

STATE OF TEXAS	§	IN THE DISTRICT COURT
	§	
vs	§	390th DISTRICT COURT
	§	
JAMES RICHARD "RICK" PERRY	§	TRAVIS COUNTY, TEXAS

BILL OF PARTICULARS & AMENDMENT OF INDICTMENT

Now comes the State of Texas, by and through Michael McCrum, District Attorney Pro Tem, Travis County, Texas, and presents this Bill of Particulars and Amendment of Indictment.

Court's Order

On January 27, 2015, the Court entered an order (1) suggesting that the State provide more information relative to the charges set forth in Counts One and Two of the Indictment, and (2) notifying the State that the Court will dismiss Count Two unless the State alters the language in the indictment to affirmatively negate the statutory exception of Texas Penal Code, Section 36.03(c). Pursuant to Articles 28.10 and 28.11 of the Texas Code of Criminal Procedure, and pursuant to *Kellar v. State*, 108 S.W.3d 311 (Tex.Crim.App. 2003), the State presents this Bill of Particulars with respect to Counts One and Two of the Indictment, and Amendment of Count Two.¹

¹ As this Court is aware, article 28.11 of the Texas Code of Criminal Procedure requires that any amendment of an indictment "shall be made with the leave of the court and under its direction." This Court's order dated January 27, 2015, specifically granted the State leave to amend Count Two of the Indictment. *See* Order, p. 22 & Title ("Granting the State Leave to Amend Count II of the Indictment as Directed"). Accordingly, the State respectfully assumes that a motion for leave to amend is unnecessary. Of course, should the Court determine that the amendment to Count Two would require a motion for leave to amend the State requests that this pleading be considered as such, and stands prepared to provide additional information and/or argument to support its request for leave to amend, should the Court so require.



Filed in The District Court
of Travis County, Texas

FEB 13 2015

At 4:30 P M.
Velva L. Price, District Clerk

Summary of Clarifications and Amendment to Indictment

The grand jury's indictment charges, and the State will prove, that the Defendant broke the law in two different ways. Count I (Abuse of Office) charges the Defendant for using a lawful power in an unlawful manner and for unlawful purposes. Count II (Coercion of a Public Servant) charges the Defendant for conveying an illegal threat in a similarly unlawful manner and for unlawful purposes. The Defendant has requested more detail about the basis for these two charges, and has asserted that the State failed to negate the statutory exception set forth in Section 36.03(c), Texas Penal Code.

Accordingly, to provide the Defendant with further clarity and to comply with this Court's order relative to Count Two, the State hereby offers a Bill of Particulars as to Counts One and Two, and amends that portion of Count Two that addresses the statutory exception of Section 36.03(c).

Bill of Particulars: COUNT ONE

The State offers the following Bill of Particulars as to Count One:

On or about June 14, 2013, Defendant Perry misused his gubernatorial power to veto a legislatively-approved appropriation of funds for the Public Integrity Unit of the Travis County District Attorney Office in order to harm Rosemary Lehmberg and the Public Integrity Unit and as a direct result of Ms. Lehmberg not resigning her elected position as District Attorney of Travis County, a governmental jurisdiction over which Defendant Perry had no direct control. The State will prove that Defendant Perry did not approve of historical and current management decisions regarding the operation of the Public Integrity Unit and therefore wanted to coerce Ms. Lehmberg into resigning her elected position and/or stymie or obstruct the continued operation



of the Public Integrity Unit under Ms. Lehmberg's management. For these reasons, the Defendant misused government property, namely, money which was approved by the Legislature of the State of Texas to fund the continued operation of the Public Integrity Unit of the Travis County District Attorney Office, through two different manner and means.

First, by accepting the position of Governor of the State of Texas, Defendant Perry was obligated to act in compliance with his express, inherent and implied agreement to faithfully, honestly and impartially execute the duties and authority granted him by virtue of his office as Governor, and to execute such duties for the sole benefit of the people of the State of Texas, and not for the benefit of any private or individual purpose, private business, political party, or other. Contrary to such agreement, Defendant Perry misused government property that was subject to his custody and possession in that he used the lawful power of gubernatorial veto for an unlawful purpose, to-wit: eliminating funding for the Public Integrity Unit after Ms. Lehmberg refused to resign from her elected position as Travis County District Attorney.

Second, the Defendant Perry took an oath of office as a public servant to faithfully execute the duties of the office of Governor of the State of Texas. Contrary to such oath, Defendant Perry misused government property that was subject to his custody and possession in that he used the lawful power of gubernatorial veto for an unlawful purpose, to wit: eliminating funding for the Public Integrity Unit when Rosemary Lehmberg refused to resign from her elected position as Travis County District Attorney.

The State will present evidence that Defendant Perry had control or possession of government funds by virtue of his power of gubernatorial veto to stop the flow of legislatively-authorized appropriated funds.



Bill of Particulars: COUNT TWO

The State offers the following Bill of Particulars as to Count Two:

Beginning on or about June 10, 2013, and continuing through on or about June 14, 2013, Defendant Perry caused the communication of an unlawful threat to Rosemary Lehmborg, an elected public servant of a distinct jurisdiction over which Defendant Perry could not control, that he would use his gubernatorial power of veto to eliminate funding for continued operation of the Public Integrity Unit of the Travis County District Attorney Office if she did not resign her elected position as District Attorney. The State will prove that Defendant Perry did not approve of historical and current management decisions regarding the operation of the Public Integrity Unit and therefore wanted to coerce Ms. Lehmborg into resigning her elected position and/or stymie or obstruct the continued operation of the Public Integrity Unit under Ms. Lehmborg's management. The State will present evidence that Defendant Perry is criminally responsible for the communication to Rosemary Lehmborg that unless she resigned from her official position as elected Travis County District Attorney, Defendant Perry will veto funding for the continued operation of the Public Integrity Unit of the Travis County District Attorney's Office.

