MOTION TO QUASH COMPLAINT

Cause No(s). \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

The State of Texas § IN THE PASADENA MUNICIPAL COURT

§ 1001 SHAW AVE., SUITE A

VS. § PASADENA, TX 77508

§

§ HARRIS COUNTY, TEXAS

MOTION TO QUASH COMPLAINT FOR FAILURE TO PROVIDE SUFFICIENT NOTICE OF CRIMES CHARGED

Defendant \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ excepts to and moves for an order quashing the Complaint in this case because the Complaint is *apparently* charging the defendant with a broad Penal Code Offense rather than the more specific offense under the Transportation Code. The defendant has a due process right to be prosecuted under the 'special' statute that is *in pari materia* with a broader statute when two statutes which are *in pari materia* irreconcilably conflict. The Complaint does not allege the particular circumstances of the terms of her release or why she was in custody in the first place. To prosecute the defendant under the broader Penal Code would violate her right to receive due process protections from any vicarious liability of the charges against her under Texas law, the Texas Constitution, and the Constitution of the United States. In support, Defendant would respectfully show as follows:

I COMPLAINT

This Complaint alleges in pertinent part that " \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_...in the territorial limits of the city of PASADENA, and the State of Texas,...DID THEN AND THERE INTENTIONALLY AND KNOWINGLY FAIL TO APPEAR, IN ACCORDANCE WITH THE TERMS OF DEFENDANTS RELEASE, IN MUNICIPAL COURT, CITY OF PASADENA, TEXAS HAVING BEEN LAWFULLY RELEASED FROM CUSTODY WITHOUT BAIL ON CONDITION THAT THE DEFENDANT SUBSEQUENTLY APPEAR."

On the header of this document also appears near the top; "COMPLAINT - FTA 38-10, COMPLAINT FAILURE TO APPEAR (SEC. 38.10,PC)".

The face of the Complaint does not reference any specific law or statute OR negate any exceptions that are required to be negated by the State.

II. THE COURT SHOULD QUASH THE COMPLAINT

A. The Complaint is Insufficient Under Texas Law.

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

Texas law guarantees an accused the right to have an indictment 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).

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 alsoMcElroy 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.

*SeeHaecker 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).

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 (Vllareal 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).

This Complaint stems from a traffic stop and in particular from CITATION NO. E1079133. In Azeez v. State, 248 S.W.3d 182 (Tex. Crim. App. 2008), a case which is consistent with this one, the Texas Court of Criminal Appeals wrote:

The doctrine has been codified in Section 311.026 of the Government Code:

(a) If a general provision conflicts with a special or local provision, the provisions shall be

construed, if possible, so that effect is given to both.

(b) If the conflict between the general provision and the special or local provision is

irreconcilable, the special or local provision prevails as an exception to the general

provision, unless the general provision is the later enactment and the manifest intent is that

the general provision prevail.[38]

With respect to how the doctrine applies to penal provisions, we have observed:

In construing penal provisions this Court has on a number of occasions found two statutes to

be in pari materia, where one provision has broadly defined an offense, and a second has

more narrowly hewn another offense, complete within itself, to proscribe conduct that would

otherwise meet every element of, and hence be punishable under, the broader provision. In

the case in which the special statute provides for a lesser range of punishment than the

general, obviously an "irreconcilable conflict" exists, and due process and due course of law

dictate that an accused be prosecuted under the special provision, in keeping with presumed

legislative intent. Accordingly, where range of punishment under what is perceived to be the

more specifically defined offense is less than that for the broader, . . . this Court has not

hesitated to reverse convictions obtained under the broader provision.[39]

Or, as we stated more succinctly in a recent opinion, "a defendant has a due process right to be

prosecuted under a `special' statute that is *in pari materia* with a broader statute when these statutes irreconcilably conflict."[40]

The same court wrote further:

On its face, the complaint itself was unobjectionable. It alleged a failure to appear *apparently* under the terms of the Penal Code provision, but did not allege the particular circumstances of the terms of his release or why he was in custody in the first place. It was only after the State's evidence disclosed that the case involved the failure to appear under the terms of a speeding citation that a basis for the appellant's *in pari materia* challenge became manifest.

... The trial court erred to allow the appellant to be prosecuted under the Penal Code.

**3. The Compliant Does Not Meet Requirements for Courts in Harris County to prosecute on 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, "...in counties having one or more criminal district courts an information must be filed in each misdemeanor case". Since Harris County is one of the counties which provides such courts, 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 Pasadena Municipal Court which is in Harris County. The defendant 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.

**4. Complaints and Informations in Harris 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 Harris 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.

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 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 mute.

**5. The Texas Constitutional Requirement for Indictment or Information to Invest the Court With Jurisdiction Applies to Courts in Harris 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 Murphy 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 subsection A(1-6), and in particular, because of the failure to state any law the alleged defendant may have violated or any affirmative defenses that may be attached.

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).

C. The Court Should Quash The Indictment.

On its face, the complaint itself is unobjectionable. Under the authorities cited above, the Complaint fails to provide adequate notice of the charges against the Defendant. In this case, the State presumably knows exactly what law it claims the Defendant 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 the Defendant committed and eliminate any possible perception that it is simply trying to hide the ball. The Court should enforce Defendant Murphy's rights under Texas and federal law, sustain Defendant's exceptions, and grant this Motion to Quash.

**III. CONCLUSION**

Defendant respectfully requests that the Court sustain the exceptions and quash the

Complaint for the reasons set forth herein.

Dated: February 18, 2015

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.

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Cause No(s). 1928359/E1168102

The State of Texas § IN THE PASADENA MUNICIPAL COURT

§ 1001 SHAW AVE., SUITE A

VS. § PASADENA, TX 77508

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ §

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ § HARRIS COUNTY, TEXAS

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ORDER ON DEFENDANT'S MOTION TO QUASH COMPLAINT

On this the day of , 2015, came on to be heard Defendant's Motion to Quash Complaint in the above entitled and numbered cause(s), and the court, having heard the said motion, and the evidence thereon submitted, is of the opinion that said Motion should be GRANTED

It is hereby Ordered that the above cause(s) be DISMISSED

Signed and entered this day of , 2015.

SEAL

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Judge Presiding