE COURT SHOULD QUASH THE COMPLAINT AFFIDAVIT

A. This Complaint Affidavit Alone is Insufficient Under Texas Law.

1. Texas Law Requires That An Indictment or Information Sufficiently Describe The Alleged Criminal Conduct.

Texas law guarantees an accused the right to have an indictment or information present fair notice of the charges against him. Article I, Section 10, of the Texas Constitution provides that, "[i]n all criminal prosecutions the accused...shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof." Additionally, Articles 21.04 and 21.11 of the Texas Code of Criminal Procedure require that an indictment must contain "that degree of certainty that will give the defendant notice of the particular offense with which he is charged" and "enable the accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense." Tex. Code Crim. Proc. Ann. arts. 21.04, 21.11 (Vernon 1989). Additionally Article 21.23 state that "The rules with respect to allegations in an indictment and the certainty required apply also to an information." Prosecution for a crime, even a misdemeanor without such information is a due process injury upon Defendant Titus.

The en banc Texas Court of Criminal Appeals has recognized that the requirement that indictments give adequate notice implicates "fundamental notions of fairness." Drumm v. State, 560 S.W.2d 944, 946 (Tex.Crim.App. 1977) (en banc). Accordingly, "[t]he accused is not required to anticipate any and all variant facts the state might hypothetically seek to establish." Id. at 947.

Texas law, therefore, requires that indictments charge a crime with sufficient particularity. In Terry v. State, 471 S.W.2d 848 (Tex.Crim.App.1971), for example, the Court considered the notice provided from the face of the indictment and found it insufficient. In reaching its determination, the Court noted: "There is nothing in this indictment to inform the accused of the specific acts he is alleged to have committed to commit this offense. It is only by speculation and by looking outside the indictment that the accused can determine the acts with which he is charged." Id. at 851852; see also McElroy v. State, 720 S.W.2d 490,492 (Tex.Crim.App.1986) (holding that an indictment must "particularize the act complained of so that its identity cannot be mistaken"). Moreover, merely tracking statutory language is not sufficient if

the statutory language itself does not provide fair notice of the particular alleged conduct at issue. See Haecker v State, 571 S.W.2d 920, 921 (Tex. Crim. App. 1978) (reversing conviction because the charging instrument did not specify how the defendant allegedly "torture[d]" an animal). The statutory language of the statutes in the immediate case is vague and contradictory at best. Defendant therefore objects to the prosecutor simply citing for the court any statute that suggest an offense applies to the charge.

Texas law also clearly requires that the notice of the charges must come from the face of the indictment alone. Riney v. State, 28 S.W.3d 561, 565 (Tex.Crim.App. 2000); Miller v. State, 909 S.W.2d 586, 591 (Tex.App.Austin, 1995); Voelkel v. State, 501 S.W.2d 313, 315 (Tex.Crim.App.1973); See, e.g., Benoit v. State, 561 S.W.2d 810,813 (Tex.Crim.App. 1977). It is, of course, not sufficient to argue that the accused knew with what offense he was charged; rather, the inquiry must be whether the face of the indictment furnished that information in plain and intelligible language. Miller at 591; Benoit at 813; Riney at 565. Moreover, it is improper to look to the record of the case in order to determine whether the charging instrument constitutes adequate notice. Adams v. State, 707 S.W.2d 900,901 (Tex.Crim.App. 1986), citing Bonner v. State, 640 S.W.2d 601 (Tex.Crim.App.1982).

2. The Complaint Fails to Identify any Specific Circumstances from which the Complaint is Derived.

Texas law also requires that a complaint not only allege all elements necessary to constitute an offense (Villarreal v. State, 729 S.W.2d. 348 (Tex.App.--El Paso 1978) but if there is an exception in the statute which the State must negate, the complaint must also negate the exception Bird v. State, 927 S.W.2d. 136 (Tex.App.--Houston [1st Dist.] 1996). Clearly there are exceptions to the statutes named. TXTRC 201.904 would be such an exception to be negated. Other exceptions to be negated are found in the cited statutes themselves, however, not a single exception in noted.

3. The Compliant Does Not Meet Requirements for Courts in Colorado County to prosecute Misdemeanor charges by Complaint alone.

While Ex Parte Greenwood, 307 S.W.2d 586 (Tex.Crim.App. 1957) provides that municipal courts may prosecute upon complaint alone, Greenwood does not negate Art. 2.05 of TCCP which requires, "WHEN A COMPLAINT IS MADE: If the offense be a misdemeanor, the attorney shall forthwith prepare an information based upon such complaint and file the same in the court having jurisdiction; provided, that in counties having no county attorney, misdemeanor cases may be tried upon complaint alone, without an information, provided, however, in counties having one or more criminal district courts an information must be filed in each misdemeanor case." Colorado County is such a county which has county attorneys and also having a Criminal District Court, therefore an information must be required for each misdemeanor case. The exemption from filing informations by Greenwood in misdemeanor cases should not be construed to apply to Justice Courts is in Colorado County. Defendant Titus has the right to demand a copy of the information (Art. 25.04) and does therefore demand a copy of the information for this Misdemeanor Complaint prior to any further proceeding.

