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FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

APR 18 1977

Flourne Walsh

No. 27488

IN THE SUPREME COURT OF THE STATE OF COLORADO

OSCAR RAY BURLESON,]	Appeal from the District
]	Court of Arapahoe County
Petitioner-Appellant,]	and State of Colorado
]	
]	
vs.]	
]	
ARNOLD MILLER, Sheriff of]	
Arapahoe County,]	
]	Honorable
Respondent-Appellee.]	WILLIAM B. NAUGLE
		Judge

BRIEF OF PETITIONER-APPELLANT

ROLLIE R. ROGERS
Colorado State Public Defender

JAMES F. DUMAS, Jr.
Chief Deputy State Public Defender

MARY G. ALLEN
Deputy State Public Defender

ATTORNEYS FOR PETITIONER-APPELLANT
1575 Sherman Street
Denver, Colorado 80203
892-2664

INDEX

	<u>Page</u>
ISSUE PRESENTED	1
STATEMENT OF THE CASE	1
ARGUMENT	2
THE INDICTMENT FORWARDED IN SUPPORT OF THE EXTRADITION DEMAND DOES NOT CHARGE THE OFFENSE OF AGGRAVATED ROBBERY UNDER THE STATUTES OF THE STATE OF TEXAS	2
CONCLUSION	4
CERTIFICATE OF SERVICE	4

TABLE OF CASES CITED

Bryan v. Conn, 187 Colo. 233, 530 P.2d 1274 (1975).	3
Samples v. Cronin, ___ Colo. ___, 536 P.2d 306 (1975).	3

OTHER AUTHORITY

Vernon's Texas Codes Annotated, Penal Code, Section 29.02	3
Section 29.03	2

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BRIEF OF PETITIONER-APPELLANT

Petitioner-Appellant was the petitioner in the trial court and will be referred to by name or as Petitioner. Respondent-Appellee will be referred to as the Respondent. Numbers in parenthesis refer to folio numbers of the original record.

ISSUE PRESENTED

Whether the indictment forwarded in support of the extradition demand fails to charge the offense of aggravated robbery under the statutes of the State of Texas?

STATEMENT OF THE CASE

The Petitioner, Oscar Ray Burleson, filed a petition for writ of habeas corpus in the Arapahoe County District Court challenging the sufficiency of an extradition request by the State of Texas and alleging, inter alia, that the indictment forwarded in support of the requisition does not substantially charge the Petitioner with having committed the crime of aggravated robbery in Texas.(081) A hearing was held and the petition denied.(109, 128) Mr. Burleson here appeals this ruling.(094)

ARGUMENT

THE INDICTMENT FORWARDED IN SUPPORT OF THE EXTRADITION DEMAND DOES NOT CHARGE THE OFFENSE OF AGGRAVATED ROBBERY UNDER THE STATUTES OF THE STATE OF TEXAS.

The extradition papers filed in this case include the following: (1) Requisition of the Governor of Texas directed to the Governor of Colorado; (2) Application for Requisition of the district attorney of Williamson County, Texas directed to the Governor of Texas; (3) Indictment and Capias; and (4) Warrant of the Governor of Colorado. The Requisition of the Governor of Texas states that Petitioner, Oscar Burleson, stands charged with the crime of aggravated robbery in Texas.(030) The Application for Requisition, signed by the Williamson County District Attorney, states that Mr. Burleson stands charged by indictment with the crime of aggravated robbery.(033) However, the indictment itself does not specify the charge and does not contain any statutory citation for the alleged violation.(038) The indictment states in pertinent part that "Oscar Ray Burleson, Defendant, on or about the 15th day of December, A.D. 1975 . . . did . . . while in the course of committing theft and with intent to obtain property of Edward Jasek . . . without the effective consent of said owner and intent to deprive the said owner of said property did then and there intentionally and knowingly placed Edward Jasek in fear of death. . ." (Copy of Indictment attached hereto as Exhibit A). This language does not charge Petitioner with the crime of aggravated robbery under the laws of the State of Texas.