The Court noted in a footnote in its order that it is operating under the impression that Count Two is being alleged as a Class A misdemeanor. *See* Order, p. 1, n. 1. As noted by the Court, Defendant Perry has not raised an issue as to whether he is facing felony or misdemeanor punishment. Nevertheless, the State hereby provides notice to the Court and Defendant Perry that Count Two is being alleged as a third degree felony on the basis that defendant Perry threatened to commit a felony, to-wit: Abuse of Office, a violation of section 39.02 of the Texas Penal Code, or Obstruction or Retaliation, a violation of section 36.03. It is the State's position that



amendment of the indictment is unnecessary to assert that Count Two is charged as a felony based on notice being given through this Bill of Particulars.

Amendment of COUNT TWO

In its Order dated January 27, 2015, the Court ruled that “the statement in the indictment that ‘the defendant and Rosemary Lehmborg were not members of the same governing body of a governmental entity’ did not properly negate the exception under Section 36.03(c)” of the Texas Penal Code. *See* Order, p. 19. Without waiving the right to argue that such language complies with applicable rules of criminal procedure, the State hereby amends Count Two in the following respect:

the following language shall be struck from Count Two of the Indictment:

and the defendant and Rosemary Lehmborg were not members of the same governing body of a governmental entity, such offense having been committed by defendant, a public servant, while acting in an official capacity as a public servant.

and the following language shall be inserted at the end of Count Two of the Indictment:

and it is further alleged that Rosemary Lehmborg was an elected district attorney in the Judicial Department (or Branch) of Texas, specifically, the District Attorney of Travis County, Texas, and the defendant was the chief officer of the Executive Department (or Branch) of Texas, specifically, the Governor of the State of Texas, and the defendant was therefore not a member of the governing body of a governmental entity in which Rosemary Lehmborg was a member, and the defendant’s influence and attempt to influence Rosemary Lehmborg by means of an unlawful threat to veto legislatively-approved appropriation of funds did not constitute an official action taken by the defendant as a member of a governing body.

A revised Indictment is attached to this pleading as Attachment A.



Respectfully Submitted:

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**ATTORNEYS FOR
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CERTIFICATE OF SERVICE

This is to certify that on February 13, 2015, a true and correct copy of this the State's Bill of Particulars and Amendment of Indictment has been emailed to:

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ATTACHMENT A

No. D-1-DC-14-100139

The State of Texas v. James Richard “Rick” Perry

INDICTMENT

**Abuse of Official Capacity 39.02
Coercion of Public Servant 36.03**

In the 390th Judicial District Court of Travis County, Texas

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY for the County of Travis, State of Texas, duly selected, empanelled, sworn, charged, and organized as such at the January 2014 Term, A.D., of the 390th Judicial District Court for said County, upon its oath presents in and to said Court at said term, that in Travis County, Texas, and anterior to the presentment of this indictment, James Richard “Rick” Perry, committed the following offenses:

Count One

On or about June 14, 2013, in the County of Travis, Texas, James Richard “Rick” Perry, with intent to harm another, to-wit, Rosemary Lehmborg and the Public Integrity Unit of the Travis County District Attorney’s Office, intentionally or knowingly misused government property by dealing with such property contrary to an agreement under which defendant held such property or contrary to the oath of office he took as a public servant, such government property being monies having a value of in excess of \$200,000 which were approved and authorized by the Legislature of the State of Texas to fund the



continued operation of the Public Integrity Unit of the Travis County District Attorney's Office, and which had come into defendant's custody or possession by virtue of the defendant's office as a public servant, namely, Governor of the State of Texas.

Count Two

Beginning on or about June 10, 2013, and continuing through June 14, 2013, in the County of Travis, Texas, by means of coercion, to-wit: threatening to veto legislation that had been approved and authorized by the Legislature of the State of Texas to provide funding for the continued operation of the Public Integrity Unit of the Travis County District Attorney's Office unless Travis County District Attorney Rosemary Lehmborg resigned from her official position as elected District Attorney, James Richard "Rick" Perry, intentionally or knowingly influenced or attempted to influence Rosemary Lehmborg, a public servant, namely, the elected District Attorney for Travis County, Texas, in the specific performance of her official duty, to-wit: the duty to continue to carry out her responsibilities as the elected District Attorney for the County of Travis, Texas through the completion of her elected term of office, ~~and the defendant and Rosemary Lehmborg were not members of the same governing body of a governmental entity, such offense having been committed by defendant, a public servant, while acting in an official capacity as a public servant.~~ and it is further alleged that Rosemary Lehmborg was an elected district attorney in the Judicial Department (or Branch) of Texas, specifically, the District Attorney of Travis County, Texas, and the defendant was the chief officer of the Executive Department (or Branch) of Texas, specifically, the Governor of the State of Texas, and the defendant was therefore not a member of the governing body of a



governmental entity in which Rosemary Lehmberg was a member, and the defendant's influence and attempt to influence Rosemary Lehmberg by means of an unlawful threat to veto legislatively-approved appropriation of funds did not constitute an official action taken by the defendant as a member of a governing body.

AGAINST THE PEACE AND DIGNITY OF THE STATE OF TEXAS.

Foreperson of the Grand Jury