4. Complaints and Informations in Colorado County are the duty of the District or County Attorney.

The duty and the responsibility for misdemeanor complaints and to represent the State in Texas counties with Criminal District Courts in criminal proceedings, fall to the District and County Attorneys (Art. 2.01 and 2.02). In Colorado County and pursuant to Art. 27.01, "The primary pleading in a criminal action on the part of the State is the indictment or information". Therefore this complaint standing alone does not provide lawful notice to Defendant Titus by the District or County Attorney.

This complaint is not verified buy any county attorney (TCCP Art. 2.04) which is also a requirement and therefore does not meet the lawful requirement for the form of a Complaint even without an Information. Under TCCP Art. 27.08 (4) it is an exception to an indictment or information if it shows upon its face that the court trying the case has no jurisdiction thereof. Without an information in this case the court then has no jurisdiction and the Complaint is defective.

5. The Texas Constitutional Requirement for Indictment or Information to Invest the Court With Jurisdiction Applies to Courts in Colorado County.

While Ex Parte Greenwood, 307 S.W.2d 586 (Tex.Crim.App. 1957) states that the complaint invests the municipal court with jurisdiction, in counties with Criminal District Courts only an indictment or information may invest the court with jurisdiction of the cause which stands consistent with State's Constitution;

> "Article 5 JUDICIAL DEPARTMENT
>
> Sec. 12. JUDGES TO BE CONSERVATORS OF THE PEACE; INDICTMENTS AND INFORMATION. (a) All judges of courts of this State, by virtue of their office, are conservators of the peace throughout the State. (b) An indictment is a written instrument presented to a court by a grand jury charging a person with the commission of an offense. An information is a written instrument presented to a court by an attorney for the State charging a person with the commission of an offense. The practice and procedures relating to the use of indictments and informations, including their contents, amendment, sufficiency, and requisites, are as provided by law. The presentment of an indictment or information to a court invests the court with jurisdiction of the cause.[emphasis added] (Amended Aug. 11, 1891, and Nov. 5, 1985.)"

The same Texas Constitution in a 1985 amendment to the Texas Constitution provides that the " presentment of an indictment or information to a court invests the court with jurisdiction of the cause." Texas Constitution, Art. 5, Sec. 12(b).

B. The Complaint is Insufficient Under The United States Constitution.

1. The United States Constitution Requires That The Indictment Sufficiently Describe The Alleged Criminal Conduct.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right...to be informed of the nature and cause of the accusation." The Due Process Clause of the Fourteenth Amendment guarantees Defendant Titus the right to due process and makes the Sixth Amendment right to notice applicable to state prosecutions. Pointer v. Texas, 380 U.S.400, 85 S.Ct.1065, 10671068,13 L.Ed.2d 923 (1965). The Complaint in this case violates those rights.

With respect to a defendant's rights under the United States Constitution, the United States Supreme Court has consistently held that one of "the criteria by which the sufficiency of an indictment is to be measured" is whether it "'sufficiently apprises the defendant of what he must be prepared to meet.'" Russell v. United States, 369 U.S. 749, 763, 82 S.Ct. 1038, 1047 (1962) (quoting Cochran v. United States, 157 U.S. 286, 290, 15 S.Ct. 628, 630 (1895)). As the Supreme Court has held, a mere recitation of the elements of a crime or the tracking of statutory language may not sufficiently apprise a defendant of the charges against him. Accordingly, "'[i]t is an elementary principle of criminal pleading, that where the definition of an offence [sic], whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offence [sic] in the same generic terms as the definition; but it must descend to the particulars.'" Russell, 369 U.S. at 765, 82 S.Ct. at 1047 (quoting United States v. Cruikshank, 92 U.S. 542, 558 (1895)). Thus, in addition to statutory language and generic terms, an indictment "'must be accompanied by such a statement of facts and circumstances as will inform the accused of the specific offense, coming under the general description, with which he is charged.'" Russell, 369 U.S. at 765, 82 S.Ct. at 1048 quoting United States v. Hess, 124 U.S. 483, (1888)). An indictment that fails to apprise the defendant of the charge against him "'with reasonable certainty'" is constitutionally "'defective.'" Russell, 369 U.S. at 765, 82 S.Ct. at 1047 (quoting United States v. Simmons, 96 U.S. 360, 362 (1977)).

2. The Complaint Does Not Provide Constitutionally Sufficient Notice.

The Complaint in this case is deficient under the United States Constitution for each of the reasons set forth above in section I(1-3), section IIA(1-5), and are herein incorporated by reference. Specifically the Complaint fails to particularize what points of any law the alleged defendant may have violated or any affirmative defenses that may be attached. Defendant Titus has a reasonable expectation for a Republican form of government and for all due process to be followed and for justice to be served by law and order.