Vernon's Texas Codes Annotated, Penal Code, Section 29.03 defines aggravated robbery as follows:

(a) A person commits an offense if he commits robbery as defined in Section 29.02 of this code, and he:

- (1) causes serious bodily injury to another; or
- (2) uses or exhibits a deadly weapon.

V.T.C.A., Penal Code, Section 29.02 provides the following definition of robbery:

(a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 of this code and with intent to obtain or maintain control of the property, he:

(1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

As the indictment in the instant case alleges neither the infliction of serious bodily injury nor the use of a deadly weapon, it does not charge the offense of aggravated robbery under § 29.03. Moreover, the indictment contains no allegation that the offense is aggravated robbery and fails to mention a statutory citation.

There thus exists a major inconsistency in the requisition documents. The Texas requisition papers all allege that the Petitioner is charged in that state with aggravated robbery. Yet the indictment furnished in support of the demand indicates that he is not so charged.

In Bryan v. Conn, 187 Colo. 233, 530 P.2d 1274 (1975), this Court held that "a minor discrepancy in charge set forth in the requisition documents does not prevent extradition." 530 P.2d at 1275. In that case the requisition documents were found sufficient because "[c]onsidered together, the documents create no confusion as to the crime which provides the basis for extradition." Id. Such is not the case here. The indictment does not specify the charge and does not support the conclusion that Mr. Burleson is charged with commission of aggravated robbery. The extradition papers throw no light on this major discrepancy.

The holding in Samples v. Cronin, ___ Colo. ___, 536 P.2d 306 (1975), that there is no requirement that the statutory citation be included within the indictment is not controlling. There petitioner argued that the extradition papers were insufficient solely because the Texas indictment did not carry a statutory citation. In rejecting his contention, this Court noted

that the indictment clearly charged the crime of armed robbery in the language of the Texas statute. Thus petitioner was given adequate notice of the crime charged in the demanding state. By contrast, in the case at bar it is impossible to determine the crime for which extradition is sought.

For these reasons, the requisition documents are invalid on their face and insufficient to sustain the extradition order. Therefore, the trial court's order discharging the writ of habeas corpus must be reversed and the Petitioner released.

CONCLUSION

For all of the above reasons, the trial court's order should be reversed and Petitioner discharged from custody.

Respectfully submitted,



MARY G. ALLEN
Deputy State Public Defender
Attorney for Petitioner-Appellant
1575 Sherman Street
Denver, Colorado 80203
892-2664

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the attached Brief of Petitioner-Appellant was duly served upon the Honorable John D. MacFarlane, Attorney General of the State of Colorado, and J. Stephen Phillips, Assistant Attorney General, by interdepartmental mail, this 18th day of April, 1977.

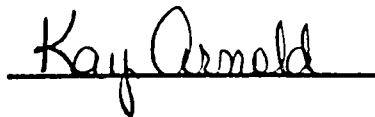


EXHIBIT A

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

338

The Grand Jurors for the County of Williamson, State of Texas, duly selected, impaneled, sworn, charged and organized as such at the May Term, A. D. 1976, of the 26th Judicial District Court of said County, upon their oaths present in and to said Court, that Oscar Ray Burleson, Defendant, on or about the 15th day of December, A. D. 1975, and before the presentment of this indictment, in said County and State, did then and there while in the course of committing theft and with intent to obtain 1 property of Edward Jasek, the owner of the following described property, to-wit: Two Hundred Fifty-Eight and 75/100 Dollars (\$258.75) in lawful money of the United States of America,

without the effective consent of said owner and intent to deprive the said owner of said property, did then and there² intentionally and knowingly placed Edward Jasek in fear of death,

339

AGAINST THE PEACE AND DIGNITY OF THE STATE.

1st Robert B. Chambers

Foreman of the Grand Jury.