In Russell, for example, the Supreme Court reversed convictions in circumstances similar to these. Russell involved prosecutions for refusal to answer questions before a congressional subcommittee. The relevant statute, 2 U.S.C. § 192, criminalized a refusal to answer a question that was "pertinent to the subject under inquiry" by the subcommittee. The indictments identified the particular questions asked. They also tracked the statutory language and averred that the questions were "pertinent to the subject matter under inquiry." The indictments failed, however, to "identify the subject which was under inquiry at the time of the defendant's alleged default or refusal to answer." Russell, 369 U.S. at 754, 82 S.Ct. at 1041 (emphasis added). The Supreme Court held that the failure to identify or describe the subject matter under inquiry rendered the indictments fatally defective because they did not sufficiently apprise the defendants of the charges against them. See id. at 76869, 82 S.Ct. at 10491050.

The Supreme Court also specifically rejected the argument that a bill of particulars could have cured the defects. As the Court pointed out, "[i]t is a settled rule that a bill of particulars cannot save an invalid indictment." See id. at 770, 82 S.Ct. at 1050. In particular, the Supreme Court emphasized that, in order to return an indictment, the grand jury must have determined "what the question under inquiry was." Id. But permitting a prosecution based on an indictment that did not identify this element would have violated the defendants' constitutional rights. As the Court explained:

> "To allow the prosecutor, or the court, to make a subsequent guess as to what was in the minds of the grand jury at the time they returned the indictment would deprive the defendant of a basic protection which the guaranty of the intervention of a grand jury was designed to secure. For a defendant could then be convicted on the basis of facts not found by, and perhaps not even presented to, the grand jury which indicted him."

Other appellate decisions have reached similar results and dismissed indictments that failed to provide an adequate description of the core allegation against the defendant. See, e.g., United States v. Murphy, 762 F.2d 1151, 1154 (1 st Cir. 1985) (reversing conviction and dismissing indictment that did not adequately inform defendants of which proceeding they allegedly attempted to influence); United States v. Salisbury, 983 F.2d 1369, 137576 (6 th Cir. 1993) (indictment was invalid because it failed adequately to specify the activities that allegedly constituted voting more than once).

3. The Complaint Relies on Unconstutional Statues as the Basis for Allegations.

The Complaint is substantively defective because the statutes listed (TXTRC 545.351 ; 545.352) were unconstitutionally enacted in 1995 under SB971 (Texas Transportation Code Re-codification Bill) under the 74th Legislature in contradiction to requirements pursuant the Texas Constitution under Article 3, Sections 29-40 and 62. This Bill, SB971, was voted into law by the use of an emergency clause employed to suspend the constitutionally required reading of the bill on the floor of each house over three several days (see journal entry note: "Constitutional three day rule suspended"; found on Journal page 1352 dated 4/21/1995 and noted on the states web site at: http://www.legis.state.tx.us/billlookup/History.aspx?LegSess=74R&Bill=SB971) . The exact language of the emergency clause can be found in Section 28 of the Bill under the heading "EMERGENCY" on page 2079 of the original typed version of the bill and page 2603 of the state's electronic "WORD" version seen at: http://www.legis.state.tx.us/billlookup/Text.aspx?LegSess=74R&Bill=SB971

The emergency clause used to suspend this procedural rule under the guise of "crowed conditions of house calendars" directly violates Art. 3, Sec. 62, as to how and when the legislature has lawful authority to suspend certain procedural rules. The 74th Legislature failed to meet the clearly defined suspension criteria for the reading of Bills on the floor of each house over three several days and the open discussion held thereon before SB971 could have or should ever have the force and effect of law.

The use of the EMERGENCY clause in Section 28 of the Bill to suspend Art.3, Sec. 62 of the Texas Constitution, makes it impossible to claim that Sec. 62 was followed. Furthermore, if Art. 3, Sec. 62, of the Texas Constitution was NOT followed, then, anything created in violation of that Article is void ab initio pursuant to Art. 1, Sec. 29, of the Texas Constitution, which was required to be followed for SB971 to ever have the force and effect of law. Thus each and every statute found in SB971 are unconstitutional

under the provisions of the Texas Constitution and the statutory codes being used to charge Defendant Titus, also being found therein listed in the immediate case are unconstitutional as well.

C. The Court Should Quash The Complaint.

On its face, the complaint itself is objectionable in form and substance. Under the authorities cited above, the Complaint fails to provide adequate notice of the charges against Defendant Titus. In this case, the State presumably knows exactly what law it claims Defendant Titus did violate. The State supposedly did and knows exactly what it intends to try to prove at trial. With minimal effort, the State can easily identify and describe the crimes it claims Defendant Titus committed and eliminate any possible perception that it is simply trying to hide the ball. The Court should enforce Defendant Titus' rights under Texas and federal law, sustain his exceptions, and grant this Motion to Quash.

III. CONCLUSION

Defendant Michael Titus respectfully requests that the Court sustain his exceptions and quash the Complaint for the reasons set forth herein.

Respectfully submitted,

_____

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing has been delivered to the following party or counsel of record via delivery confirmation, hand delivery or fax on this _____ day of _____, 2015.

Copy to the Honorable Francis J. Truchard

Copy to the County Attorney or Acting County Attorney

Copy for Clerk's file

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